

Judgment Sheet
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

R.F.A. No.113-2017/BWP

M/s. Bahawalpur Cotton Vs. United Bank Limited.
Company.

Date of Hearing: **26.09.2018**

Appellant By: **Mian Muhammad Mujahid, Advocate**

Respondent By: **Mr. Mahmood Ahmad Bhatti, Advocate**

JUDGMENT

MUZAMIL AKHTAR SHABIR, J. Through this Regular First Appeal filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (*'FIO'*), read with Order 41 of the Civil Procedure Code, 1908, the appellant has called in question the judgment and decree dated 11.10.2017 passed by learned Judge Banking Court, Bahawalpur, (*'court'*), whereby the recovery suit filed by the respondent-Bank against the appellant was decreed.

2. Brief facts of the case are that the respondent-Bank instituted a suit bearing No. 348/2007 through attorneys, Syed Abdul Majid Shah and Muhammad Iqbal, for recovery of Rs. 1,94,95,823/- against the appellant in the court, in which the appellant filed an application for leave to appear and

defend the suit (*'PLA'*), which was dismissed and the suit filed by the respondent-Bank was decreed for an amount of Rs. 1,94,95,823/- with cost of suit and cost of fund. The appellant has challenged the afore-referred judgment and decree through this appeal.

3. It has been contended on behalf of the appellant that the judgment and decree passed by the court suffers from misreading and non-reading of the relevant record and the trial court had not exercised its judicious mind while dismissing the application for leave to appear and defend the suit, wherein substantial questions of fact and law are raised and consequently erroneously decreed the suit as prayed for. Besides, the suit has not been filed by the properly authorized persons and the same was not proceed able under the law.

4. On the other hand, learned counsel for the respondent-Bank fully supports the judgment and decree passed by the court and prays for dismissal of the instant appeal.

5. Heard. Record perused.

6. The appellant availed two Finance Facilities from the respondent-Bank by way of Cash Finance of Rs. 50,00,000/- and Demand Finance of Rs. 1,40,00,000/- but could not repay the same as per terms of agreement. The respondent-Bank on 08.11.2007 instituted a recovery suit for an amount of Rs. 1,94,95,823/- through its attorneys Syed Abdul Majid Shah and Muhammad Iqbal claiming therein that the appellant had availed Cash Finance Facility of rupees 5 million and Demand Finance Facility of rupees 14 million on the basis of mark up, against which the appellant had

executed sufficient securities to liquidate their liabilities. However, it is claimed that the appellant defaulted in payment of the outstanding Finance Facilities and consequently an amount of Rs. 1,94,95,823/- was stated to be outstanding, the details of which are as under:-

a) CASH FINANCE (COTTON)

Amount of Finance	Rs. 50,00,000.00
Principal amount	Rs. 17,10,000.00
Amount of mark up recoverable	Rs. 4,68,200.00
Balance due	Rs. 21,78,200.00

b) DEMAND FINANCE

Amount of Finance	Rs. 1,40,00,000.00
Total amount availed	Rs. 1,40,00,000.00
Total amount repaid	Rs. 7,54,962.71
Principal amount	Rs. 1,32,45,037.29
Amount of mark up recoverable	Rs. 40,72,586.40
Balance due	Rs. 1,73,17,623.69

7. The first objection raised by the appellant against the afore-referred suit is that plaint had not been filed through authorized attorneys, however, from the perusal of the record it is seen that Syed Abdul Majid Shah and Muhammad Iqbal have been appointed as attorneys of the bank and have been duly authorized to file recovery suit. The said power of attorneys are available on the file, which are dated 02.11.1974 and 22.04.1981, respectively, according to which the said attorneys have been authorized to

file recovery suit. It has been contended on behalf of the appellant that the said power of attorneys have been executed on the date prior to the sanction of the Finance Facilities to the appellant, therefore, the same could not have been used to file recovery suit against the appellant. From the perusal of the above said power of attorney it is observed that the afore-referred attorneys have been authorized to perform various acts including:-

“9. To commence, prosecute, continue and defend all actions, suits or legal proceedings whether civil, criminal or revenue, including proceedings to procure or establish the bankruptcy or insolvency of any person or firm or liquidation or winding up of any company, to compromise or refer to arbitration any claims or disputes either in such suits or proceedings or otherwise, to appoint Solicitors, Advocates, Pleaders, Vakils and other legal agents: to make sing, verify, execute, plaints, petitions, Written Statement, Memorandum of Appeal, applications, tabular statements, Vakalatnamas, Warrants of Authority or any the papers, writings or documents expedient or necessary in the opinion of the Attorney to be made, signed, executed, verified, presented or filed.

11. To advance money of the Bank on security or otherwise in accordance with the limits sanctioned by the Board of Directors of the Bank or by any authorized Director, Managing Director, General Manager or other authorized officer of the Bank or within the discretionary powers authorized to the Attorney by the Board of Directors or any authorized Director, Managing Director or General Manager of the Bank on such terms as to rate of interest, repayment and security or otherwise as the said Board or any of the aforesaid persons may sanction or authorize.

12. To do generally all acts, deeds, and things not herein specifically mentioned which are necessary or requisite or expedient to carry on and manage the business of the bank or which be necessary or requisite or expedient for the better and more effectively doing and performing the several acts, deeds and things afore-said or incident; thereto.”

II. For and in the name of the Bank to do, execute, transact and perform alone and singly and without joining any other Attorney or Officer of the bank the following acts or any of them, namely-

(a) In respect of all cheques and bills drawn or endorsed in favour of the Bank or otherwise payable to the Bank to endorse them as payable to bankers of the Bank for credit of the Bank's Account or Accounts with such bankers or for collection.

- (b) To discharge such cheques and bills for payment through the banker's Clearing House or otherwise.*
- (c) To confirm endorsements of clients, constituents and customers of the Bank or other parties on all cheques, bills, drafts, telegraphic transfers, payslips, pay orders, dividend and interest Warrants and vouchers and other negotiable or mercantile or other instruments.*
- (d) For and in the name of the Bank to certify that the proceeds of any cheques, bills, drafts, telegraphic transfers, payslips, pay orders, dividend and interest warrants, vouchers, negotiable or mercantile instruments or other instruments have been or will be credited to the account with the Bank as specified in the certificate, and*
- (e) To endorse Bills of Exchange, Hundies, Bills of Lading, Dock and Warehouse Warrants and other Shipping Documents, Railway Receipts and other negotiable or transferable instruments for the purpose of discharging the same."*

The said powers vested in the attorneys generally authorize the attorneys to prosecute/file recovery suit and legal proceedings on behalf of the Bank giving them very wide powers for the said purpose and the said attorneys have also been authorized by Clause 12 *ibid* to perform other acts on behalf of the Bank which powers also include the power to file the suit out of which this appeal has arisen, therefore, it is observed that suit had been filed by competently constituted attorneys and no defect can be found against the same.

8. The next question raised by the appellant is that the Bank had not complied with provisions of Section 9 (1)(2)(3) of the FIO. It is observed that the statement of account attached with the plaint are duly certified by enforcing the certificate and the same is in terms of Bankers Book Evidence Act, 1891, which is reproduced below:-

"Certified that it is a true copy of the entries of the ledger and that these entries are contained in one of the ordinary books of the bank and were made in the usual and ordinary course of business, and, that the book is still in the custody of the bank."

Besides the afore-referred statements provide in detail the debit and credit entries for transaction of the Finance Facilities along with mark-up upon the same and duly provide amounts that had been withdrawn by the appellant and returned with their exact date and have been duly attested and, therefore, there is sufficient compliance of Section 9 (1)(2)(3) of the FIO in the plaint and the objection raised by the appellant is devoid of any merit and consequently declined.

9. In the petition for leave to appear and defend the suit filed by the appellant, the availing of Finance Facilities has not been denied rather it has been claimed that the appellant had repaid the entire Finance Facility and nothing was outstanding and due against the appellant, however, the appellant has not provided any dates or attached any receipts to show that when the said adjustment/repayment of Finance Facility was made, therefore, compliance of Section 10 (3)(4)(5) of the FIO has not been made by the appellant, consequently no substantial question of law and fact was raised for leave to appear to be allowed to the appellant and the learned court was justified in dismissing the PLA filed by the respondent.

10. As regards the objection raised by the appellant that illegal mark-up has been charged, the said allegation has not been substantiated by pointing out any entry in the statement of account, which could be declared as not due from the appellant. Consequently, there is no force in the said objection and the same is also declined.

11. As already observed above as the statement of accounts produced by the Bank have been duly verified in terms of the Bankers Book Evidence Act, 1891 in which no discrepancy has been pointed out, besides the Appellant has failed to demonstrate that the Finance Facility had been adjusted or repaid, consequently presumption of correctness is attached to the same and can be taken up as evidence. From the perusal of the statement of accounts for Cash Finance Facility it is observed that an amount of Rs. 17,10,000/- was outstanding on account of principal. The plaintiff had produced statement of markup concerning Cash Finance Facility which found consists of three pages and duly certified and it also shows an amount of Rs. 4,68,199/- i.e., 3,99,237/- + Rs. 68, 962/- outstanding on account of markup. The period of mark-up, as per these documents relates to 30.09.2006 to 02.11.2007 and thus not found beyond the expiry date. The statement of accounts relating to Demand Finance Facility is also found duly certified in terms of Banker Books Evidence Act, 1891, and it shows outstanding amount of Rs.1,32,45,037/- on account of principal and Rs. 20,92,235/- on account of mark-up charged up to 02.11.2007. If the afore referred amount for principal and markup for cash finance facility and demand finance facility are added, the aggregate amount would be Rs. Rs.1,75,15,472/-, the break of which is provided as under:

Principal Cash Finance Facility.	Rs.17,10,000/-
Markup Cash Finance Facility	Rs.4,68,200/-
Principal Demand Finance Facility	Rs.1,32,45,037/-
Markup Demand Finance Facility	<u>Rs.20,92,235/-</u>
Total	Rs.1,75,15,472/-

The objections relating to the validity of statement of account are not found valid or sustainable as no discrepancy has been pointed out in the same, however, it appears that while calculating the final decretal amount, the learned Banking Court has made error by treating the total of afore referred amounts as Rs. 1,94,95,823/- instead of Rs.1,75,15,472/- actually due and outstanding against the appellants, therefore, we *modify* the decree of the Court from Rs.1,94,95,823/- to Rs.1,75,15,472/- with costs of suit and costs of fund.

12. In the foregoing terms, this appeal is *partially allowed*.

(Jawad Hassan)
Judge

(Muzamil Akhtar Shabir)
Judge

Approved for reporting