

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
IST APPEAL NO. 33/ 2014

Date	Order with signature of Judge
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- 1) For katcha peshi.
- 2) For hearing of Misc. No. 1019/2013.

05.08.2015.

Mr. Ghulam Mujtaba Advocate for the Appellant.
Mr. Ghulam Rasool Advocate for the Respondent No. 1.

Through instant appeal the appellant has impugned judgement dated 4.3.2013 and decree dated 25.3.2013 passed by the Banking Court No. II at Karachi, in Suit No. 108 of 2010, whereby, the Suit filed by respondent has been decreed in the sum of Rs. 1,15,38,377.77/- along with cost of funds from the date of default, till realization of the decretal amount, including the cost of Suit and sale of mortgaged property.

Counsel of the appellant contends that no proper Statement of Account was annexed with the plaint as required under the Bankers Book Evidence Act, 1891. Counsel further contends that though Running Finance Facility was availed by the appellant, however, excessive mark-up has been charged in the Statement by respondent which has been allowed by the Banking Court vide impugned judgment. Counsel further submits that the appellant had initially obtained Finance Facility from M/s United Bank Limited to the extent of Rs. 6,202,726.48, which liability was thereafter taken over by the respondent Bank, and as per the Statement the appellant's account was debited for an amount of Rs. 8,249,934.75, instead of the amount as referred to herein above. Counsel further submits that the agreement between the parties stood expired on 6.4.2009 and thereafter no renewal took place, whereas, the respondent Bank has charged mark-up even beyond the period of agreement which cannot be allowed. It has been further contended that there was no Repurchase price in the agreement of financing, therefore, the same could not have been acted upon.

Conversely, Counsel for the respondent bank submits that the appellant itself in its synopsis filed before the Banking Court has admitted that it had availed Finance Facility to the extent of Rs. 13,202,808.00/-, whereas there is an admitted default, therefore, instant appeal is liable to be dismissed.

We have heard both the learned Counsel and perused the record. It appears that admittedly the appellant had availed Running Finance Facility from the respondent Bank vide sanction letter dated 28.3.2007 for an amount of Rs. 13,380,000/- and continued to

avail the said facility till 31.12.2009, whereafter it defaulted in repayment of the same. Insofar as the objection with regard to non-filing of a proper statement as required under the Bankers Book Evidence Act is concerned, it appears that the same is misconceived as the document which has been referred to by the Counsel for the appellant is in fact a summary / break-up of the statement of account, whereas, the details of payments made by the appellant have been separately annexed, which fulfils the requirement of the Bankers Book Evidence Act. Insofar as availing of Running Finance Facility is concerned, the same also stands admitted by the appellant in its synopsis filed in support of the break-up of the statement before the trial Court, wherein, it has been stated that the correct position is that the plaintiff (respondent) had disbursed Rs. 13,202,808.00/- from 28.3.2007 to 31.12.2009. It further appears that the appellant had been operating its Running Finance Facility account with the respondent even beyond the period of expiry of the agreement and therefore, the contention with regard to charging of mark-up beyond the said agreement period is also misconceived as the appellant itself had availed such facility and had also made a request in this regard for renewal of the said Finance Facility (pg: 53), wherein, the respondent had been requested that since the facility had expired on 31.3.2009, the same may be renewed for further period after which the Finance Facility was continuously availed till date of default i.e. 31.12.2009. Therefore, the objection with regard to charging of any mark up beyond the period of agreement is also not tenable.

In view of herein above facts and circumstances of the instant case, we are of the view that the Counsel for the appellant has not been able to point any illegality in the impugned judgment which appears to have been passed on the basis of admitted position, whereas, substantial relief has already been granted to the appellant by the Banking Court by giving adjustments of the payments made after 31.12.2009 from the principal amount outstanding, by refusing charging of mark-up beyond such period.

Accordingly, instant appeal does not merit any consideration and is hereby dismissed.

JUDGE

JUDGE