

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

**RFA No.901 of 2016**

**M/s Jamal Tube (Pvt) Ltd, Lahore & others**

**Versus**

**First Punjab Modaraba, Lahore & another**

**J U D G M E N T**

Date of hearing: 20.09.2021.  
Appellant by: Mr. Salman Mansoor, Advocate.  
Respondent-Bank by: Mr. Bilal Ahmad Kashmiri, Advocate.  
Barrister Ameer Abbas Ali Khan,  
Assistant Advocate General on Court's  
call.  
Research by: Mr. Ahmad Zia Ch., Civil Judge /  
Research Officer, LHCRC.  
Mr. Muhammad Imran Sh. Addl. District  
Judge / Senior Research Officer, LHCRC.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** Through instant Appeal, appellants have assailed judgment and decree dated 31.12.2015, passed by learned Single Judge, whereby appellants' applications for leave to appear and defend the suit ("PLA") were dismissed and suit filed by respondent-bank for recovery of Rs.98,099,484/- was decreed along with cost of funds and costs of the suit.

2. Brief facts of the case are that respondent-bank instituted suit for recovery of Rs.98,099,484/- against appellants asserting therein that respondent-bank sanctioned *Ijarah* / Lease Finance Facility of Rs.22.500 Million in favour of appellant-company vide letter dated 16.05.2009, and lease agreement dated 29.06.2009 was accordingly executed between the parties. Appellant-company also availed Morabaha Finance Facility of Rs.67.500 Million vide letter dated 09.05.2009 and agreement dated 29.08.2009 was executed. It was asserted that appellants executed various agreements / documents

including personal guarantees and also mortgaged properties against these facilities, however, defaulted in their repayment obligations. The suit was contested by appellants by filing PLAs, which were resisted by respondent-bank by filing replication and were ultimately dismissed. Consequently, suit was decreed in the sum of Rs.98,099,484/- with cost of funds and costs of the suit.

3. Learned counsel for appellants submits that appellants successfully proved that at the time of filing of suit no default was in existence as account was being operated by respondent-bank under the authority given by appellant-company, so, the bank had made a window dressing exercise by crediting the amount first in account of appellant-company and then taking out the same itself through cheques, duly signed by officers of the bank, in its own favour. He adds that this aspect of the matter, also agitated through PLA, was not adverted to and dealt with by learned Single Judge. He further submits that suit was filed by an unauthorized person, thus, was not maintainable. He argues that statement of account does not show disbursement of finance facilities to appellants, and it contains sham transactions. He maintains that appellants raised substantial questions of law and facts, which were required to be addressed through evidence of the parties after granting them leave but learned Single Judge has not rightly exercised the jurisdiction.

4. Conversely, learned counsel for respondent-bank defends the impugned judgment and decree and submits that learned counsel for appellants has failed to point out any illegality or legal infirmity in the same, which is liable to be upheld.

5. Arguments heard. Available record perused.

6. The main plea in PLA is that amounts of Rs.22.500 Million under *Ijarah* / Lease Finance Facility and Rs.67.500 Million under *Morabaha* Finance Facility were never disbursed to appellant-company. Admittedly, respondent-bank has not appended with the plaint complete documents / statements of account showing disbursement of aforesaid amounts in the account of appellant-

company. Even while filing replication, no such documents/statements of account were appended by the respondent-bank. However, subsequently through application for additional documents, the respondent-bank placed on record the statement of account showing disbursement of amounts from respondent-bank but no corresponding statement was appended to show where the amounts were disbursed.

7. A perusal of the additional documents referred to by learned counsel for the respondent-bank shows that amounts of Rs.22.500 Million and Rs.67.500 Million were disbursed from the account of respondent-bank. However, no statement of account of appellant-company was placed on record to show that said amounts were credited in company's account. In reply to the application for additional documents, appellant-company placed on record statement of account of the Bank of Punjab and certain cheques to show that said amounts were credited in the said so called account of appellant-company, however, subsequently, the amounts were again returned to the account of respondent-bank through various cheques, which were signed and operated by officials of respondent-bank and not by appellant-company. Prima facie, copies of these cheques correspond with the entries whereby the amounts of Rs.22.500 Million and Rs.67.5 Million were reversed from the Bank of Punjab to respondent-bank. The stance of appellants is that aforesaid amounts were never disbursed to appellant-company rather the same remained in the account of respondent-bank and entries of various accounts were only cosmetic transactions just to show disbursement.

8. Needless to say that under Section 9(2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("**FIO, 2001**"), plaint of the suit filed by financial institution must be supported by a statement of account, which shall be duly certified under the Bankers Books Evidence Act, 1891, and all other relevant documents relating to grant of finance. The purpose of such

obligation was to give fair opportunity to defendant to come up with cogent grounds to seek leave from the Court. It is settled law that such omission by the bank is a non-compliance of aforesaid provision of law and the effect of such non-compliance entails grant of leave to defend the suit to defendant. If a financial institution fails to adhere strictly to this mandatory requirement of law, then a defendant, of course, besides entitled for the grant of a leave to defend the suit or otherwise, may be within his/its right to contest for rejection of the plaint. It is equally well-settled that defect of non-filing of complete and accurate statement of account with the plaint cannot be cured subsequently by filing the same with replication or application seeking submission of additional documents. If it happens, no opportunity would be available to appellants to counter or rebut those documents, as after filing the PLA, the law does not permit and provide any further remedy to lead further defence unless leave is granted. Reference can be made to Pakistan Kuwait Investment Company (Pvt.) Limited through Authorized Representative v. Messrs Active Apparels International and 6 others (2012 CLD 1036), Bank of Punjab v. International Cremacis Ltd. and others (2013 CLD 1472), Pak Oman Investment Company Limited v. Chenab Limited and 9 others (2016 CLD 1903), National Bank of Pakistan v. Messrs Amna Export (Private) Limited and 2 others (2020 CLD 1243), Decent Builders and Developers and others v. Standard Chartered Bank (Pakistan) Limited (2021 CLD 130) and Abdul Khaliq and 3 others v. MCB Bank Limited through Manager (2021 CLD 776).

9. It is also worth mentioning that if PLA is dismissed and suit is decreed while relying a statement of account, not filed with the plaint or replication, it will tantamount to infringement of constitutional and fundamental right of fair trial and due process inasmuch as right to be treated and dealt with in accordance with law, guaranteed under Articles 4 & 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. According to Article 10-A *ibid*,

for determination of civil rights, obligations or in a criminal charge, person affected thereby would be entitled to a fair trial and due process. In order to safeguard interest of a party and to fulfill salutary principle of due process and natural justice, a fair opportunity to lead evidence in rebuttal to evidence brought on record by plaintiff subsequently should have been granted to defendant to disprove the same. Reference can be made to Soneri Bank Limited v. Classic Denim Mills (Pvt.) Limited and 3 others (2011 CLD 408) and Sheikh Murshid Ali and others v. United Bank Limited (2016 CLD 1471),

10. The term “substantial question of law” has also been elaborated by Indian superior Courts to mean that having substance, essential, real, of sound worth, importance or considerable, in contradistinction with technical, of no substance or consequence, or academic merely, in the cases reported as Boodireddy Chandraiah and Ors. v. Arigela Laxmi and Anr. [2007 AIR (SCW) 7062], Kashmir Singh v. Harnam Singh & Anr. [2008(2) R.C.R. (Civil) 688] and G. Basavaraj v. H.M. Shivappa Patel [2011(19) R.C.R. (Civil) 701].

The submissions of appellants that mandatory requirement of filing statement of account with the plaint was not fulfilled as well as disbursement of finance facility was also not established through any valid document, give rise to substantial questions of law and fact as first plea is purely a question of law and the latter can only be addressed after evidence of the parties. Section 10(9) of the FIO, 2001, empowers Banking Court to grant leave to defend if, on consideration of the contents of the plaint, the application for leave to defend and the reply thereto, it is of the view that substantial questions of law or fact have been raised in respect of which evidence needs to be recorded. But, this aspect of the matter has been overlooked while dismissing the PLA. Reference can also be made to Abdul Sattar v. Muslim Commercial Bank Limited through Manager/Attorney and 2 others (2019 CLD 1254).

11. The above legal as well as factual aspects of the matter have not rightly been appreciated and dealt with in accordance with law, therefore, impugned judgment and decree is unsustainable in the eye of law.

12. In view of the above, this appeal is allowed and impugned judgment and decree dated 31.12.2015 is set aside. Consequently, appellants' PLAs are accepted subject to payment of one third of the suit amount in cash with learned Single Judge within a period of thirty days from today. The suit shall be decided afresh on merits after framing issues and recording evidence of the parties.

(Abid Aziz Sheikh)  
Judge

(Muhammad Sajid Mehmood Sethi)  
Judge

APPROVED FOR REPORTING

Judge

Judge

\*Sultan\*