

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:

**Mr. Justice Muhammad Shafi Siddiqui**

Suit No.B-93 of 2011

Burj Bank Limited  
Versus  
M/s Pak-Hy Oils Ltd. and others

Date of Hearing: 03.02.2016

Plaintiff: Through Mr. Mr. Ejaz Ahmed Zahid along with Syed Aijaz Hussain Sheerazi Advocates

Defendants: Through Mr. Mr. Waleed Khanzada Advocate

J U D G M E N T

**Muhammad Shafi Siddiqui, J.**- Plaintiff has filed this suit for recovery of Rs.80,913,505.77 under section 9 of Financial Institutions (Recovery of Finances) Ordinance, 2001 against the defendants. The plaintiff has been providing finances under Islamic mode of financing since May, 2007. The defendant perhaps failed in settling the outstanding dues and defaulted in May, 2010 which resulted in execution of renewal of facility vide Facility Advising Letter dated 30.06.2010 (FAL) followed by addendum to first FAL on 12.01.2011 in terms whereof the Murahaba Finance Facility was extended up to 31.01.2011. The third FAL in this regard was of 01.04.2011 which was also accepted by the defendants based on Murahaba Finances Facility to defendants up to a limit of 14.350 Million. On these facts learned counsel for the defendant has filed leave to defend application and has out rightly denied the claim of the plaintiff being baseless, incorrect, false and maliciously. It is claimed that there is nothing due and outstanding and no agreement in pursuance of the FAL was executed and availed.

2. It is the case of the defendants that the Facility Advising Letter dated 30.06.2010 shows to be subsequent to the Murahaba Facility Agreement dated 01.06.2010. Learned counsel for the defendants thus submitted that prior to the Facility Advising Letter, the plaintiff has shown that Murahaba Facility Agreement was executed one month prior to the sanction and that the personal guarantees by Tariq Siddiqui, defendant No.2 and Mrs. Shazia Tariq, defendant No.3, were procured by the plaintiff whereas the plaintiff has availed the guarantee of defendant No.4 as well which is not supported by this FAL dated 30.06.2010. Counsel submitted that even the guarantees available as Annexure H/1 to H/3 are prior to the sanction advice/Facility Advising Letter dated 30.06.2010 and hence these guarantees are not to be considered in pursuance of alleged facility, which is claimed to be provided under Murahaba Facility Agreement.

3. Learned counsel for the defendant has also relied upon stamp dates endorsed by the stamp vendor which are different from those available at Annexure P/7 onwards though they are the same documents. Counsel submitted that these documents were manufactured subsequently in order to streamline the sequence of the documents date-wise. These personal guarantees since not executed for the relevant and claimed amount, therefore, purposely they have been re-used by assigning appropriate dates in documents attached along with the plaint.

4. Counsel further submitted that insofar as the earlier outstanding dues are concerned those have been paid vide Annexure P/1 to P/6 since nothing was due and outstanding, therefore, there is no question of renewal of any amount outstanding. Counsel submitted that thus the defendants are entitled for an unconditional leave to defend this suit.

5. On the other hand learned counsel for the plaintiff submitted that irrespective of any such agreement, the finances provided under Murahaba Facility are established independently. He submitted that the agreement only provides a way and mechanism which in the absence could always be established through documents based on Murahaba transactions. He submitted that at present there are 13 outstanding Murahaba transactions which are unpaid and it is only in this relation that this suit has been filed. All those Murahaba transactions related to a period from 06.12.2010 onwards.

6. Learned counsel for the plaintiff has relied upon statement of accounts of the defendant No.1 available as Annexure J/1 page 3232 and submitted that the outstanding Murahaba transactions are specified at page 325 and these facilities/transactions have not been denied by the defendants. These are neither previous outstanding nor continuation of any previous debt.

7. The first transaction facility amongst the outstanding was of 06.12.2010 available at page 247. This set of documents from page 247 to 253 contains an order for purchase of goods by defendant No.1, receipt of the amount of Rs.8 Million, declaration, confirmation and undertaking by defendant No.1 that the goods were received at the factory and the offer to purchase in the sum of Rs.8,488,942/-. The offer to purchase in relation to this transaction, which is available at page 243 separately describes the amount financed and the profit. The counsel submitted that by applying Kibor method to claim interest/markup, the plaintiff has reduced it to 403,130.81.

8. The second set of Murahaba transaction dated 20.12.2010 is available from page 255 onwards which contains chronologically the same set of documents such as order for purchase, receipt of amount, confirmation of the goods received, company's offer to purchase the

goods and the acceptance of sale of goods and by applying Kibor method to the interest/profit, the amount is reduced from 391,574/- to 388,311/-. Thus, counsel for the plaintiff submitted that all these 13 transactions based on Murahaba facilities were based on independent transactions and this could hardly be a ground to consider that the defendant had paid all previous outstanding prior to 2010. There is nothing that is being claimed by the plaintiff in relation to those outstanding dues and hence the stand taken by the defendants that there is no such agreement in relation to the present debt is of no consequence. These transactions are otherwise established independently.

9. In addition to the above, learned counsel for the plaintiff submitted that insofar as the dates which are claimed to have been maneuvered by the plaintiff is concerned nothing would turn on this account as the guarantees executed by defendants No.2 to 4 provides that in consideration of defendants' request Bank entered into a finance agreement or any supplemental thereto and the defendants jointly and severally guaranteed for the repayment of these specified amounts. These independent transactions of Murahaba Facilities are in fact supplemental to the finance agreement and so also the Facility Advising Letters and it could not be said to be exhausted or limited only to the extent of a debt outstanding prior to 2010. Hence learned counsel submitted that the leave application is liable to be dismissed.

10. Heard the learned counsel and perused the material available on record.

11. Adverting to the contention of learned Counsel for the defendant that the Facility Advising Letter was subsequent to the Murahaba Facility Agreement dated 01.6.2010 these Murahaba Facilities are to be established independently as being separate and independent

transactions. Certainly the agreement in relation thereto does provide a mechanism, method and a way in case of dispute however as to the disbursement of amount and availment of fund, it could independently be established through Murahaba transactions which in the present case have not been denied except it is claimed that all previous debt prior to June, 2010 stood paid and that these Murahaba transactions have not been based on any Finance Agreement. The set of documents provided by the plaintiff is sufficient to ascertain (i) the principal amount, (ii) the profit payable, (iii) transaction debt and (iv) the maturity date. Thus in my view this could hardly constitute a ground to grant leave in this suit since the finance otherwise is established and nothing would turn on the contention that the stamp endorsed on some of the documents were subsequent to the agreement which documents were earlier used with some different dates as the contents of the guarantee itself is sufficient. The plaintiff would have gained nothing by endorsing such stamps on those documents as text of guarantees speaks itself. The contents of the guarantee relates to a Finance Agreement or any supplemental thereto thus these transaction of Murahaba Facility though are supplement to the earlier agreement and Facility Advising Letter so also these guarantees cannot be said to be limited only to the extent of date prior to the 2010. These contentions of the learned Counsel for the defendant do not constitute a substantial question of law and facts.

12. The thirteen outstanding facilities are as under:

#### **Outstanding Murabaha Finance Facility Transactions**

Disbursement date	Principal Disbursed amount	Maturity date	Principal payable	Profit Payable
6-Dec- 10	8,000,000.00	5-Apr- 11	8,000,000.00	403,130.81
20- Dec-10	6,400,000.00	19-Apr- 11	6,400,000.00	388,311.67
22-Dec-10	2,178,205.00	21-Apr-11	2,178,205.00	108,837.44

12-Jan-11	11,625,844.00	12-May-11	11,625,844.00	641,125.48
17-Jan-11	6,287,951.00	17-May-11	6,287,951.00	355,122.80
28-Jan-11	2,773,157.00	28-May-11	2,773,157.00	123,492.86
29-Jan-11	4,400,000.00	28-May-11	4,400,000.00	195,938.63
29-Jan-11	4,331,588.00	28-May-11	4,331,588.00	192,892.14
19-Feb-11	5,400,000.00	18-Jun-11	5,400,000.00	296,973..37
19-Feb-11	2,000,000.00	18-Jun-11	2,000,000.00	109,990.14
5-Mar-11	2,794,967.00	2-Jul-11	2,794,967.00	132,161.35
1-Apr-11	9,000,000.00	30-Jul-11	9,000,000.00	466,703.01
1-Apr-11	5,350,000.00	30-Jul-11	5,350,000.00	266,798.63
<b>Sub Total</b>	<b>70,541,712.00</b>		<b>70,541,712.00</b>	<b>3,681,478.33</b>
<b>Grand Total</b>	<b>422,480,184.00</b>		<b>70,541,712.00</b>	<b>3,681,478.33</b>
<b>TOTAL</b>			<b>74,223,190.33</b>	

12. Hence in my view the plaintiff is entitled for the judgment and decree as prayed but to the extent of above amount i.e. 74,223,190.33 with cost of funds till realization of the amount. Order accordingly.

Dated: 19.02.2016

**Judge**