

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. B-71 of 2011

J U D G M E N T

Date of hearing: 22.10.2013.

Plaintiff: Summit Bank Limited through Mr. Arshad Warsi, Advocate.

Def. No.1 to 4: M/s. Fatani Impex (Pvt.) Limited and three others are exparte.

NAZAR AKBAR, J. The plaintiff filed suit under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance XLVI of 2001 (hereinafter referred as Ordinance XLVI of 2001) against the barrower and guarantors for recovery of a sum of Rs.286,105,975.57 with the following prayer:-

- “(a) Pass Judgment and Decree against the Defendants jointly and severally in the sum of Rs.286,105,975.57 with accrued profit/mark-up thereon from the date of default till the date of realization of entire decretal amount;
- (b) For attachment and sale of the mortgaged property of the defendants with the Bank.
- (c) Direct the recovery of the above amount through the attachment and sale of all pledged collateral in the shape of shares of the Company;
- (d) For attachment and sale of all movable and immovable assets and properties of all the defendants in favor of Plaintiff and the sale consideration be adjusted against the decretal amount until realization of entire decretal amount.
- (e) In the event that any mortgaged/hypothecated property/goods have been sold/alienated/transferred, Defendants be directed to account for the same to the plaintiff;

- (f) Direct Defendants to deposit cash security with the Nazir of this Hon'ble Court to maintain the security available to the Plaintiff from the Defendant as on the date of the Running Finance Facility;
- (g) Liquidated damages @ 20% in respect of outstanding amount due against Defendants as provided in the Agreement for Financing on Markup basis;
- (h) An order for taking accounts;
- (i) Award costs of funds as provided under Ordinance XLVI of 2001;
- (j) Cost of the suit; and
- (k) Any other relief as this Hon'ble Court deem fit and proper under the circumstances."

The defendants were served on all modes of service in terms of Section 9(5) of Ordinance XLVI of 2001. The Defendants No.1 to 4 failed to file their applications for leave to defend. Only Defendant No.5 filed such an application for leave to defend. However, after contest the plaintiff dropped its claim against the Defendant No.5, by consent. The Defendant No.5 on 30.5.2012 filed an application under Order 1 Rule 10(2) CPC in Court and the plaintiff on receiving a copy of said application conceded to the request. Such application was later on numbered as CMA No.5366 of 2012. In the circumstances Defendant No.5's earlier application (CMA No.8292 of 2011) for leave to defend become infructuous and the suit remained between the plaintiff and Defendants No.1 to 4.

The Defendants No.1 to 4 failed to file their written-statement within 30 days in terms of Section 10 of Ordinance XLVI of 2001 and, therefore, the Court is left with no option except to decree the suit in terms of Subsection (11) of Section 10 of Ordinance XLVI of 2001 in favour of the plaintiff against Defendants No.1 to 4. The plaintiff have already given details of the

statement of accounts with markup as Annexures 'X' to 'X/10' as it was due and payable by the defendants jointly and severally as on 30th June 2011. The plaintiff has also placed on record mortgaged documents of various properties of the defendants.

In view of the above facts and circumstances the suit is decreed as prayed against Defendants No.1 to 4 except prayer clauses (f), (g) and (h) with markup till realization of the liabilities.

JUDGE

Karachi:
Dated: 28.11.2013

S. Akhtar