

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

Suit No. B-51 of 2009

Pakistan Kuwait Investment

Versus

M/s. Three Star Hosiery Mills (Pvt.) Ltd. & others

Date	Order with signature of Judge
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1. For hearing of CMA No.5245/10
2. For hearing of CMA No.8305/09
3. For hearing of CMA No.8306/09

Date of Hearing: 16.11.2016

Plaintiff: Through Mr. Ijaz Ahmed Advocate

Defendants: Through M/s. Furqan Naveed and Shahid Iqbal Rana Advocate

ORDER

Muhammad Shafi Siddiqui, J.- The applications at serial No.2 is the leave applications filed by defendants whereas the application at serial No.1 is also an application for grant of leave on account of Article 10-A of the Constitution in view of the 18th Amendment in the year 2010 and accordingly the application was filed on 06.5.2010. The subject finances involved are lease finance facilities in the sum of Rs.22, 12, 78 and 55 Million regarding which four separate agreements were executed.

2. In relation to the preliminary objection it is argued that the statement of account available as annexure P-54 is not as required in terms Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. The statement of account claimed to have been filed in violation of the Bankers Book Evidence Act, 1891 and in particular subsection (8) of Section 2 of the Act, as neither the name of the officer concerned is disclosed in the statement of account nor the designation is apparent. He further argued that one Tasnimul Haq Farooqui claimed to have filed this suit on behalf of the plaintiff whereas along with the

plaint neither any Power of Attorney nor any board resolution was filed. The only board resolution apparently filed along with the replication is available as annexre-R-1 at page 143. He further submits that along with the replication the plaintiff has filed additional account carrying a certificate. It is purported to be true copy of the entries of the ordinary books of account. He claimed that certain additional documents such as the auditor's report was placed on record along with replication and the defendant had no chance to rebut these documents. He has however categorically denied that any amount in pursuance of such lease agreement were disbursed to the defendant and has also denied to have made any payment as reflected in the statement of account.

3. Mr. Ijaz Ahmed has explained the circumstances at the time when the Bankers Book Evidence Act was promulgated since entries were being made by hands at the relevant time therefore, it was felt necessary by the legislature to have made it a requirement of law that such statement of account be certified with the requirement of subsection (8) of Section 2 of the Bankers Book Evidence Act. It is claimed that the present system of banking is taken over by electronic era and gadgets such as computer and are helpful to overcome earlier deficiencies and hence there is no probability of any such error which could have occurred while maintaining such record manually. He has further relied upon the auditor's report to deny the contention that the defendants have not availed any finance. It is claimed that the auditor's report itself is sufficient admission at least to the extent of Rs.42,777,776 and 21,912,894 respectively. Counsel has further relied upon Subsection (5) of Section 10 of the Act and submitted that in case of any deliberate attempt of giving false statement, the leave application ought to have been dismissed with additional cost.

4. I have heard the learned Counsels and perused the material available on record. Since some preliminary objections have been raised,

I would decide them first before dilating upon the merits of the case. It is the contention of the learned Counsel for the plaintiff that subsection (8) of Section 2 of the Bankers Book Evidence Act has lost its force and strength in the present regime when perhaps there is no probability of such error as there was earlier when the law was promulgated. I would disagree with the contention of the learned Counsel that in view of the present banking system substantially based and taken over by electronic gadgets and computer, the Bankers Book Evidence Act has lost its applicability and force. Earlier the ledgers were being maintained manually and presently the ledgers are being maintained electronically but by human being. The purpose of such authentication and certification in terms of subsection (8) of Section 2 of the Act is that it signifies the authenticity of document such as statement of account which in absence of such certificate cannot be presumed to be correct. Bankers Book Evidence Act provides the presumption of the correctness to such statement of account and is considered to be correct if it is certified by the officer as contemplated under section 2(8) of the Bankers Book Evidence Act, 1891. Though it may have been attempted to be cured on the basis of additional statement of account which appears to have been certified yet the authority of the officer is only in relation to instituting a suit, verification of plaint, engaging a Counsel etc. in terms of Board resolution. This authority based on the board resolution cannot be stretched down to the frame of Section 2(8) of the Bankers Book Evidence Act. In the connected matter of Pak Kuwait Investment v. Active Apparel International where the shareholders claimed to be the same, the leave was granted on this score alone. The auditor's report may have its strength but such material document ought to have been filed along with the plaint since the defendant have no chance to rebut the same as has been filed along with the replication.

5. Without considering the merit of the case, it seems that the plaintiff is entitled for an unconditional leave on these preliminary

grounds alone. As to the contention of the preliminary decree on the basis of auditor's report, suffice it to say that such material documents filed along with the replication could hardly be considered at this stage.

The application bearing CMA No.8305/09 is allowed.

6. The application bearing CMA No.5245/2010 has become infructuous and is accordingly dismissed.

Judge