

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

Suit No.B-43 of 2007

Askari Commercial Bank Ltd.

Versus

Zafar Ahmed & others

BEFORE:

**Mr. Justice Muhammad Shafi Siddiqui**

Date of Hearing: 19.11.2012

Plaintiffs: Through Mr. Amanullah Khan Advocate  
& Ms.Lubna Amar Advocate

Defendant: Through Mr. Shahab Sarki Advocate

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- The plaintiffs filed this suit for recovery of Rs.57,343,495.09 and US 557,400/= and sale of mortgaged and pledged properties. Pursuant to the summons/notices issued, the defendant filed application under section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 bearing CMA No.10651 of 07 The said application was dismissed vide order dated 24.08.2011 for non-prosecution and the plaintiff was directed to submit the breakup of the amount that has been claimed by the plaintiff. Consequently pursuant to the said order the plaintiff filed their statement showing breakup of the amount that has been sought to be recovered through these proceedings.

2. It is contended by plaintiff's counsel that the defendant No.1 being proprietor of M/s Q.C. International which is engaged in the

business of processing and export of rice etc. availed various finance facilities from time to time for his proprietorship concern M/s Q.C. International. Consequently plaintiff on the request of the defendant No.1 has created FAPC-1 and FAPC-FE-25 from 22.09.2006 to 09.01.2007 and from 29.06.2006 to 15.09.2006 respectively. However, despite some adjustments the same are still outstanding, the details of which are as under:-

(A) FAPC-1:- From the statement of breakup filed it appears that from 28.09.2006 to 09.01.2007 the defendant No.1 availed several FAPCs-1 (Finance Against Packing Credit Part-1) for total sum of Rs.59,200,000/- from time to time for a period of 180 days each under Part I of the State Bank of Pakistan Export Re-Finance Scheme. These 15 Finances Against Packing Credit Part-1 are FAPCs No.341, 342, 343, 344, 345, 346, 350, 351, 352, 353, 354, 355, 356, 358 and 359. These 15 finances were provided by the plaintiff to the defendants by crediting the requisite amount in Q.C. Internationals current account No.01-010-0263-4 from time to time and also by correspondingly debiting the export finances account of Q.C. International. Pursuant to such disbursement and finance facilities, the defendant No.1 executed the Agreements for financing for short/medium/long term on markup basis, General Financing and Collateral Agreement and Demand Promissory Note on 12.11.2005, 25.04.2006 and 02.02.2007. In addition for availing the outstanding fifteen FAPCs the defendant No.1 also executed and submitted following documents, which were also submitted to the State Bank of Pakistan:-

- i) Undertaking under Part-1 prescribed by the State Bank of Pakistan.
- ii) Demand Promissory Notes
- iii) Application on prescribed Form "D"
- iv) Sale Contracts

B) The other outstanding amount is in respect of FAPCs-FE-25. The said finance facility was availed from 29.06.2006 to 15.09.2006. The total amount thus outstanding in respect of the aforesaid finance facilities is US \$464,500/-. The FAPCs-FE-25 facilities were availed by the defendant No.1 by crediting the requisite amount in the account of defendant No.1 and by correspondingly debiting the respective export finance accounts of Q.C. International and in order to avail the said FAPC-FE-25 facilities the defendant No.1 executed Agreements for financing for short/medium/long term on markup basis, General Financing and Collateral Agreement and Demand Promissory Note on 12.11.2005, 25.04.2006 and 02.02.2007. In addition for availing the outstanding fifteen FAPCs the defendant No.1 also executed and submitted following documents, which were also submitted to the State Bank of Pakistan:-

- i) Undertaking under Part-1 prescribed by the State Bank of Pakistan.
- ii) Demand Promissory Notes
- iii) Application on prescribed Form "D"
- iv) Sale Contracts

3. The aforesaid facilities granted to the defendant No.1 are secured by pledge of rice which was under the custody of defendants No.1 and 2. It is contended that the defendant No.1 in criminal conspiracy with each other fraudulently removed the stock of pledged rice without permission of the plaintiff in respect whereof a Criminal Complaint No.15 of 2012 is pending before the Banking Court No.1 which is at the stage of evidence. However, through sale of left over pledged rice by this Court the plaintiff adjusted the partial liability of the defendant No.1 pursuant to the order of this Court dated 07.05.2008, 13.05.2008 and 15.05.2008. To further secure the finances availed by the defendant No.1, the defendants No.1 to 3 created equitable mortgage over their respective

properties which were also disposed of and by consent adjusted the TOD liability of the defendant No.1. Presently there appears to be three mortgaged properties left by with the plaintiff to secure the present outstanding liabilities, as claimed in the suit. These three properties are as under:-

- i) Plot of land No.150, measuring 600 sq. yds., Block-G of PECHS off Fateh Jung Road, District Rawalpindi, mentioned in prayer at serial No.4(i).
- ii) Five plots of lands No.B-193, B-244, A-177, A-146 and B-120 located in Housing Scheme "New World City" situated at Airport Road Gawadar, mentioned in prayer at Serial Nos.4(ii), 4(iii), 4(iv), 4(v) and 4(vi).
- iii) Office No.109 on first floor of Land Mark Plaza within jurisdiction of Arambagh police station, Karachi, mentioned at Sr. No.5(ii).

4. As far as the present liabilities are concerned, the plaintiff has submitted a breakup supported by the enclosures and the letter of State Bank of Pakistan regarding penalty/fine imposed on the defendant No.1 due to non-shipment. Such penalty was debited from the plaintiffs' account by the State Bank of Pakistan and consequently the defendant No.1 is liable to pay the amount of said penalty/fine to the plaintiff. It also appears from the record that the suit filed by the defendant No.1 has already been dismissed by this Court on plaintiff's application for rejection of plaint.

5. I have seen the statement of breakup under heading of FAPC-1 and FAPC-FE-25. After perusal of the said two statements/breakups it appears that nothing mentioned in the said statement/breakup which require scrutiny of any alleged illegal and unlawful claimed amount. Since leave to defend application of the defendant has already been dismissed and the claim of the plaintiff with regard to the State Bank of Pakistan also appears to be legitimate and lawful and there is no rebuttal in respect of the amount claimed which otherwise appears to be lawful, I, in view of the statement/breakup, referred to above, decree

the suit of the plaintiff excluding the claim of liquidated damages in prayers 1 and 2 along with any such markup as claimed thereon. The plaintiff is also entitled to the cost/cost of funds till realization of the outstanding amount at the current rate as determined by the State Bank of Pakistan in terms of Finance Ordinance, 2001.

JUDGE