

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

Suit No.B-84 of 2013  
M/s Summit Bank Limited  
Versus  
M/s Al-Abid Silk Mills Limited

Date	Order with signature of Judge
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For hearing of CMA 8741/13

**Date of hearing: 21.11.2014**

Mr. Abid Hussain for the plaintiff.  
Mr. Adnan I. Chaudhry for the defendant.

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**Mohammad Shafi Siddiqui, J.**- This is an application under section 10 of Financial Institutions (Recovery of Finances) Ordinance, 2001 filed by the defendant seeking leave to defend the suit.

The defendant in the application has challenged a number of entries in statement of accounts and has also challenged markup agreements and the liability claimed thereunder.

Learned counsel for the defendant contended that the amount arising out of the Facility Advising Letter dated 16.01.2009 has been repaid. He further claimed that the amount in terms of Markup Agreements dated 26.02.2009 and 28.05.2009 have also been repaid. It is further contended that the hypothecation and the charged documents referred in the plaint constituted security only for the amount extended under ERF Markup Agreement dated 26.02.2009 and FBP Markup Agreement dated 28.05.2009 and since the amount has been paid therefore nothing is due and outstanding against the defendant in respect thereof.

Learned counsel for the defendant further submitted that the Markup Agreement dated 05.05.2010 (Annexure K-4 to the plaint) was in

respect of ERF Facility and the amount claimed thereunder was duly paid and nothing is outstanding thereunder. He further submitted that the Annexure K-5 to K-8 are in respect of FBP Facility and no claim thereunder is made in the plaint and that the letter of hypothecation, Annexure K/10 to the plaint, was the security for the amount extended under Markup Agreement dated 05.05.2010 which was duly paid.

Learned counsel further submitted that as far as Para 13(i) of the plaint is concerned which relate to Facility Advising Letter dated 15.07.2011 the plaintiff is put to strict proof with regard to the actual disbursement in terms of same. Learned counsel submits that the defendant has denied the claims made by the plaintiff in the suit as essentially this suit pertains to one account and letter dated 02.05.2012 does not constitute any admission of liability for the amount claimed in the suit.

It is further contended by learned counsel for the plaintiff that the statement of account filed with the plaint is incorrect and disputed. The only statement of the account that has been provided was the statement of current account through which all transactions and finances were routed hence he disputes all such amount debited in such statement of account. He submitted that none of the letter of credit was filed with the plaint though all the letters of credit were retired by debiting current account of the defendant. Learned counsel submitted that defendant thus has raised substantial question of law and fact as to whether such amount is payable by the defendant to the plaintiff and that the amount claimed in the suit has been disbursed under the agreements.

Learned counsel in support of his arguments relied upon the cases of (i) United Bank Limited v. Mehmood Ilyas Khan (2012 CLD 1372), (ii)

Barkurdar v. Muhammad Razzaq (PLD 1989 SC 749), (iii) Habibur-Rehman v. Judge Banking Court (2006 CLD 217).

In reply learned counsel for the plaintiff has not advanced any argument but only submitted that if at all any amount is disputed, leave to that extent be granted whereas claim of undisputed amount in pursuance of letter dated 02.05.2012 be decreed.

Heard the learned counsel and perused the record.

Only arguments advanced by plaintiff's counsel with regard to letter dated 02.05.2012 where amounts claimed to have been admitted, cannot be read in isolation particularly with reference to the arguments advanced by learned counsel for defendants regarding repayment and applicability of such letter. Such questions are question of fact as well as question of law. It is to be seen whether the amount is disbursed under such Markup Agreements, which have been agitated by the defendants. It is also to be seen whether under Markup Agreements dated 26.02.2009, 05.05.2010 and 21.07.2011 any amount is liable to be recovered from the defendant since it is claimed that entire amount has been paid and the defendant relied upon current statement of account as far as debit entries are concerned.

The defendant has also raised question of fact as well as law that the Markup Agreements dated 28.05.2009 and 21.07.2011 are in respect of FBP Facility for which no claim is made in the suit. Learned counsel for the defendant has challenged the entries in the statement of account available as Q/1 to Q/4 and such entries which have been challenged have not been disputed/controverted by the plaintiff at all. Prima facie it appears that for the amount sought to be recovered from the defendant in terms of Letter of Credit substantial question of law and fact have been raised in this regard. Hence, all these need to be proved or otherwise through evidence.

In the case of United Bank Limited (Supra) it has been observed that the Court would be bound to grant such application to defend the suit if satisfied that there was even a single substantial question of law or fact raised therein.

Similarly the case of Barkhudar (Supra) is on the point that admission which was wrong on account of fact or is made on ignorance of legal right is not binding on the person making it.

In the case of Habibullah (Supra) it is observed by learned Division Bench of this Court that since the claim of the Bank consisted of illegal markup charged on various finance agreements, rather than the amount actually disbursed to them or markup due thereupon in accordance with the terms of the Finance Agreement, requires scrutiny and consideration. It was observed that infirmities were floating in the case hence constituted serious disputed question of fact and law which could only be adjudicated after recording evidence and hence on this account leave to defend application required consideration.

In the above facts and circumstances, I am of the view that there are serious question of fact and law which can only be decided after recording of the evidence. Accordingly, vide order dated 21.11.2014 the application for leave to defend the suit was granted of which above are the reasons.

Dated:

**Judge**