

2017 C L D 186

[Lahore]

Before Shahid Karim and Jawad Hassan, JJ

NAZIR RICE MILLS (PVT.) LIMITED---Appellant

Versus

HABIB METROPOLITAN BANK LIMITED---Respondent

R.F.A. No. 371 of 2013, heard on 6th December, 2016.

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

---Ss. 10, 9 & 22---Suit for recovery---Application for leave to defend, dismissal of---  
Scope---Application of defendants for leave to defend was only allowed to the extent of  
the issue of "cash liability" and suit was decreed for the remainder amount in favour of  
the plaintiff Bank---Contention of the defendant, inter alia, was that the impugned order  
was based on a misreading of the record and that the plaint filed by the Bank was  
defective---Validity---Perusal of record revealed that the defendant on the one hand  
negated the authenticity of the Statement of Accounts, on the other hand relied on the  
same to prove its case, and thus lacked consistency in its stance---No defect in the plaint  
filed by the plaintiff Bank was pointed out by the defendant and simple denial of  
execution of documents could not be termed as a plausible defence or an issue which  
could only be resolved after recording of evidence---Defendant's application for leave to  
defend was therefore rightly dismissed---Appeal was dismissed, in circumstances.

IGI Investment Bank Limited through Attorney v. Messrs Admore Gas Pvt. Ltd.  
and another 2014 CLD 1354 rel.

Mian Asghar Ali for Appellant.

Hassan Nawaz Sheikh for Respondent.

Date of hearing: 6th December, 2016.

## **JUDGMENT**

**JAWAD HASSAN, J.**---Through this single order we intend to dispose of the  
instant appeal as well as Regular First Appeal No.372 of 2013 and Regular First Appeal  
No.373 of 2013 as all the three appeals are outcome of impugned judgment and decree

dated 17.01.2013.

2. These appeals before the Court are filed under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the Ordinance) against judgment and decree passed on 17.01.2013 whereby the suit filed by the Respondent Bank was decreed partially to the tune of Rs.388,196,353.17/-.

3. Brief facts of the case are that the Respondent Bank filed a suit for recovery of Rs.524,544,786.57/- against the Appellant Company and others. The Appellant in the instant appeal including other Defendants filed separate petitions for leave to appear and defend the suit by raising various questions of law and facts. The learned Single Judge, after hearing the parties and perusal of record partially allowed the Appellant's petition for leave to appear and defend the suit unconditionally to the extent of liability in Cash Finance Facility whereas rejected the rest of the petitions and decreed the suit of the Respondent Bank to the tune of Rs.388,196,353.17/- vide impugned judgment and decree.

4. Learned counsel for the Appellants argued that the Hon'ble Banking Court has granted unconditional leave to the Appellants to the extent of Finance Facility against the pledge stocks whereas all amount secured by the pledge stocks has not been excluded from the decree, as such the impugned judgment and decree is liable to be set aside. Learned counsel of the Appellants further contended that the Respondent Bank did not file the plaint in strict compliance of section 9(2) of the Ordinance as the Statement of Accounts annexed with the plaint lacks requirements of Bankers' Books Evidence Act, 1891. Learned counsel of the Appellants further maintained that on the mere basis of allegation that the pledge stock has been removed by the Appellants which was in the safe custody of the Respondent, the Appellants cannot be ousted from the lis. Learned counsel also submitted that the impugned judgment and decree is based on misreading and non-recording of record.

5. Learned counsel for the Respondent Bank vehemently contested the arguments of the learned counsel for the Appellants and submitted that there is no illegality in the impugned judgment and decree and the same has been passed in accordance with law. Learned counsel further contended that the Appellants have not proved their assertion of repayment of Finance Facility. Learned counsel also submitted that an FIR has been registered against the Defendants for removal of stock.

6. From the perusal of the record it reveals that on one hand, no one else but the Appellants themselves have negated the authenticity of the Statement of Accounts by asserting that the same is not reliable being defective but on the other hand tried to prove their case by relying upon the same Statement of Accounts. The Appellants are

lacking consistency in their stance. Furthermore, learned counsel for the Appellants has failed to point out defect in filing the plaint with sheer disregard of section 9(2) of the Ordinance and therefore, the said objection of the Appellants has no force. Reliance is placed on the case titled IGI Investment Bank Limited through Attorney v. Messrs Admore Gas Pvt. Ltd and another (2014 CLD 1354) where Hon'ble Sindh High Court has held as under:

"Even otherwise, not a single entry or illustration was pointed out by the defendants in their application for leave to defend, or at the time of the final hearing, to show any incorrect or illegal debit entry in the statement of account filed and relied upon by the plaintiff, or any discrepancy therein, or any such amount that was allegedly charged by the plaintiff as markup over markup. Such omission on the part of the defendants is significant and has a direct impact on the objection raised by them regarding the authenticity and admissibility of the plaintiff's statement of account on the ground that the same is not in accordance with section 2(8) of the Act of 1891 and section 9(2) of the Ordinance. It is well settled that a statement of account carried presumption of truth by virtue of section 4 of the Act of 1891 when the entries therein are not rebutted with cogent reasons."

7. Regarding the issue of removal of stock, the learned Single Judge has aptly observed that FIR in this regard has been got lodged and without recording of evidence the same cannot be determined either way.

8. We also agree with the finding of the learned Single Judge that Defendants Nos.2-9 have only denied the execution of documents and their simple denial cannot be termed a plausible defence or issue which could be resolved after recording of evidence and thus their petition for leave to appear and defend the suit was rightly dismissed. We find no illegality in the impugned judgment which has been passed in consonance with the spirit of law, therefore, does not call for interference by us in the instant appeal.

9. In the circumstances presented hereinabove, this appeal being devoid of any merit, is hereby dismissed with no orders as to cost.

KMZ/N-42/L

Appeal dismissed.