

## IN THE HIGH COURT OF SINDH, KARACHI

**PRESENT:****Mr. Justice Irfan Saadat Khan****Mr. Justice Arshad Hussain Khan****Ist Appeal No.26 / 2007**M/s. Industrial Resources (Pvt) Ltd & 03 others Vs. M/s. United Bank Limited  
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Appellants M/s. Industrial Resources (Pvt) Limited and  
03 others Through Mr. Khadim Ali Metlo,  
Advocate.

Respondent-1 M/s. United Bank Limited Through M/s.  
Ejaz Ahmed Zahid & Hashmatullah Aleem,  
Advocates.

Date of Hearing: 13.02.2023, 23.02.2023 & 22.03.2023

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J:** Through this appeal under section 22 of the Financial Institutions [Recovery of Finances] Ordinance 2001, the appellants have assailed the judgment and decree dated 12.03.2007 and 30.03.2007, respectively, passed by Banking Court-II, Karachi, in suit No.221/2001 whereby the suit of the plaintiff was decreed against the defendants jointly and severally in the sum of Rs.1,85,70,548/32 with future cost of funds at the latest rate prescribed by the State Bank of Pakistan from the date of filing of suit till realization of decree, besides the cost of the suit, the prayer clause (b) of the Plaint for attachment and sale of immovable mortgaged properties was also allowed.

2. Concisely, the facts giving rise to the present appeal are that the bank-plaintiff/respondent filed Suit No.221 of 2001 against the appellants/defendants for Recovery of Rs.23,639,637.51. The Bank, at the request of appellant/defendant No.1 through its Chief Executive and Directors i.e. defendants 2 & 3 and upon guarantee of defendant No.4 sanctioned credit finance facilities, vide Sanction Advice dated 20.07.1999 to defendant No.1 as follows :

- a) Non-Interest Cash Finance [NICF] for Rs.2.00 Million for meeting working capital requirements.
- b) Non-Interest Demand Finance [NIDF] for Rs.15.00 Million for adjusting the accumulated overdue PADS/IFDBCS.
- c) Letter of Credit (L/C) D.A.90 to 120 days Rs.10.00 Million.

- d) Letter of Credit at sight for Rs.7.500 Million for facilitating the import of stainless steel and tor steel.

3. The appellant No.1/defendant No.1 availed and utilized the above said facilities but failed or neglected to pay the outstanding liabilities and accordingly Rs.23,639,637.51 became due outstanding liabilities till filing of the suit against the defendants, hence the respondent/plaintiff filed the aforesaid suit. Before the banking court, the appellants/defendants after service appeared and filed application for leave to defend, which was allowed unconditionally. Thereafter, the evidence was led by the parties on the issues framed by the court. The banking court after hearing the learned counsel for the parties decreed the suit of the respondent-plaintiff-bank, vide its judgment and decree dated 12.03.2007 and 30.03.2007, which are impugned in the present appeal.

4. Pursuant to the notice of this appeal, Reply to the Memo of Appeal on behalf of the respondent-bank has been filed stating therein that the impugned judgment is based on the evidence and the same has been passed after the case stood fully established. It has been stated that the banking court, in its judgment, has referred to the documentary evidence available on the record in respect of the facilities availed by the appellants and discussed the same at length. It has also been stated that the appellants have fully availed the aforementioned facilities; that the NIDF facility was allowed for adjustment of overdue PADs/IFDBC's, vide Sanction Advice dated July 20, 1999, and in this regard the amount of Rs.15.00 Million was transferred from Account No.740-0004-6, opened by the bank on behalf of appellant No.1 to bring the facility in operation to Account No.670-3240-3 (admitted account of appellant No.1). The above said Sanction Advice was also accepted by appellant No.1 through its letter dated October 4, 1999, wherein appellant No.1 also undertook to pay the monthly installment of Rs.1.00 Million regularly. It is stated that the banking court has given its judgment in the light of the documentary evidence produced in respect of the NIDF facility and therefore the judgment of the banking court was completely in accordance with the law and does not suffer from any non-reading or misreading as has falsely been alleged by the appellants. Lastly, it is stated that the appellants are not entitled to any relief prayed for hence instant appeal should be dismissed in limine.

5. Learned counsel for the appellants, during his arguments while reiterating the contents of the memo of appeal has contended that the main dispute between the parties is regarding the disbursement and utilization of the alleged NIDF facility of Rs.15.00 Million, which facility was never disbursed to appellant No.1 and this material fact though was admitted by the witness of the respondent-bank in its cross-examination, however, the same was ignored by the banking court while passing the impugned judgment in favour of the respondent-bank. It is argued that respondent-bank could not produce any single document in support of disbursement of the alleged NIDF facility to the appellants, however, at the time of final arguments the plea was taken that the alleged NIDF facility was not disbursed to the appellants but the same was created for adjustment of the accumulated over due PADs/IFDBC's. Such stance of the respondent is untenable unless the respondent-bank could prove through documentary evidence; the bare statement in this regard is not admissible in the evidence. It is argued that the trial court has passed the impugned judgment and decree for the alleged NIDF facility on the basis of those vouchers and statements, which were neither filed with the plaint nor produced during the course of evidence, nor even brought on the record till the conclusion of the final arguments, however, the same were subsequently submitted in the chamber without any intimation to the appellant when the matter was reserved for judgment. It is further argued that the trial court erred in holding that the disbursement of the NIDF facility is supported by the agreement of finance dated 29.09.1999 but in fact the alleged agreement is not the proof of disbursement of the said facility. It is further argued that the appellants have categorically challenged the truthiness of the alleged statement of account in their leave to defend application and clarified that appellant No.1 was maintaining only one account bearing No.670-3240-3 with the respondent-bank and this very fact has also been admitted by the witness of the respondent and confirmed that the other account was established by the bank itself, which was neither applied nor operated by appellant No.1. Lastly, he has prayed for setting aside the impugned judgment and decree regarding the alleged NIDF facility passed against the appellants as the respondent-bank has failed to discharge its burden to prove the disbursement of the alleged NIDF facility to Appellant No.1. In support of his arguments, learned counsel has relied upon the cases of

*Messrs ICEPAC Limited and 2 others v. Messrs Pakistan Industrial Leasing Corporation Ltd.* [2005 CLD 1186], *Jamal Tube (Pvt.) Ltd., Lahore through Chief Executive Officer and others v. First Punjab Modaraba, Lahore, through Authorized Officer and another* [2021 CLD 1372], *Messrs C.M. Textile Mills (Pvt.) Ltd. and 5 other v. Investment Corporation of Pakistan* [2004 CLD 587], *Muhammad Akram and another v. Mst. Farida Bibi and others* [PLJ 2008 SC 42], *Aamir Tufail v. Muhammad Sadiq and others* [2006 CLD 91], *Haroon Traders and 2 others v. KASB Bank Limited* [2015 CLD 645], *Abdul Khaliq and 3 others v. MCB Bank Limited* [2021 CLD 776], *Bankers Equity Limited and 5 others v. Messrs Bentonite Pakistan Limited and 7 others* [2010 CLD 651], *Citi Bank N.A. Banking Company v. Riaz Ahmed* [2000 CLC 847], *Ghulam Nazak v. Zarai Taraqiati Bank and another* [2007 CLD 667], *Military Estate Officer Hazara Circle and another v. Ch. Manzoor Hussain and 3 others* [2010 CLC 1866], *Muhammad Din and others v. Mst. Naimat Bibi and others* [2006 SCMR 586] and *Nazir Hussain v. Abdul Manan through her Legal Heirs* [1998 MLD 678].

6. Conversely, learned counsel for respondent while reiterating the contents of his reply to the main appeal has argued that the fourth (4<sup>th</sup>) facility namely; NIDF was sanctioned for settlement of overdue IFDBC / PAD as provided in the Sanction Advice dated 20.07.1999 and the NIDF facility was disbursed by opening a facility account No.740-0004-6 on 28.09.1999 to make the finance facility operational and available as the same is reflected in the statement of account for the said account. He has further argued that from this account the amount was transferred on the same day i.e. 28.09.1999 and credited to appellant No.1's account No.670-3240-3 as reflected in the statement of account, which account and all the entries are admitted by appellant No.1. The same day this amount was utilized to settle the overdue IFDBC/PAD by making 07 debits entries in the said account. The total amount of overdue IFDBC/PAD came to Rs.15,125,554/- out of which Rs.15,000,000/- was settled from the proceeds of NIDF facility, which were credited to this account and the balance Rs.125,554/- was debited to this admitted account. He has argued that the statement of account related to this **admitted account** shows that this account was being regularly used by appellant No.1 and also includes an entry for repayment of one installment of Rs. 1 Million on 25.11.1999.

The corresponding entries of such repayment are also reflected in the NIDF account. He has further argued that appellant No.1 has never questioned this statement of account and has in fact admitted all entries in this statement of account when it filed breakup of its liabilities before the banking court on 28.02.2007. Learned counsel has further argued that appellant No.1's liability for overdue IFDBC/PAD is also established from a perusal of the appellant No.1's letter dated 04.10.1999, which is an admitted document and this letter was addressed to the respondent with reference to the sanction advice. The said letter accepts NIDF facility and contains appellant No.1's undertaking to pay the installments in a timely manner; hence the denial of disbursement of this facility is an afterthought to avoid its lawful liability. He has further argued that the acceptance of the facility is also established from the contents of the admitted letter dated 04.10.1999 [Exh.P-29]. Lastly, he has argued that the banking court has considered all the relevant facts in the impugned judgment, hence the Appeal may be dismissed with costs. In support of his arguments he has relied upon the cases of *National Bank of Pakistan v. Messrs Applo Textile Mills Limited and 4 others* [2012 CLD 189], *The Bank of Punjab v. Arif Ali Shah Bukhari* [2016 CLD 1301], *Messrs International Traders and 3 others v. Union Bank Limited* [2003 CLD 1464], *Saudi Pak Commercial Bank Ltd. v. Qazi Ehtishamul Haq and another* [2008 CLD 566] and *Muhammad Akhtar Hookmani and another v. Faysal Bank Limited* [2015 CLD 227].

7. We have heard learned counsel for the parties, perused the impugned judgment and have also examined the record as well as considered the case law cited at the Bar.

8. From perusal of the record it appears that the appellants initially in their leave to defend application denied that they have not availed the aforementioned four facilities, however, during the final arguments before the banking court accepted that they availed first three aforementioned facilities, however, disputed the fourth (4<sup>th</sup>) facility viz. NIDF not being availed or utilized. Keeping in view the above fact this court on 10.10.2007, admitted this appeal to the extent of NIDF whereas for rest of the claim against the respondent-bank this appeal was dismissed.

9. Precisely, the case of the appellants in respect of NIDF is that the said facility was never disbursed to appellant No.1 nor the same was ever

availed or utilized. In this regard, main stance of the appellants is that disbursement of NIDF was made in account No.740-0004-6 [Exh.P/27] which was opened by the bank on its own without seeking any request from the appellants and further the letter dated 03.04.2001[Exh. P/30] whereby appellant No.1 acknowledged the outstanding NIDF facility is a document manipulated by respondent-bank. Conversely, the stance of the respondent-bank is that NIDF was sanctioned for settlement of overdue IFDBC [Inward Foreign Documentary Bills for Collection] /PAD [Payment Against Documents] and further the NIDF facility was disbursed by opening a facility account No. 740-0004-6 on 28.09.1999 to make the finance facility operational and available. Insofar as the letter dated 03.04.2001 [Exh.P/30] is concerned, the stance of the respondent-bank is that this letter, **carry the signature of the signatory at the bottom of the each page as well as upon to all over writings or revisions**, was the actual letter submitted to the bank, which states about the discussion **that appellants' CEO had with officials of the respondent**. Further the appellant, though evasively denied authenticity of the documents, however, never applied for the forensic examination of the said letter.

10. From perusal of the record it appears that the respondent-bank, vide its sanction advice dated 20.07.199 [Exh.P/2], sanctioned all the aforementioned four finance facilities, which include NIDF for Rs.15 Million to appellant No.1. Page No.3 of this document [Exh.P/2] clearly states that this facility can be utilized only for adjustment of overdue IFDBC (inward Foreign Documentary Bills for Collection). Further the facility of NIDF of Rs.15 (M) with installment of Rs.1(M) is also established from the letter dated 04.10.1999 [Exh. P/29] addressed by appellant No.1 to the respondent; relevant portions whereof are reproduced as under:

“As against our request for working capital of 15 (M) in IRL you have sanctioned NIDF Rs.15 (M) with the installment of Rs. 1(M) per month although this does not serve our purpose but we have accepted the same as per facility sanction in IPL for Rs.10(M) sight L/C with 5(M) (FTR) is tag with the reduction to NIDF facility is not understandable.”

“We undertake the installment of Rs.1.00 (M) per month in IRL will be regularly paid and in no case it default (Inshallah).”

11. Record also reflects that on 28.09.1999 an amount of Rs.15 million was debited from the NIDF account No. 740-0004-6 by way of transfer and on the same day the said amount appears to be credited to appellant No.1's **admitted account** No. 670-3240-3. The appellant No.1 although denied that NIDF account has been opened under its instruction and further it received any amount from the respondent towards NIDF facility, however, they have failed to justify the amount they received on 28.09.1999 in their **admitted account** No. 670-3240-3. When the court confronted this fact with the appellants' counsel, he also failed to give any plausible explanation in this regard. Record also reflects that on 25.11.1999, Rs.1 million was debited from the appellants account (No. 670-3240-3) by way of transfer and on the same date it was credited in the NIDF account (No. 740-0004-6). The said debit and credit entries in the appellant No.1's admitted account appear to have been established from the break up filed by the appellants in the case as the total withdrawal and deposit amount include the above said debit and credit entries. Besides, there is nothing available on the record, which could show that the appellants have raised objection about the above said entries in their **admitted account**. It also does not appeal to a prudent mind that business entity like appellant No.1 could overlook said entries of huge amount and/or escape from their notice.

12. Insofar as the contention of learned counsel for the appellant with regard to admission of the respondent's witness for non-disbursement of the NIDF facility is concerned, in order to examine such contention, it would be appropriate to reproduce here the relevant portion of the deposition of respondent's witness:

“It is incorrect that out of four facilities sanctioned by the plaintiff to the defendant, one of the facility i.e. NIDF for Rs.15 million was not availed by defendant No.1. It is correct that the Account No.740-0004-6 was not opened at the request/application of defendant No.1. Voluntarily says that this Account was opened in the name of defendant No.1 against the sanctioned of finance facility i.e. NIDF. It is correct that defendant No.1 had not withdrawn the amount of Rs.15 million in-cash from the Account No.740-0004-6, but the said amount was debited from the said account and credited to another account No. 670-324-03 of the defendant No.1 against overdue facility. It is incorrect that I have deposed falsely about the debited of amount of Rs.15 million from the Account No.740-0004-6 and credited to Account No. 670324-03. On 28.9.1999 the debited and credited of Rs. 15 million had taken place. It is incorrect that voucher amounting to Rs.15 million placed at Exh.P-31 is forged document....”

[emphasis supplied]

A bare perusal of the above, by no stretch of the imagination the deposition of the witness could be termed as admission on the part of the respondent. On the contrary, it supports the stance of the respondent in the case. The above said facts lead us to an irresistible conclusion that NIDF amount was not only disbursed but it was also availed and utilized by the appellant No. 1

13. Insofar as the contention of the appellants' counsel with regard to the alleged manipulation of the letter dated 03.04.2001 [Exh.P/30] is concerned, record shows that the document viz. **Exh.P/30** relied upon by respondent-bank claiming to be the letter based on the discussion was submitted by the appellant to respondent-bank, whereas, the appellants have disputed the same being manipulated one. The stance of the appellants is that the document viz. **Exh.D/2** is the actual letter addressed by appellant No.1 to the respondent, which was manipulated by the respondent in the shape of Exh.P/30. The examination of both the above letters, with the assistance of learned counsel for the parties, transpires that in the second page of the letter [Exh.P/30] under the heading **payment of accumulated markup and overdue IFDBC** contained additionally printed text and in the given format of the page there was no space in the document-Exh.D/2, which could accommodate the large amount of additional text. Besides this, the additional text typed on the last page of the letter Exh.P/30, marked as **P.S.** is signed by the signatory of the letter at the end. The document also carries the signatures of the signatory at the bottom of each page as well as upon all over writings. Such fact reflects that Exhibits D/2 and P/30 are two different documents. Thus, the letter Exh.D/2 could at best be an earlier form of the letter, however, it is clear that Exh.P/30 is the letter, which was submitted by the appellant to respondent-bank. In this regard, the contention of the learned counsel also has some weight that the document Exh. D/2, does not bear any receiving acknowledgement of the respondent which could show that the said letter was ever submitted to the respondent-bank. Learned counsel for the appellant also fails to controvert such contention of respondent's counsel through the record. Besides above, there is nothing available on the record, which could show that the appellants at any point in time ever filed any application for forensic examination of the said letter. Thus, contention of learned counsel for the appellants, in the circumstances, is untenable being misconceived and frivolous.



14. From perusal of the impugned judgment, it appears that the banking court while passing the judgment has considered all material facts and documents produced in the case. Whereas, on the other hand, learned counsel for the appellants before the trial court could not bring on record anything else in support of his contention except verbally denying the same. Hence, the contention of the Appellants' counsel appears to be misconceived and has no force. He has also failed to point out any illegality or infirmity in the impugned judgment. The case law relied upon by learned counsel for the appellants have been considered and found distinguishable from the facts of the present case as such the same are not applicable to the present case.

15. The upshot of the above discussion is that we do not find any infirmity or irregularity in the impugned judgment, which could warrant any interference by this Court and as such the Appeal being devoid of any merit is dismissed.

JUDGE

JUDGE

Karachi;  
Dated:19.05.2023

*Jamil\*\*\**