IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.50 of 2013

Appellant	:	MCB Bank Limited through Syed Danish Ghazi, Advocate
Respondent	:	Iqbal Ahmed S/o Mukhtar Ahmed Nemo.
Date of Hearing	:	29.10.2026
Date of Judgment:		29.10.2026

J U D G M E N T

Amjad Ali Sahito, J-. Through the instant appeal, the Appellant, MCB Bank Limited (hereinafter referred to as the **"appellant-Bank**"), has challenged the judgment dated 16.07.2013 and decree dated 05.08.2013 passed by the learned Banking Court No.II, Karachi, in Suit No.107 of 2010, whereby the suit instituted by the appellant-Bank for recovery of Rs.10,708,260.64 was decreed to the extent of Rs.6,554,448.99, inclusive of mark-up up to the date of default, i.e. 12.11.2009, with cost of funds thereafter until realization of the decretal amount. The learned Banking Court also allowed the appellant-Bank's claims for costs of the suit and sale of the mortgaged property.

2. Briefly stated, the appellant-Bank instituted the aforesaid suit seeking recovery of Rs.10,708,260.64 against the Respondent in respect of a finance facility availed by him. Its case was that, despite expiry of the stipulated period and repeated demands, the Respondent had failed to fulfil his repayment obligations under the terms and conditions governing the facility. The Respondent contested the claim, disputing the disbursement of Rs.9,800,000/- and asserting that the appellant-Bank had failed

to establish the actual advancement of the said amount. He further questioned the correctness of the statement of account, contending that it did not disclose the particulars of the alleged disbursements and that the repayments made by him had not been properly reflected or adjusted. He also disputed the mark-up claimed for the period from June 2009 to December 2009, maintaining that the same was neither supported by the finance agreement nor established through cogent evidence. Accordingly, he sought dismissal of the suit.

3. During the proceedings, the Respondent appeared through counsel and filed an application for leave to defend, which was dismissed by the learned Banking Court. However, the parties were directed to submit their respective detailed statements of accounts. In compliance, the appellant-Bank filed a break-up of its claim, whereas no corresponding statement was furnished by the Respondent. Upon consideration of the pleadings and material available on record, the learned Banking Court decreed the suit for Rs.6,554,448.99, inclusive of mark-up up to 12.11.2009, with cost of funds thereafter until realization, besides allowing the claims for costs and sale of the mortgaged property. The appellant-Bank has preferred the instant appeal, being aggrieved by the restriction of the decretal amount to the aforesaid sum.

4. Learned counsel for the appellant-Bank contends that the learned Banking Court erred in restricting the decretal amount to Rs.6,554,448.99, despite the claim of Rs.10,708,260.64 having been made in the suit. It is argued that the finance documents and statement of account were not properly appreciated while determining the amount recoverable from the Respondent. Learned counsel further submits that the disallowance of mark-up beyond the stipulated period, on the ground that the finance facility had not been renewed, is contrary to the material available on record. It is, therefore, contended that the appellant-Bank was entitled to recover the entire amount claimed under

the finance arrangement and that the impugned judgment and decree are liable to be modified accordingly.

5. Despite service of notice, no one has appeared on behalf of the Respondent. Considering that the matter pertains to the year 2013, we have proceeded to examine the appeal on the basis of the material available on record.

6. We have heard learned counsel for the appellant-Bank and examined the available record with his assistance.

7. The controversy requiring determination is whether the appellant-Bank has established any illegality or material irregularity in the assessment of its claim by the learned Banking Court, particularly in restricting the decretal amount to Rs.6,554,448.99 instead of the Rs.10,708,260.64 claimed in the suit. The appellant-Bank, therefore, has to demonstrate that the amount disallowed was legally recoverable under the finance documents and supported by the evidence on record.

8. Perusal of the impugned judgment reflects that the learned Banking Court did not reduce the claim arbitrarily. Rather, it examined the terms of the finance facility, the statement of account and the period for which mark-up was contractually payable. It was observed that the facility had initially been sanctioned on 16.07.2007 for a period of one year, extendable on a yearly basis subject to Clause 8 of the sanction letter dated 16.07.2007. However, upon expiry of the agreement dated 24.07.2007, no renewal agreement was executed, nor were any renewal fees or charges deducted from the Respondent's account as contemplated under the said clause. The appellant-Bank also failed to produce any material establishing renewal of the facility after expiry of its initial term.

9. The statement of account subsequently furnished by the appellant-Bank, following dismissal of the application for leave to defend, reflected that the Respondent had availed and utilized the finance facility to the extent of Rs.9,800,000/-. The mark-up calculated up to the expiry of the facility on 15.07.2008

amounted to Rs.980,918.99, bringing the aggregate liability to Rs.10,780,918.99. After adjustment of the payments aggregating to Rs.4,226,470/- made by the Respondent, the outstanding amount was determined at Rs.6,554,448.99, inclusive of mark-up up to the date of default, i.e. 12.11.2009. Since the appellant-Bank had failed to establish renewal of the finance facility, the learned Banking Court declined to allow mark-up beyond the contractual period and decreed the aforesaid amount, together with cost of funds thereafter until realization. In the circumstances, the appellant-Bank was required to establish, through the relevant finance documents and supporting evidence, its entitlement to the additional amount claimed. However, no material has been brought to our notice demonstrating that the finance facility was renewed in accordance with Clause 8 of the sanction letter or that the calculation made by the learned Banking Court was inconsistent with the contractual terms or the statement of account. Consequently, the appellant-Bank has failed to establish any legal basis for claiming mark-up beyond the stipulated contractual period.

10. It is settled that a party seeking enhancement of a decretal amount must establish its legal entitlement to the additional sum claimed. The mere fact that the amount decreed is less than the amount claimed does not, by itself, render the determination of the learned Banking Court erroneous. In the present case, the learned Banking Court examined the relevant finance documents, assessed the statement of account and adjusted the payments made by the Respondent before determining the outstanding liability. The appellant-Bank has failed to identify any material misreading or non-reading of evidence, or any error in the application of the contractual terms, which could justify enhancement of the decretal amount.

11. In the absence of any material establishing the appellant-Bank's entitlement to the balance amount claimed, no ground is made out for interference with the impugned judgment and

decree. We, therefore, find no illegality or material irregularity in the impugned determination warranting interference by this Court.

12. For the foregoing reasons, the instant appeal is **dismissed**, being devoid of merit. Consequently, the judgment dated 16.07.2013 and decree dated 05.08.2013 passed by the learned Banking Court No.II, Karachi, in Suit No.107 of 2010 are **maintained**.

JUDGE

JUDGE

KAMRAN/PS