

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Spl. High Court Appeal No.418 of 2022

Industrial Development Bank Ltd.

Versus

Bankers Equity Ltd. & others

Date	Order with signature of Judge
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For Hearing of Main Case.

Dated 19 August 2025

Mr. Salman Hamid, Advocate for the Appellant.

Mr. Muhammad Salim Thepdawala, Advocate for the Respondent No.2, 3(b), 3(c), 3(d), 3(e), 3(f) and 3(g).

J U D G E M E N T

MOHAMMAD ABDUR RAHMAN, J. Through this High Court Appeal, maintained under section 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001 read with Section 105 of Code of Civil Procedure, 1908, the Industrial Development Bank Limited i.e., the Appellant impugns an order dated 16 November 2022 passed by a learned Single Judge of this Court in in Banking Suit No. 2 of 2017 and by which order CMA No. 20683 of 2021, being an application under Order I Rule 10 of Code of Civil Procedure, 1908, maintained by the Appellant, seeking to be impleaded as a Defendant in Banking Suit No. 2 of 2017, was dismissed.

2. Banking Suit No. 2 of 2017 has been maintained by Bankers Equity Ltd. i.e., the Respondent No. 1 as against Respondents No. 2 to 8 seeking recovery of Rs.377,643,078/- along with liquidated damages, cost of funds, charges and costs till the realization of that amount.

3. The Appellant had maintained CMA No. 20683 of 2021 in Banking Suit No. 2 of 2017, being an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 contending that it has maintained J.M. No.24 of 2003, being a petition under Section 39 of Industrial

Development Bank of Pakistan Ordinance, 1961 for the recovery of Rs.496,142,758.69 as due on 20 January 2003. It was contended by the Appellant and which was apparently is not denied by the Respondents, that the overlap as between Banking Suit No. 2 of 2017 and J.M. No.24 of 2003 was that both the Respondent No.1 and the Appellant had a *pari passu* charge in the form of a mortgage over the same immovable property and that the execution of a decree that is passed in Banking Suit No. 2 of 2017 would directly impact the Appellant rights in respect of that immovable property and hence they should be impleaded as party to that suit.

4. Mr. Salman Hamid Advocate entered appearance on behalf of the Appellant and contended that if the Appellant was not a necessary party, it was clearly a proper party to that suit as any decree passed or executed in Banking Suit No. 2 of 2017 would impact the rights of the Appellant as *pari passu* holders of a mortgage over an immovable property which was sought to being sold in that *lis*. In this regard he relied upon the decision of the Supreme Court of Pakistan reported as **Uzin Export Import Enterprises for Foreign Trade, Karachi vs. Union Bank of Middle East Ltd. and another.**¹ and in which it was held as hereinunder:

“ ... Sub-rule (2) of Rule 10, C.P.C. which is relevant in the present case deals with .the powers of the Court to strike off the names of the parties improperly joined in the suit either as defendant or plaintiff. This rule also authorises the Court to order for adding the name of any other party either as plaintiff or defendant in the suit who ought to have been joined in the proceeding or whose presence is felt by the Court as necessary to settle and adjudicate all questions involved in the suit, completely and effectually. This power can be exercised by the Court either on its own motion or on the application of either party to the proceedings. A careful reading of sub-rule (2) *ibid*, will show that power to add parties to the suit can be exercised by the Court in two' cases: Firstly, the Court may order joinder of a party in a suit either as a defendant or plaintiff, if it reaches the conclusion that a party who ought to have been joined as a party in the proceedings is not before it.-The other case in which the Court may direct joinder of a party in the suit as plaintiff or defendant is, where the B Court finds that the presence of that party will facilitate the Court to decide effectually. and finally all questions arising in the suit. In the first case, the joinder is of a necessary party to the suit while in the latter case the party added to the proceedings is only a proper party. Failure to implead a necessary party is always fatal to the proceedings while it ,may not be so in the other case and the Court may proceed. to determine the matter in controversy between the parties before it. **It is, therefore, not at all necessary that some relief must have been claimed in the suit against the party which is. joined in the proceedings as a proper party. The primary object of impleading a proper party in the suit is to avoid multiplicity of legal proceedings and to determine effectually and finally all questions arising in the proceedings.** This Court in the case, of Islamic Republic of Pakistan V. Abdul Wali Khan PLD 1975 SC 463 observed as follows on the scope of joinder of a. proper party to the proceedings:---

¹ PLD 1994 Supreme Court 95

"Now a proper party is a party whose presence before the Court is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the proceedings. The term 'questions involved' includes all matters, material to a proper decision of the case but, the object of making such persons parties is to prevent multiplicity of proceedings.. The person must, therefore, be a person whose interest is likely to be affected even though no relief is claimed against him. This does not, therefore, extend to persons who have no interest which is likely to be affected by the proceedings nor does it embrace persons only generally interested in common with others nor can persons be added as parties so as to set up a new cause of action which does not concern the original parties. ..."

5. Mr. Muhammad Salim Thepdawala entered appearance on behalf of the Respondent No.2, 3(b), 3(c), 3(d), 3(e), 3(f) and 3(g) and denied that the Appellant had any cause to be impleaded as a Defendant in Banking Suit No. 2 of 2017 as the rights of the Appellant were premised on separate cause of action through different finance facilities and therefore there existed no legal basis for the Appellant to be impleaded as a Defendant in Banking Suit No.2 of 2017. He stated that the Appellant having instituted J.M. No. 24 of 2003 had secured their rights and which would be determined in that *lis* and that there was no basis for the Appellant to be impleaded as Defendant in Banking Suit No. 2 of 2017.

6. We have heard Mr. Salman Hamid and Mr. Muhammad Salim Thepdawala and have perused the record.

7. To begin with, we are in agreement with Mr. Muhammad Salim Thepdawala that the cause of action that has accrued to the Appellant and the Respondent No.1 are different as the financing that has been provided is separate and therefore each cause has been correctly instituted through separate suits. The sole question that therefore arises is whether the *pari passu* charge in the nature of a mortgage created over an immovable property, which has been given as surety to two separate financial institutions under different financing agreements would result in each of the *pari passu* holders being treated as either "necessary" or "proper" party in a banking suit or for that matter a suit for recovery. The Appellant concedes that it is not a "necessary" party to Banking Suit No. 2 of 2017. The question that therefore arises is as to whether the Appellant, in the facts and circumstances, is a "proper" party. In this regard the Supreme Court of Pakistan in the decision reported as **Islamic Republic of Pakistan vs. Abdul Wali Khan**² has held that for a person to be considered

² PLD 1975 SC 463

as a ‘proper’ party, “*The person must, therefore, be a person whose interest is likely to be affected even though no relief is claimed against him.*” In this context we have considered the Appellants rights in Banking Suit No. 2 of 2017 and are clear that a decree being passed in Banking Suit No. 2 of 2017 would have no impact on the liability of the Appellant to the Respondent No. 1. However, in the facts and circumstances as disclosed, being a *pari passu* holder of a charge in the nature of a mortgage the execution of any decree that is passed in Banking Suit No. 2 of 2017, to our mind, may well impact the rights of the Appellant as the immovable property that has been mortgaged in favour of both the Appellant and the Respondent No. 1 would be subject to foreclosure and may well be auctioned in that Execution Application. We are therefore of the opinion that so as to be able to address its rights over that immovable property, the Appellant being a person “*whose interest is likely to be affected*” by the execution of any decree passed in Banking Suit No. 2 of 2017 is a proper party to that *lis*. This Appeal must therefore be allowed.

8. For the foregoing reasons, we are of the opinion that the Learned Single Judge had erred in his order dated 16 November 2022 dismissing CMA No.20683 of 2021 in Banking Suit No. 2 of 2017 and which order is set aside; CMA No. 20683 of 2021 is therefore allowed and the Respondent No. 1 is directed to file an amended title within ten days impleading the Appellant as a Defendant in in Banking Suit No. 2 of 2017. There will, however, be no order as to costs.

JUDGE

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