

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No.44 of 2019

Muhammad Bilal through his legal heirs
Versus
Dubai Islamic Bank Limited

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

Hearing case (priority)

1. For order on office objection/reply "A".
2. For hearing of main case.
3. For hearing of CMA No.1771/2019 (stay).

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Dated 06.02.2024

Mr. Sohail Hameed, Advocate for the appellant.

Mr. Suleman Hudda, Advocate for the Respondent.

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We have heard learned counsel for the appellant as well as for the Respondent.

This appeal is filed against the judgment and decree of the Banking Court No.III, Karachi in suit No.72/2012.

Two questions have been raised by the learned counsel for the appellant that is (a) in a house finance, KIBOR is not applicable and (b) that the payments made subsequent to the decree in term of the cheques/pay orders, as reflected in para-8 of the judgment, were not adjusted; which revealed subsequently, after filing of this appeal.

In this regard, at the first instance, learned counsel in attendance have taken us to the finance facility which is described as "*Musharaka*". The loan terms were agreed vide agreement dated 08.01.2010 and the terms of such finance facility were incorporated in the letter, on the basis of which the finance was

availed vide letter dated 07.12.2010 with schedule 'B' attached to it. It includes recovery of the outstanding principal (fixed rental element) multiplied by the product of 06-month KIBOR + margin multiplied by the number of days in the relevant lease period divided by 360 (rentals schedule is schedule-5 to such agreement with 192 installments). On such terms, the loan was utilized. The payment was to be made in sixteen years, however, the appellant defaulted in terms of its schedule and a suit was filed in the year, 2012. The leave was refused on 14.03.2018 and in consequence whereof perhaps a settlement was reached. Yet again, a settlement agreement available at page-241 was executed and terms were violated. During defiance of these settlement terms, a compromise application, duly signed by the parties, reflecting some negotiable instruments (6 in number) in para-1, was filed, however, these terms were also violated and the banking court passed a decree in respect of the outstanding amount.

It is inconceivable that after consuming the amount the appellant has come forward challenging the KIBOR on the terms of which the finance facility was availed and on the terms incorporated therein, the finance was consciously availed and utilized and then defaults were made and the recovery suit was filed. Appellant came out with proposition that KIBOR is not applicable in terms of some circular of State Bank of Pakistan. Neither, when the leave application was filed and granted nor at any stage of suit proceeding, nor when this appeal was filed, such circular of the State Bank of Pakistan as insisted, were presented to the Court. It is the agreed terms when the loan was structured and financed and hence they cannot blow hot and cold after utilization of amount. We have no material before us to adjudge the

finance agreement/contract violative of any provision of contract act. They (appellant) have once utilized the finances, cannot be permitted to challenge any of the terms which, in view of the available record, is neither unlawful nor contrary to the contract act, hence a belated stage to intervene.

Insofar as the adjustment of the amount is concerned, it seems that some of the instruments disclosed in the application of compromise, on the strength of which adjustment has been sought, were bounced. Six instruments were forwarded, as reflected in the compromise application, out of them, four were bounced. The copies of the four bounced cheques with the bank memorandum are taken on record, originals of which were shown to Court. One of such cheques of Rs.700,000/- (0.7 million) was adjusted as cash amount offered, as conceded by Mr. Hudda, whereas, rest of the three instruments could not be adjusted as remained unpaid except the amount mentioned in the execution application. The execution application reflects adjustment of Rs.1,200,000/- (1.2 million) and hence, in view of the amount as disclosed in the judgment via cheques, could not be adjusted completely, as those cheques were bounced and rightly pleaded by the respondent/ decree-holder in the execution application. The amount that was paid after the decree was Rs.1.2 million only and duly adjusted.

No interference is required. The appeal is dismissed along with pending application(s).

JUDGE

JUDGE

Ayaz Gul