

## IN THE HIGH COURT OF SINDH AT KARACHI

**SUIT NO.B -1222 of 1999**

### O R D E R

DATE OF HEARING : 24.10.2013

PLAINTIFF NO.1 : National Bank of Pakistan through  
Mr. Safdar Mehmood, Advocate.

PLAINTIFF NO.2 : National Bank of Pakistan through  
Mr. Nabeel Kolachi, Advocate.

DEF. NOS.1 TO 3 : Northern Polyethylene limited and two  
others through Mr. Muhammad Riaz,  
Advocate for Mr. Muhammad Anwar  
Tariq, Advocate.

DEF. NOS.4 TO 16. : None present.

**NAZAR AKBAR, J.** By this order I intend to dispose of this suit which is pending for further proceedings since 25.8.2004 when leave to defend application of Defendants No.1, 2 and 4 were dismissed.

2. In brief, the Plaintiff filed this suit for recovery of US\$39,316,706.39 and Pak Rs.1,623,787,075 and for sale of the mortgaged / hypothecated properties on or about 09.08.1999 under Banking Companies (Recovery of Loans, Advances, Credit and Finances) Act XV of 1997. (hereinafter referred to as "ACT XV OF 1997"); The suit was initially filed against Defendant Nos.1 to 16. The defendant Nos.12,13,14,15& 16 are proforma defendants as shown in the title; and no substantial relief has been claimed against them. By order dated 10.02.2000, the defendant No.13 was struck off by consent of the Plaintiff, therefore, substantially the suit was between the Plaintiff and against the Defendant Nos.1 to 11. Subsequently on promulgation of the Financial Institutions (Recovery of Finances) Ordinance XLVI of 2001 gazetted on August 30<sup>th</sup>, 2001, the Defendants were required to file amended applications for leave to defend

within twenty one (21) days with effect from 30.08.2001 and by order dated 11.08.2004 all the counsel were directed to address the Court on the point that the defendants are required to file a fresh application for leave to defend or not and whether the same is necessary under the amended law (Ordinance XLVI of 2001) and what shall be the consequences thereof. By the order dated 25.08.2004 while disposing of original CMA No.9606 of 1999 under section 10 of the Act XV of 1997, this Court observed that it is a mandatory requirement for the defendant to file amended application for leave to defend. Resultantly, Mr.Justice Ali Aslam Jaffery (“as he then was”) had been pleased to decree the suit in the following terms; and I reproduce only the operative part from the said order as follows:-

*“I find myself in agreement with a view taken by the learned Judges of the Lahore High Court in the above cited cases and have no hesitation to hold that as a result of careful examination of Section 10 of the Ordinance, no other view can be taken but to hold that the compliance of the requirements for filing an amended application for leave to defend under the Ordinance are mandatory in nature, as non-compliance thereof shall be visited with penal provisions viz. rejection of the application for leave to defend. Since the defendants No.1,2& 4 who have failed to file the amended application for leave to defend and there is no plausible explanation for the same, hence they stand relegated to the same position as that of a defendant who has failed to file such application.*

*The plaintiffs are directed to file the statement of account showing the liability of the said defendants within two weeks from today. For arguments on merits on the amended application filed by Mr.R.F.Virjee on behalf of defendant No.12”*

4. Thereafter by order dated 29.03.2013 even the application for leave to defend filed by the proposed defendant No.12 was also dismissed for non-prosecution, thus there is nothing in this case to remain pending except statement of accounts showing the liability of the defendants to be

filed by the Plaintiffs for proposition of formal decree as it was observed in the order dated 25.08.2004. It is pertinent to mention here that the suit against defendant Nos. 3,5,6,7,8 & 9 has already been decreed wave back on 06.03.2003 followed by a decree available on court file dated 18.02.2003. Thus by the order dated 25.08.2004 the suit was also decreed against defendant Nos. 1,2 & 4 and subsequently suit was decreed by order dated 29.3.2012 dismissing the leave to defend application for non-prosecution. Thereafter the case was listed for only further proceedings for preparing the decree against defendants No.1, 2 & 4 after taking the statements of accounts in terms of the order dated 25.08.2004.

5. I am surprised that how this case continued as pending suit for fourteen (14) years even after the order of first decree against the defendant Nos.3,5,6,7,8 & 9 dated 06-03-3003 and second decree against defendant Nos. 1,2 & 4 dated 25.8.2004. The defendant No.12 was formal party and even their application for leave to defend was also dismissed for non-prosecution on 29-03-2012. In these circumstances the suit against all the other defendants already stand decreed. Even on 10.01.2013 when the case was again fixed for final disposal, the following orders were passed:-

*“Mr.M.Anwar Tariq is appearing for Defendant No.1 but his leave to defendant application was already dismissed on 25.08.2004 and the matter is being fixed for final disposal. In view of the Court order the plaintiff has already filed the statement of account/breakup. As a last chance adjourned to 23.01.2013 on which date Mr.M.Anwar Tariq will ensure that he will come and address the Court, if he wants to address, on the breakup filed by the plaintiff”*

6. The plaintiff during the period of nine years have repeatedly filed statements of account and the last statement of account was filed on 07.02.2013 which is at Page 871 of the file and according to this

statement of account the liability of the defendants No.1,2& 4 comes to a sum of Rs.40(Million) but till to-date no objections to this statement of liabilities has been filed by the defendant No.1. However; on 06.02.2013 the defendant No.1 after eight years of judgment dated 25.08.2004 has filed an application (CMA No.1078 of 2013) under Section 151 CPC read with Order 23 rule 102 CPC and Section 14 of the (Ordinance XLVI, 2001). The defendant No.1 through this application has sought to enforce/settle MOU dated 13.8.2007 signed between the Plaintiff and the defendant No.1. The plaintiff has filed counter affidavit and disputed the averment of defendant No.1. Be that as it may, the defendants No.1, 2 and 4 have no right of audience in this suit with effect from 25.08.2004 when their leave to defend application was dismissed till the time a decree is prepared. Till date decree against them in terms of judgment dated 25.8.2004 has not been prepared even after filing of statement of accounts by the plaintiff. May be, it so happened on account of the fact that the learned counsel for Defendants No.1 and 2 on 15.5.2008 get this suit tagged with two other suits bearing Suit No.1630 of 1998 and Suit No.808 of 1999. And since then most of the Court orders are to the effect that "same order as in Suit No.1630 of 1998" or the all the cases were adjourned by consent of the parties. The perusal of order sheet reveals that the office has repeatedly drawn attention of Court to the order dated 25.8.2004 until May 2008 and thereafter order sheet shows only for further orders or arguments of certain applications. In any case, as of today the legal position is that after the dismissal of leave to defend application on behalf of Defendant No.12 by order dated 29.3.2012 the proceedings have been finally concluded in terms of Section 10(11) of the Financial Institution (Recovery of Finances) Ordinance, 2001, and the suit stand decreed in favour of plaintiffs against all the contesting defendants. The plaintiffs have already filed statement of accounts against Defendants No.1, 2 and 4 on 07.02.2013 which is available at page 871 of the Court

file. The office is directed to issue decree on the basis of the said statement of accounts in terms of order dated 25.8.2004.

7. In view of the above, the pending application stand dismissed as this case will now proceed in terms of Section 19 of the Financial Institution (Recovery of Finances) Ordinance, 2001 after the decree is being prepared and the Court will treat the proceedings as execution proceedings before the Executing Court in accordance with the provisions of Section 19(2) of the Ordinance XLVI of 2001. The defendants may file whatever objections they may wish once the proceedings start in terms of Section 19(2) of the Financial Institution (Recovery of Finances) Ordinance, 2001, for execution of the decree against them.

8. In the above terms this suit and listed application (CMA No.1078 of 2013) stand disposed of.

**JUDGE**

Karachi:  
Dated:

S. AKHTAR