

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

First Appeal No. 75 of 2021**Sherpak (Pvt) Limited & others** **Appellants**

through Ms. Lubna Aman, Advocate

vs.

Faysal Bank Limited & another **Respondents**

through Syed Aijaz Hussain Shirazi, Advocate

Date of hearing : 29th February, 2024Date of judgment : 29th February, 2024**JUDGMENT**

OMAR SIAL, J: Faysal Bank Limited filed Suit No. 41 of 2018 against, inter alia, Sherpak (Private) Limited (the appellant in these proceedings) for the recovery of Rs. 28,606,326 along with mark-up and other amounts. The learned Banking Court No. 5 at Karachi vide judgment dated 06.07.2021 dismissed the appellant's leave to defend application and decreed the Suit against them. It is this judgment which has been challenged through this appeal.

2. The appellants have at no stage denied that they availed finance facilities from Faysal Bank. Learned counsel for the appellants has primarily argued that there was no outstanding against the finance facility for which the decree has been obtained. We have heard the learned counsel for the appellants and have also perused the statements on record towards which our attention was drawn. We fail to see any discrepancy in the statements. The reliance of the learned counsel on the ending balance of the statement which shows an outstanding of Rs. 8,125 is misconceived. The entries dated 14.03.2017 to 16.05.2017 on the same statement of accounts reflects that

four installments of money being Rs. 2.9 million, 15 million, 5.5 million and Rs. 5.2 million was disbursed by Faysal Bank to the appellant and the same amounts were also withdrawn by the appellants. The statement has been wrongly interpreted by the learned counsel. It is also important to mention that despite of the fact that it has been argued by the learned counsel that no amount was ever due to the Bank, in its own application filed under section on 23 of the Financial institutions (Recovery of Finances) Ordinance 2001 on 25.02.2020 , the appellants have categorically acknowledged that an amount of Rs. 21,807,275 is to be paid by them to the Bank. An offer to pay back that amount after selling the mortgaged property was also made in the same application. The learned counsel struggled to give any explanation regarding why such an admission and offer was made if the appellant was of the view that no money is outstanding against them.

3. We also note from the case diaries that at the first hearing of this appeal the representation made by the learned counsel for the appellant was that the Bank was in possession of some term deposit receipts for an aggregate amount of Rs. 16,280,000 and setting off that amount against the total outstanding amount would lower the payable to Rs. 5,520,949. In essence even till 27.09.2021 there was an admission of the debt being outstanding. Learned counsel for Faysal Bank has stated that when the statement was made by the learned counsel, the appellant was aware that the amount of the TDRs had already been adjusted against the outstanding as far back as in 2016 on the request of the appellants, for facilities availed prior to the disbursement of the current facility in the year 2017. This has not been rebutted by the learned counsel for the appellants. No question of law, as required by section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 has been agitated.

4. Given the above, we are not convinced that a ground emerges which would merit interference with the order of the trial court. The appeal is dismissed.

JUDGE

JUDGE

