

2013 C L D 54

[Lahore]

Before Muhammad Khalid Mehmood Khan and Shahid Waheed, JJ

M. SALEEM & COMPANY and 4 others---Appellants

versus

Messrs ASKARI COMMERCIAL BANK LIMITED--Respondent

Regular First Appeal No. 218 of 2006,' heard on 2nd April, 2012.

Waqar Mushtaq Ahmed for Appellants

Qazi Iftikhar Ahmad Toor for Respondent

Date of hearing: 2nd April, 2012.

JUDGMENT

[Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---Sections 10 & 22---Suit for recovery was decreed, and leave to defend was refused, on the ground that the defendant had availed the finance facility for Letter of Credit and had not pointed out any discrepancy---Validity--Amount availed by the defendant was as per agreement and the amount due pertained to that period which was not covered under the agreement for finance---Agreement for Letter of Credit, on examination, showed that the column for mark-up was blank---Defendant had deposited the margin for every Letter of Credit but the said margin amount had not been shown credited to the appellants liability account---Signature on the Letters of Credit and the other letters relied on by the Trial Court, prima facie, differed with each other--High Court set aside decree of Trial Court and remanded the case to Trial Court with the direction to grant the defendant leave to defend---Appeal was allowed, in circumstances.

MUHAMMAD KHALID MEHMOOD KHAN. J.---The respondent filed a suit for recovery of Rs.22,08,185 against the appellants, asserting that appellant No.1 is a partnership concern with appellant No. 2, appellant No. 1 availed financial facilities in the shape of letter of credit. Appellant No. 2 also executed an agreement of personal guarantee for repayment of financial facility availed by Appellant No.1. The appellant availed the facilities but failed to repay the same and a sum of Rs.22,08,185 is recoverable from the appellants. The respondent has referred number of documents executed by the appellants in acknowledgment of amount of finance availed, in paragraph No.6 of the plaint. the respondent further asserts that appellant has also mortgaged his immovable property in favour of respondent. It is asserted that appellant availed Rs. 12,241,000 and out of said utilized amount he paid Rs. 10,370,476, the other amounts payable by appellants is Rs. 18,70,5274 and as such total amount/payable is Rs.22,08,185.

2. The appellants filed application for permission to defend the suit and raised number of legal as well as factual objections, the statement of accounts was attacked on the ground that it contains number of fake entries. It is also pointed out that respondent is charging markup on markup which is not permissible under' the non interest banking system and submitted that appellant availed the facility of Rs.12,241,000 and paid Rs. 10,796,093 in addition to the agreed markup and commission payable on LC, a sum of Rs. 14,44,907 is payable out of which margin deposited with the respondent for opening the letter of credit has to be deducted from the due amount.

3. The learned Banking Court decreed the suit on 27-01-2006 holding that appellant has admitted the availment of finance and has not pointed out any discrepancy in the statement of accounts.

4. Learned counsel for appellants submits that statement of accounts available at page No. 39 of the plaint shows that nothing is recoverable in the account of LCs mentioned in it. Learned counsel has also pointed out number of entries which show that respondent is charging markup on markup, The amount of margin has not been deducted from the liability. Further submits that maximum liability under the agreement of finance . comes to Rs.26,40.000 whereas admittedly the appellant has paid the amount more-than the buyback price.

5. Learned counsel for respondent supports the judgment and decree passed by the learned banking court and submits that the agreement was for one year and after expiry of agreed period the appellant continued to open the letter of credit and as such appellant is liable to pay markup.

6. Heard. Record perused.

7. We have asked the learned counsel for respondent what was the rate of markup fixed for opening of letter of credit, admittedly according to respondents own showing, the amount availed by appellant is as per agreement and the amount due pertains to that period which is not covered under the agreement of finance. Learned counsel for respondent is unable to explain the rate of make up agreed on finance. We have examined the agreement of LCs available at pages Nos. 62 to 76, the column of markup is blank. Further in every letter of credit the appellant has deposited margin which is evident from the letter of credit itself. The margin amount has not been shown credited to the appellant's liability account.

8. The above said facts were not considered by the learned trial Court and only relied upon the appellants letter for which appellant has already taken stance that these were signed blank. The contention of appellant that letter relied upon by the learned Banking court does not bear his signatures, find force from the signatures of appellant on letter of credit. The signatures on letter of credit and the letters relied upon by the learned banking court prima facie differs with each other. 9. In these circumstances learned trial court was not justified to pass a decree by ignoring the above said facts, the loan of appellant is fully secured by way of mortgage of property and as such the appellant was entitled for grant of leave ,to defend the suit. In these circumstances, we accept this appeal and grant permission to defend the suit, to appellant as sufficient security is available with respondent/bank.

16. In view of above, the appeal is allowed, judgment and decree of learned trial Court is set aside and case is remanded to learned trial Court who will decide the same afresh after framing issues and recording the evidence. There is no order as to costs.

Appeal allowed.