

IN THE HIGH COURT OF SINDH KARACHI

Suit No. B-73 of 2019

[Sindh Bank Ltd. versus Syed Tahir Hussain (since deceased) through his legal heirs]

Plaintiff : Sindh Bank Limited through Mr. Muhammad Ali Haider, Advocate.

Defendants : Syed Tahir Hussain (since deceased) through his legal heirs namely, Seema Tahir & others through Ms. Nazia Hanjrah, Advocate.

Date of hearing : 13-01-2025

Date of judgment : 06-03-2025

JUDGMENT

Adnan Iqbal Chaudhry J. - The suit is for recovery of finance under the Financial Institutions (Recovery of Finances) Ordinance, 2001 [FIO]. The Plaintiff seeks to recover outstanding Demand Finance [DF] extended by it to Syed Tahir Hussain acting as sole proprietor of Indus Petroleum Services Pakistan for the purposes of making payments to his suppliers. Syed Tahir Hussain had filed CMA No. 2032/2020 for leave to defend the suit. He passed away pending suit. Since the cause survived against his legal heirs, they were impleaded as defendants.

2. The aforesaid DF Facility amounting to Rs. 193,000,000/- was sanctioned by the Plaintiff by offer letter dated 01-12-2016. It was subject to markup @ 3 months KIBOR + 4% repayable by 30-11-2017. A markup agreement dated 05-12-2016 was executed by the parties. The marked-up price of the facility *i.e.* the Purchase Price was set at Rs. 231,600,000/- which was worked out up till 30-11-2017.

3. The finance facility was secured by the Defendant as follows:

- (i) by equitable mortgage of his immovable property described in para 5 of the plaint, for which he also

executed a Memorandum of Deposit of Title Deeds dated 01-12-2016;

(ii) by a Promissory Note dated 05-12-2016;

(iii) by a Personal Guarantee dated 05-12-2016.

4. As per the plaint, a sum of Rs. 192,999,113 was disbursed to the Defendant as DF; that he repaid only Rs. 10,611,873 which was adjusted towards markup; and as on 29-11-2019, the outstanding amount was:

Principal	Rs. 192,999,113
Markup	<u>Rs. 59,390,903</u>
Total	Rs. 252,390,016

5. For leave to defend the suit, learned counsel for the Defendants submitted that while the suit was filed by persons holding Sub-Power of Attorneys executed by the CEO, there was no Board Resolution authorizing the suit; and that the principal amount of the finance was never disbursed. On the other hand, learned counsel for the Plaintiff submitted that the leave application does not comply with the mandatory provision of section 10(4) of the FIO which is sufficient to dismiss the same; and that the disbursement of the finance was evident from the statement of account annexed to the plaint.

6. Heard learned counsel and perused the record.

7. It was submitted by the Plaintiff's counsel that the leave application did not comply with section 10(4) of the FIO. However, keeping in view the Defendant's contention that no amount was disbursed, the necessary compliance has been made in para 8 of the leave application though not in tabular form.

8. Regards the Defendants' objection that a Board Resolution authorizing the suit is not produced, it was settled by the Supreme Court in *Rahat and Company v. Trading Corporation of Pakistan* (2020

CLD 872) that where the doctrine of indoor management applies to such an objection, as it does in this case, then the production of a Board Resolution with the plaint is not necessary, and only if the Court considers the objection to be worthwhile and not frivolous it may call upon the Plaintiff to produce the Articles of Association to satisfy itself that the suit is authorized. Here, the plaint has been signed and verified jointly by two officers of the Plaintiff, both authorized by Sub-Power of Attorneys executed by the President and CEO of the Plaintiff. That is the usual *modus operandi* in Banks. I see no reason to doubt that the CEO was not empowered by the Board to institute the suit. The objection is rejected as frivolous.

9. The Defendants' counsel had then submitted that the DF facility was never disbursed. However, the disbursement of Rs. 192,999,113/- appears in the statement of account at page 109 which is certified as per the Bankers' Books Evidence Act, 1891 as required by section 9(2) of the FIO. By virtue of section 4 of the Bankers' Books Evidence Act there is a presumption of correctness to such statement of account. A bald averment to the contrary does not dislodge such presumption. Per the statement of account, the Defendant did not make any payment towards the principal amount. There is nothing to contradict such account.

10. However, as regards the Plaintiff's claim for markup of Rs. 59,390,903/- the statement of account for markup at page 111 raises an issue. The markup agreement dated 05-12-2016 between the parties had envisaged markup only up till 30-11-2017, whereas the Plaintiff has charged and claimed markup up till 30-09-2019. There is no contract between the parties that permits the Plaintiff to charge markup beyond 30-11-2017. When confronted with that, learned counsel for the Plaintiff conceded and did not press the claim for markup beyond the entry of Rs. 4,932,740/- dated 30-10-2017 appearing in the statement of account at page 111. He also made the

necessary endorsement to para 8 of the plaint. With that, there is also no issue to the Plaintiff’s claim for markup.

11. In view of the forgoing, the outstanding amount of the DF facility works out to be:

Principal	Rs. 192,999,113
Markup	<u>Rs. 4,932,740</u>
Total	Rs. 197,931,853

12. Having concluded as above, the case does not raise any substantial question of law or fact that may require the recording of evidence. Therefore, CMA No. 2032/2020 is dismissed.

13. The suit is decreed as follows in favor of the Plaintiff

- (a) For a sum of Rs. 197,931,853 (Rupees One Hundred Ninety Seven Million, Nine Hundred Thirty One Thousand, Eight Hundred Fifty Three) only against the Defendants in the share in which they inherit from late Syed Tahir Hussain, plus cost of funds from 30-11-2017 till realization;
- (b) for sale of the mortgaged property being Plot No. 30/II, Khayaban-e-Shaheen, admeasuring 1666 square yards, DHA Phase V, Karachi;
- (c) for cost of the suit.

JUDGE

Karachi
Dated: 06-03-2025