

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No. 77 of 2006

Date	Order with signature of Judge
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Present :

Mr. Justice Nadeem Akhtar

Mr. Justice Sadiq Hussain Bhatti

Appellant : Pakistan Export Finance Guarantee Agency Limited
through Mr. Naveed-ul-Haq Advocate.

Respondents : Muhammad Dawood Khan and Syed Anwer Ali,
called absent.

Date of hearing : 07.08.2014.

J U D G M E N T

NADEEM AKHTAR, J. – This appeal has been filed by the appellant under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance of 2001 (**‘the Ordinance’**) against the judgment delivered on 04.05.2006 and decree drawn on 10.05.2006 by the Banking Court No.V at Karachi in the appellant’s Suit No.400/2005, whereby the Suit was decreed with costs against respondent No.1 in the sum of Rs.1,378,114.00. The appellant is aggrieved by the impugned judgment and decree as future markup, legal expenses and liquidated damages claimed by it, have not been granted by the Banking Court.

2. At the very outset, Mr. Naveed-ul-Haq, learned counsel for the appellant, stated that the appellant would be satisfied if the decree is modified by allowing cost of funds on the decretal amount from the date of default as provided under Section 3(2) of the Ordinance. He further stated that the appellant will not press its claim for future markup, legal expenses and liquidated damages.

3. Section 3(2) of the Ordinance specifically provides that where the customer defaults in the discharge of his obligation, he shall be liable to pay cost of funds of the financial institution as certified by the State Bank of Pakistan, for the period from the date of his default till realization. Section 17 of the Ordinance further provides that the final decree passed by the Banking Court shall provide for payment from the date of default of the amounts found to be payable on account

of the default in fulfillment of the obligation, and for costs, including in the case of a Suit filed by a financial institution, cost of funds determined under Section 3 *ibid*.

4. A perusal of the impugned judgment shows that cost of funds was not granted by the Banking Court although the impugned judgment was delivered after coming into force of the Ordinance. In view of the aforesaid specific provisions in the Ordinance for the grant of cost of funds in case of default by the customer in the discharge of his obligation, cost of funds ought to have been allowed by the Banking Court at the time of passing of the decree. Learned counsel for the appellant relied upon a number of reported cases in support of the appellant's claim in relation to cost of funds, which need not be discussed here in view of the explicit provisions in the Ordinance as noted above.

5. Accordingly, the appeal is partly allowed by granting cost of funds to the appellant on the decretal amount from the date of default.

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