2017 C L D 298

[Lahore]

Before Shams Mehmood Mirza, J

Messrs HABIB METROPOLITAN BANK LIMITED---Plaintiff

Versus

Messrs SUBHAN KNITWEAR and another---Defendants

C.O.S. No.98 of 2013, decided on 1st February, 2016.

Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---

----S. 9---Suit for recovery of loan amount---Leave to appear and defend the suit, application for---Substantial question of fact---Scope---Simple denial of the entries in the statement of accounts was made without providing any reasons therefore---Defendant could not simply put up a denial simpliciter in his application for leave to defend in answer to a claim of financial institution which was backed up by a statement of account and other finance documents---Bare denial of liability was never held to constitute a valid defence in law---Mark-up on the finance facilities had been charged outside the period of finance facility which amounts were deleted from the suit claim---Claim of plaintiff Bank was substantiated by the documents available on record---Defendant had failed to raise any substantial question of fact warranting recording of evidence for its resolution---Petition for leave to appear and defend the suit was dismissed---Suit was decreed in favour of plaintiff Bank and against the defendant jointly and severally with costs of funds.

Hassan Nawaz Sheikh for Plaintiff.

Muhammad Imran Malik for Defendants.

Date of hearing: 12th January, 2016.

JUDGMENT

SHAMS MEHMOOD MIRZA, J.---This is a suit filed under section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the Ordinance) seeking recovery of Rs.153,492,069/- from the defendants on account of varies working capital facilities granted to defendant No.1 and default by it of its payment obligations.

2. Brief facts of the case are that defendant No.1 was availing running finance (RF), finance against packing credit (FAPC), Export Refinance (ERF-I and ERF-II), finance against foreign bills (FAFB) and import letter of credit (LC) facilities for number of years. Lastly, the said finance facilities were granted through sanction letter dated 25.10.2011 with expiry on 30.06.2012. On accounts of default committed by the defendants, the plaintiff bank was constrained to file the present suit.

3. In pursuance of the summons issued by this Court, defendants Nos.1 to 2 entered appearance and filed their joint application for leave to defend bearing P.L.A. No.227-B of 2013 (the PLA).

4. The learned counsel appearing on behalf of the defendants submitted that the claim under the bank guarantee was premature as there was nothing on the record to demonstrate that the said guarantee had been recalled forcing the plaintiff bank to make the payments thereunder. He further submitted that the RF facility was granted for a sum of Rs.15 Million but the plaintiff bank was claiming an amount of Rs.91,071,626.34 as principal amount and a sum of Rs.13,346,014.21 as mark up thereunder. In regard to the ERF-I and ERF-II facilities, it was stated that the statements of accounts did not reflect the correct picture and that these statements of accounts could not possibly be conceived in law as valid statements of accounts. The same objection was taken in respect of FAFB facility. In respect to the LC facility it as stated that the defendants had categorically denied availing the said facility in their application for leave to defend. The learned counsel for the plaintiff bank controverted the allegations of the defendants and submitted that the liability claim of the plaintiff was duly substantiated from the documents available on the record. He, however, conceded that the plaintiff bank did not pay any amount under the bank guarantee.

5. Arguments heard and record perused.

6. Sanction letter dated 25.10.2011 by its terms was for renewal of the finance facilities mentioned therein. The amounts of the said finance facilities were also clearly mentioned in the said sanction letter, the terms whereof were accepted by defendant No.1 by putting its signatures thereon. The amount of the RF facility was inflated to Rs.91,071,626.34 on account of adjustment of ERF-I and ERF-II facilities on 21.05.2012 and 22.05.2012 from the said account. The learned counsel for the plaintiff bank referred to the instructions of the State Bank of Pakistan regarding export finance schemes wherein the following was mentioned:

> Credit Risk: Banks take the credit risk under the scheme, and SBP takes exposure on banks. The refinance extended by SBP-BSC offices to the banks is recovered on the due dates as per repayment schedule from the account of the banks/DFIs.

In case of borrower fails to make repayment of the loan on the due date, the bank is entitled to charge normal rate of mark up on such overdue principal amounts besides taking other actions to recover the same. Therefore, the repayment of EFS loans to SBP is not dependent upon the recovery of loan from the borrower. In this way, ultimate credit risk under the scheme is borne by the lending banks.

In terms of the aforementioned instructions by the State Bank of Pakistan, the plaintiff bank was duty bound to pay the amounts of the ERF-I and ERF-II facilities to the State Bank of Pakistan on the maturity of the bills. The payments of the aforementioned finance facilities through the RF account was not illegal although no mark up could be charged on the said amounts as was readily conceded by the learned counsel for the plaintiff bank. That the export refinance facilities were availed by defendant No.1 is also duly substantiated from the letter of State Bank dated 20.02.2012 addressed to defendant No.1 with regard to non-realization of the export proceed under the bills. In this regard proceedings in terms of section 12(1) Foreign Exchange Regulation Act, 1947 were also initiated by the State Bank of Pakistan against defendant No.1. The statements of accounts of ERF-I, ERF-II and FAFB facilities reflect the amounts which were lastly sanctioned/renewed through sanction letter dated 25.10.2011. The perusal of the application for leave to defend clearly shows that a simple denial of the entries in the statements of accounts was made without providing any reasons thereof. It is settled law that the defendant cannot simply put up a denial simpliciter in his application for leave to defend in answer to a claim of a financial institution which is backed up by a statement of account and other finance documents. Even otherwise, a bare denial of liability is never held to constitute a valid defense in law. The mark up on the said finance facilities has, however, been charged outside the period of finance facility and amounts thereof are accordingly liable to be deleted from the suit claim.

7. The claim under the LC facility was disputed on the ground that the letter of credits were not required by defendant No.1 to be established on its behalf. This allegation has no merit whatsoever. The claim of the plaintiff bank under the LC facility arises out of 14 letters of credit. The plaintiff bank has appended the request letters, the letters of credit, proforma invoice/sale contract and the insurance cover of all the transactions. The request letters are on the letterhead of defendant No.1. The amounts of the letters of credit corresponds with the LC facility as mentioned in sanction letter dated 25.10.2011. Defendant No.1 duly executed undertaking dated 11.11.2011 in respect of the LC facility. In view of the presence of the overwhelming documentary evidence, the allegations made by the defendants in regard to the LC facility do not merit any serious consideration. The mark up charged on the said facility cannot be granted in the absence of any instrument allowing the plaintiff to charge such mark up.

8. The claim of the plaintiff bank is substantiated by the documents available on the record including the sanction advice, finance documents and statements of accounts. The defendants have failed to raise any substantial question of fact warranting recording of evidence for its resolution. The plaintiff bank's counsel has conceded the claim of the defendants with regard to the bank guarantee facility and the mark up charged on the finance facilities. The application for leave to defend filed by the defendants is accordingly dismissed for failing to raise any substantial dispute on facts.

9. In the result, the suit is decreed in favour of plaintiff and against the defendants, jointly and severally, in the sum of Rs.124,381,389.78 together with costs of funds as contemplated by section 3 of the Ordinance. Costs of the suit are also granted.

ZC/H-24/L Suit decreed.