

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

Suit No. Suit B-23 of 2012

Date	Order with signature of Judge
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1. For hearing of CMA No.3400/13
2. For hearing of CMA No.5427/13
3. For hearing of CMA No.11788/12
4. For hearing of CMA No.5724/12

30.10.2014

Mr. Aijaz Ahmed Advocate for the plaintiff.
Mrs. Samia Faiz Durrani Advocate for the defendant No.1 & 2
.X.X.X.

This is an application under section 10 of the Financial Institutions
(Recovery of Finances) Ordinance, 2001.

It is the case of the defendant no.1 that the plaintiff is totally stranger to defendants as there is no privity of contract between them and as such the suit does not lie under of the Financial Institutions (Recovery of Finances) Ordinance, 2001. It is further contended that the Polygon Developers i.e. defendant No.1 has made a request to Pak-Iran Joint Investment Company Limited for a terms finance facility for the amount of Rs.218,000,000/- which is available at page 105 and in pursuance thereto disbursement was made to Trust Investment Bank Limited in the sum of Rs.218,000,000/- and in response thereto the properties mentioned in schedule-A at page 113 were mortgaged. It is the case of the defendant that apart from the fact there is no privity of contract, even if for the sake of arguments it is presumed that the payment was made and amount was disbursed, the statement of account as filed by the plaintiff does not disclose the credit entries, since a substantial amount is claimed to have been repaid/deposited by the Trust Investment Bank Limited which document is available as annexure-B to the leave to defend application. It is further contended that in view of such defective statement of account the leave is to be granted.

Learned Counsel for the defendant submits that the Trust Investment Bank Limited is necessary and property party in the proceedings to reconcile the accounts since entry of the amount as mentioned aforesaid is not reflected in the statement of account. Learned Counsel for the defendant submits that the defendant has not been apprised of the fact that the plaintiff has changed its name from Pak Iran Joint Investment Company Limited to PAIR Investment Company Limited and hence on account of the identity it cannot be ascertained as to whether any amount as claimed is due and outstanding to the answering defendant in favour of plaintiff since the amount claimed to have been disbursed by Pak Iran Joint Investment Company Limited. Learned Counsel for the defendant has also argued that this Court has no territorial jurisdiction in terms of section 16 CPC as the mortgage property is not within the territorial limits of this Court. Learned Counsel for the defendant No.1 has relied upon the cases of Muhamamd Naveed Aslam & others vs. Mst. Aisha Siddiqui & others (SBLR 2010 Sindh 671), Mst Ismat Asad vs. Pakistan Oxygen Limited & another (SBLR 2010 Sindh 1257), Izhar Alam Farooqi vs. Sheikh Abdul Sattar LKasi & others (2008 CLD 149) Rashid Ahmad vs. The State (PLD 1972 SC 271), Muhammad Faheemuddin & others vs. Province of Sindh (2012 MLD 636) and Messr Voyage De Air, General Sales Agent, Shaheen Air International & another vs. Shaheen International Pvt. Ltd. & others (2006 CLC 173). The aforesaid cases were relied on the plea that the Court has no territorial jurisdiction as the immovable property is not situated within the limits of this Court.

Learned Counsel for the plaintiff submits that as far as the preliminary objection regarding identity of the plaintiff is concerned since the plaintiff is not a scheduled bank therefore, only the Registrar Joint Stock of Companies is required to issue certificate with reference to the change of its name. Without prejudice to the above, learned Counsel submits that the identity of the plaintiff is not disputed as the parties were corresponding with the title as mentioned in the plaint

therefore, it is not necessary to explain the same at the time of filing of this plaint. Learned Counsel submits that in terms of the Section 39 of the Companies Ordinance, a company may by a special resolution with the approval of the Registrar may change its name however irrespective of that such change of name would not hamper the legal proceedings in terms of Section 40(3) of the Ordinance which provides that the change of name shall not affect any right or obligation of the company or render defective any legal proceedings by or against the company, hence the learned Counsel submits that such objection is hyper technical and it can be taken care of and cured in terms of section referred above. Learned Counsel submits that the defendant No.1 is corresponding with the plaintiff with their identity as PAIR Investment Company Limited and hence is not an stranger to the defendant. Learned Counsel has relied upon annexure D-1 page 161 and annexure D-2 page 165.

Learned Counsel further submits that as far as the relationship is concerned the same is based on the request made by the defendant No.1 which is available at page 105 wherein the Pak Iran Joint Investment Company (former plaintiff) was requested that with reference to the Finance Agreement dated 30.12.2010 and in pursuance of the provisions of clause 2.3 of the agreement they were desirous of selling assets prescribed thereunder to lender for the sale price mentioned therein and thereafter purchase the same from the lender in accordance with the agreement. Accordingly the lender/plaintiff was requested to disburse price as Rs.218,000,000/- on 30.12.2010 for the amount to be disbursed through State Bank of Pakistan cheque drawn in favour of the Trust Investment Bank. In view of such, learned Counsel for the plaintiff submits that on the even date i.e.30.12.2010 and at the request of defendant No.1 said amount was disbursed to the Trust Investment Bank. It is contended that it is the defendant who had mortgaged the property by way of deposit of title deed which documents is available at page 109 annexure-C. Learned Counsel for the plaintiff submits that as far as the

correspondence between the plaintiff and defendant is concerned annexure D-2 provides the approval of the following:

- “1. Approval of the additional finance facility of Rs.80 Million to be disbursed to two tranches of 25 million each. The second tranche of Rs.25 million may not be required if the sale goes through as mentioned in detail above.
2. Extension in the period of already approved facility of Rs.218.0 million from 18 months to 27 months by virtue of which the maturity date would fall on March 31, 2013 i.e. extension of nine months. This extension is being requested on the assumption that the management of PAIR would give favourable consideration to our request as mentioned above for provision of additional term finance facility of Rs.50.0 million. Since our entire request is based on the request for additional finance facility, we therefore seek approval of the same as well.

Deferment in the payment of the profit payments due or to become due till September 30, 2011 due and linking of the same with the sale proceeds from the project. We are extremely confident that the sale of the project would initiate within 3 months from the date of mobilization of the site after the disbursement of first tranche of the loan by which time, we would be able to service the mark up portion as well.”

Learned Counsel further relied upon annexure F-1 at page 181 which was issued by the defendant No.1 relying on the letter dated 01.10.2011 which was replied by them in terms of letter dated 28.9.2011 referred above and at no point of time such dispute as raised here was raised. Learned Counsel further relied upon the legal notice available as annexure F-2 at page 183 where a sum of Rs.247,000,000/- as outstanding at the relevant time was claimed.

Learned Counsel for the plaintiff submits that as far as the jurisdiction is concerned it is a settled law that even if a part of cause of action accrued to a particular territory, the suit can be entertained on the basis of such accrual of cause of action within such territorial jurisdiction when it has accrued. Learned Counsel submits that in the instant case immovable properties were mortgaged with the plaintiff

having office at Karachi and also amount which was disbursed at the request of the defendant No.1 was at Karachi hence this Court has ample jurisdiction to proceed and adjudicate upon the matter. Learned Counsel has relied upon the cases of Pak Kuwait Investment vs. Messers Active Apparels International (2012 CLD 1063) and Pak Kuwait Investment Company vs. Saadullah Khan & others (2010 CLD 760) which prescribes and adjudicate upon the territorial jurisdiction if a part of the cause of action accrued.

Learned Counsel for plaintiff further submits that the amount that was claimed to have been paid by the Trust Investment Bank was not shown to have been paid by them in pursuance of the instant finance facility. Learned Counsel for the plaintiff contended that it is for them to have proved that such payment was made in relation to the transaction which is the subject matter of this suit. Learned Counsel submits that a simple perusal of this annexure-B attached with the leave to defend application does not prove anything as it does not say as to whose account such payment was made nor it was addressed to the plaintiff and hence the defendant No.1 cannot succeed at this score.

I have heard the learned Counsels and perused the record

Insofar as the issue of territorial jurisdiction is concerned, law in this regard has now been settled that even a part of cause of action accrued in a territory the Court having territorial limits in this regard has jurisdiction to adjudicate upon the matter. While perusing the record of the instant case, it appears that the amount of Rs.218,000,000/- was disbursed by cheque of State Bank of Pakistan at Karachi on 30.12.2010 at the request of defendant No.1 which request was made to the plaintiff at Karachi. The title deeds which were mortgaged were also mortgaged at Karachi thus as far as this issue of jurisdiction is concerned, in my view the cause of action in respect of the disbursement/mortgage arises where amount was disbursed and the

mortgage was created. In this matter the money was secured by way of mortgage of the subject property at Karachi hence such disbursement and creation of mortgage by depositing the title deeds provides cause of action within the territorial limits of this Court, hence this Court has jurisdiction.

As far as the identity of the plaintiff is concerned, it is correct that the plaintiff is not a scheduled bank and hence no cover by circular and notification is required but is cured by law contained in Companies Ordinance, 1984. Perusal of Section 39 of the Ordinance provides the mechanism whereby such change is accorded in terms of resolution and by issuance of certificate by the Registrar of the Companies. Be that as it may, the subsequent provision of section 40(3) of the Ordinance provides further mechanism regarding legal proceedings in absence of such certificate or otherwise. It provides that in absence of such as required in terms of section 39 *ibid* the legal proceedings shall not be hampered or considered to be of no legal effect. In addition to this the correspondence between the two provides that this change of name of the plaintiff company is not which is something new for the defendant as they have been corresponding with this name and identity hence this preliminary objection regarding the maintainability of the suit is of no consequence.

As far as the merits of the case are concerned, the only point that has been raised is with regard to the amount which is claimed to have been disbursed/deposited by the Trust Investment Bank in terms of annexure-B attached to the leave to defend application. Perusal of this does not clarify as to on who's behalf and in relation to which facility such amount is being disbursed. More importantly it is a document between the Trust Investment Bank and the Chief Executive of defendant No.2. Apart from this no receipts, pay-in slips and cheques demonstrating that such amount was deposited and that it was

deposited towards the liability and outstanding of the defendant No.1 has been placed on record. This private document between the two private parties would gain nothing and the defendant No.1 would score nothing out of this and by placing such document no substantial question of law has been raised. In order to establish the payment some cogent evidence is to be placed on record and filing of this document would not entitle them for grant of leave.

I have perused the statement of statement of account which is available at page 171 and the consolidated statement of account at page 175. The statement of account is based on the terms sheet as annexure-B page-33 which provides that the facility of Rs.218,000,000/- having tenure of 18 months with mark up rate and their modus operandi as mentioned. It is also provided that the Trust Investment Bank shall hand over the title document to the plaintiff which at the relevant time may be mortgaged with the Trust Investment Bank. The subject property was restored/released to the plaintiff in view of this term sheet and it has been categorically agreed that they would enter and execute all such documents which are required to be executed by the Trust Investment Bank to make title perfect as far as the security of defendant No.1 is concerned in relation to Finance Agreement referred above. The statement of account available at page 171 shows that suit was filed when the defendant has failed in respect of three instalments i.e. 01.10.2011, 31.12.2011, 31.3.2012 and the further statement does not reflect any mark up in respect of these overdue instalments as agreed after it becomes due. The consolidated statement of account is available at page 175 provides the total break up in terms of principal amount and mark up at the relevant time.

Defendants No.2 & 3 are the guarantors of defendant No.1 and have executed the guarantees to secure the liabilities of defendants.1 whereas defendants Nos.2 to 6 are mortgagors and have created

mortgage by deposit of title deeds to secure liabilities of defendant No.1, hence I see no discrepancy either in the statement of account or claim as prayed for. Accordingly in the above terms the suit is decree as prayed.

As far as the application bearing CMA No.3400/13 under Order VII Rule 10 CPC is concerned, the same has become infructuous.

As far as application bearing CMA No.5427/12 under Order 1 Rule 10 CPC is concerned, in view of the above, since the proposed Intervener is neither necessary nor a proper party and hence this application is dismissed.

As far as CMA No.11788/12 is concerned, it appears to have been filed for seeking condonation of delay in respect of application filed by the defendants No.4, 5 & 6, however since no affidavit in support thereof has been duly sworn or filed therefore, no such application is deemed to be pending. Accordingly, this application is also dismissed.

Judge