

2013 C L D 88

Sindh

Before Irfan Saadat Khan, J

HABIB METROPOLITAN BANK LTD.---Plaintiff

versus

Mian ABDUL JABBAR GIHLLIN and another---Defendants

Suit No. B-67 of 2009, decided on 5th November, 2012.

Jam Asif Mehmood for Plaintiff.

Altaf Hussain for Defendant No. 1. Bilal Aziz Khilji for Defendant No.2.

Dates of hearing: 23rd and 24th October, 2012.

JUDGMENT

Suit decreed.

(a) Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---S. 9--Suit for recovery of loan amount---Suit plaint signed by attorney, whose power of attorney was duly signed by directors of a Bank, which was subsequently taken over by plaint Bank with permission and under rules and regulations of State Bank of Pakistan- Competency---Suit was, held, to have been instituted by competent person.

Messrs Saudi Pak Commercial Bank Ltd. V. Messrs Marvi Agrochem (Pvt.) Ltd. and 9 others 2007 CLD 1734 distinguished.

(b) Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---Section 9 & 10---Electronic Transaction Ordinance (LI of 2002), S. 3---Suit for recovery of loan amount by Bank---Application for leave to defend---Electronically generated statement of accounts filed by Bank along with plaint--- Defendant's plea that such statement had no legal value due to absence of signature of officer and seal of Bank thereon---Validity---Electronically generated documents would not require any signature by virtue of Electronic Transaction Ordinance, 2002---Such statement of accounts containing complete picture of loan facility obtained, by defendant would not be considered to be a document having no legal authenticity--~Non-denial of obtaining of loan facility by defendant established execution of documents mentioned in plaint and his failure to discharge his liability in accordance with agreed terms--- Defendant while filing leave application had failed to comply with provisions of Ss.10(3), 10(4) & 10(5) of Financial Institutions (Recovery of Finances) Ordinance, 2001---Grant of leave to defend suit could not be considered a matter of routine or right., unless the suit involved substantial question of fact and law--- Defendant had neither denied execution of loan documents nor complied with mandatory requirement of law, thus, was not entitled to leave to defend---High Court dismissed leave application and suit was decreed resultantly.

National Bank of Pakistan v. Al-Asif Sugar Mills Ltd. 2001 MLD 1317; Sahib Deed v. Inam and 4 others PLD 1985 Quetta 69; Shafiq Ahmad v. Mirza Muhammad Anwar Beg PLD 1968 Lah. 367; National Bank of Pakistan v. Messrs Mujahid Nawaz Cotton Ginners 2007 CLD 678; Bankers Equity Ltd. and 5 others v. Messrs Bentonite Pakistan Ltd. 2010 CLD 651; Bankers Equity Ltd. v. Messrs Bentonite Pakistan Ltd. 2003 CLD 931; 2011 CLD 408; Bolan Bank Ltd. v. Baig Textile Mills (Pvt.) Ltd. 2002 CLD 557; Saudi-Pak Industrial and Agricultural Investment Company (Pvt.) Ltd. Islamabad v. Mohib-Textile Mills Ltd. Lahore and 3 others 2002 CLD 1170; National Development Finance Corporation v. Spinning Machinery Company of Pakistan Ltd. 2002 CLD 53; Industrial Development Bank of Pakistan v. N,T.N. (Pvt.) Ltd. 2002 CLD 369; Allied Bank of Pakistan Ltd. v. Mohib Fabric Industries Ltd. 2002 CLD 716; International Finance Corporation V. Sarah Textiles Ltd. and 3 others

2009 CLD 761; Industrial Development Bank of Pakistan. Karachi v. Messrs ZAMCO (Pvt.) Ltd. 2007 CLD 217; National Bank of Pakistan v. Messrs A.I. Brothers (Private) Ltd. and others 2007 CLD 1356; Hajji Ali Khan and Company, Abbotabad and 8 others V. Messrs Allied Bank of Pakistan Ltd., Abbotabad PLD 1995 SC 362; United Bank Ltd. v. Ch. Ghulam Hussain 1998 CLC 16; National Bank of Pakistan V. EFFF Industries Ltd. and 11 others 2002 United Bank Ltd. V. Progas Pakistan Ltd. 2010 CLD 828; NIB Bank Ltd. v. Taha Spinning Mills Ltd. and others 2010 CLD 635; Habib Bank Ltd. v. Paragon Industries (Pvt.) Ltd. 2009 CLD 1346; H.B.L. v. Crescent Softwear Products (Pvt.) Ltd. 2009 CLD 412; Faysal Bank Ltd. v. Genertech Pakistan Ltd. and 6 others 2009 CLD 856; Habib Bank Ltd. V. Messrs SABCOS (Pvt.) 2006 CLD 244; Shahid Farooq Sheikh v. Allied Bank of Pakistan Ltd. 2005 CLD 1489; Zeeshan Energy Ltd. and 2 others v, Faisal Bank Ltd. 2004 CLD 17211; Bank of Khyber V. Messrs Spencer Distribution Ltd. and 14 others 2003 CLD 1406; Allied Bank Ltd. V. Sholl International (Pvt.) Ltd. [Unreported judgment in the case bearing Suit.No.B-25 of 2008]; Imtiaz Ahmad V. Ghulam Ali and others PLD 1963 SC 382; Manager, Jammu and Kashmir, State Property in Pakistan V. Khuda Yar and another PLD 1975 SC 678; Chf Akbar Ali v. Secretary Ministry of Defence, Rawalpindi and another 1991 SCMR 2114; North-West Frontier Province Government, Peshawar V. Abdul Ghafoor Khan PLD 1993 SC 418; Riaz Hussain and others V. Muhammad Akbar and others 2003 SCMR 181; Mst. Arshan Bi through Mst. Fatima Bi and others v. Maula Bakhsh through Mst. Ghulam Safoor and others 2003 SCMR 318; Messrs U.B.L. V. Messrs Sindh Tech. Industries Ltd. 1998 CLC 1152; Messrs Malik and Company v. Muslim Commercial Bank 2002 CLD 1621; Muhammad Mujtaba and 5 others V. The Bank of Punjab 2004 CLD 712; Muhammad Mumtaz and 2 others v. Pakistan Industrial Credit and Investment Corporation Ltd. And another 2006 CLD 1384 and Messrs Saudi Pak Commercial Bank Ltd. v. Messrs Marvi Agrochern (Pvt.) Ltd. and 9 others 2007 CLD 1374 ref.

(c) Electronic Transaction Ordinance (LI of 2002)--Preamble--Electronic Transaction Ordinance, 2002--Object stated. The Electronic Transaction Ordinance, 2002 was promulgated with the view to provide recognition and facilitation of documents, records, information, communications and transactions in electronic form etc. By virtue of this Ordinance, a legal cover has been provided to the electronic forms by categorizing that their legal recognition and admissibility etc., would not be called in question, if the same has not been attested by any Witness, in case the same is in electronic form. It is observed that rapid changes have occurred in the recent years as old and conventional system of banking has been done away with to a great extent. In spite of having conventional and old method banking system latest technology has taken over by way of introduction of electronic and digital methods.

(d) Financial Institutions (Recovery of Finances) Ordinance (XLV1 of 2001).

Sections 9 & 1--- Suit for recovery of loan amount by Bank--- Application for leave to defend suit--- Execution of loan documents not denied by defendant---Effect---Defendant would not be entitled to such leave.

(e) Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)----S. 10---Leave to defend suit, grant of--Scope---Grant of leave could not be considered a matter of routine or right unless the suit involved a substantial question of fact and law.

IRFAN SAADAT KHAN, J .---These are two applications filed by the defendants under section 10 of the Financial Institutions (Recovery of Finances] "Ordinance, 2001, seeking unconditional leave to defend the suit filed by plaintiff. Habib Metropolitan Bank Limited, against the defendants for recovery of Rs. 103,251,994.49 along with cost of funds from the date of default, for sale of

mortgaged properties and other relieves available under the Financial Institutions (Recovery of Finances) Ordinance, 2001.

2. Brief facts, which culminated in the filing of the present suit, are narrated as under:

3. The plaintiff is a banking company and 2(a) financial institutions within the ambit of section 2(a) of the Financial Institutions (Recovery of Finances) Ordinance, 2001. ("the Ordinance"). In the year 2003, the defendants Nos. 1 and 2 approached the plaintiff with a request for a finance facility of Rs. 35,000,000 and the plaintiff, after evaluating the request and the value of the collateral offered as security, acceded to the request for the defendants and through letter dated 10-09-2003, approved a finance facility of Rs. 35,000,000. In this connection, the Clifton Branch of the plaintiff bank, entered into an Agreement of Finance with the defendants on 11-09-2003. In order to secure their repayment obligations towards the plaintiff bank, the defendant No. 2 in terms of the Sanction Letter and Finance Agreement. created token registered mortgage upon her immovable properties viz. Plot No. 171-1-C, measuring 2060 sq. yards, and Plot No. 171-1-C-A, measuring 600 sq. yards, Chalta No. 10, Survey No. 26, situated in Block III, Pakistan Employees Cooperative Housing Society Limited, Karachi with all construction thereon and fittings and fixtures installed therein. In order to further secure the repayment of loan amount, the defendant No.2 created. an equitable mortgage to the extent of Rs. 49,500,000 over the mortgaged properties by depositing Memorandum of Deposit of Title Deeds and other related documents. The defendants in order to further secure the repayment of loan amount, also executed/deposited Demand Promissory Note for Rs. 39,136,000, separate Personal Guarantees of defendants Nos. 1 and 2 for an amount of Rs. 39, 136,000 each. Where after the plaintiff bank disbursed the finance facility of Rs. 35,000,000 for a period of two years which expired in the year 2005. As the defendants could not adjust the finance facility within the stipulated period of two years, therefore. they requested for another 2-3 years extension in the repayment of the loan amount and. therefore, the plaintiff, after entering into fresh Finance Agreement and executing further documents to secure repayment of the loan amount, granted them another 27 months for settlement of their financial obligations towards the plaintiff bank. The extended period of 27 months expired on 07-04-2007, however. The defendants requested for renewal and enhancement of the finance facility to Rs. 75,000,000 which was acceded to after reevaluation of the mortgaged properties, execution of. New Agreement for Finance and other necessary documents like promissory bonds, personal guarantees in the sum of Rs. 75,000,000. Once again the defendants requested to enhance the financial facility from Rs. 75,000.000 to Rs. 90,000.000 and vide sanction letter dated 31-07-2007, and after executing necessary documents, the finance facility was enhanced to Rs.90,000,000 to be repaid within a period of five years from the date of disbursement. However, despite maximum accommodation provided by the plaintiff bank, the defendants were unable to pay their financial facility and continued. in their default towards the plaintiff bank and have caused huge loss to the plaintiff. The plaintiff sent a number of reminders to the defendants for repayment of the outstanding amount but the same were not replied by the defendants. Therefore, the plaintiff has filed. the instant suit praying for decree. jointly and severally, against the defendants for the payment of Rs. 103,251,994.49 and decree for the sale of the mortgaged properties and the sale proceed to be applied towards satisfaction of the decree.

4. After service of summons, the defendants filed leave to defend applications under section 10 of the Ordinance wherein they have raised a number of legal as well as factual pleas as to maintainability of the suit as under:-

- (i) That the plaint has not been signed and verified by competent person.
- (ii) That the suit is premature as no date of accrual of the cause of action has been shown in Para 35 of the plaint.

- (iii) That statement of accounts filed by the plaintiff is not in conformity with law and hence not admissible and the suit is liable to be dismissed.
- (i) That the suit is liable to be dismissed under Order VII, rule 1(e), C.P.C. as facts constituting cause of action have not been disclosed in the plaint.

5.1. Mr. Altaf Hussain while elaborating his viewpoint has submitted that as the plaint has not been signed and verified by a competent person, the present suit is not maintainable. He invited my attention to the power of attorney submitted by Mr. Muhammad Jamil and Mr. Farrukh Saeed Javedi and stated that these two persons were the employees of Metropolitan Bank whereas according to the letter dated August 6, 1992, submitted along with the statement by the plaintiff Bank the said letter was that of Habib Metropolitan Bank and was not that of Metropolitan Bank, the present plaintiff, wherein the Chief Executive of Habib Metropolitan Bank was given the authority to issue power of attorney to the officers of Habib Metropolitan Bank for different purposes. He also invited my attention to section 9(1) of the Ordinance, as according to him under the said provision of law only the authorized person has the authority to initiate legal proceedings and tile suit etc. against the defendants, whereas according to him in the instant suit the said authority appears to be lacking as the person who has signed the plaint could not be termed as a competent person. In support of his arguments the learned counsel has relied upon the decision in the case of Gul-e-Rana and 4 others v.

Citibank N.A., Lahore (2005 CLD 1126). He further submitted that the suit is premature as according to him the provisions of Orders VII Rule 11(e) have not been complied with. In support of his contention the learned counsel has relied upon the judgments in the cases of National Bank of Pakistan v. Al-Asif Sugar Mills Ltd. [2001 MLD 1317], Sahib Deed v. Inam and 4 others (PLD 1985 Quetta 69) and Shafiq Ahmad v. Mirza Muhammad Anwar Beg [PLD 1968 Lahore 367]. Learned counsel further asserted that no default has been pointed out in the plaint and as per clause 11 of the Agreement between the plaintiff and the defendants no cause of action appears to be arising in the present case.

5.2. The learned counsel further submitted that a perusal of the Bank statement filed by the plaintiff would reveal that the mandatory requirement of section 9(2) of the Ordinance, which according to him is a mandatory requirement, has not been fulfilled as neither any certificate was attached nor proper signatures have been embossed on the said statement. He further submitted that certified statements were not filed along with the plaint rather the same were filed through a statement filed by the plaintiff. which according to him is a legal lacuna and benefit in this regard has to be given to the defendants. He further submitted that as per section 2(8) of the Banker's Book Evidence Act, 1891 [The Act) signature and stamp on the Bank statement is a mandatory requirement which in the present plaint is lacking and this being a legal defect has to be resolved in favour of the defendants. In support of his contentions the learned counsel has relied upon the decisions in the cases of National Bank of Pakistan v. Messrs Mujahid Nawaz Cotton Ginners (2007 CLD 678), Bankers Equity Limited and 5 others v. Messrs Bentonite Pakistan Limited (2010 CLD 651) and Bankers Equity Limited v. Messrs Bentonite Pakistan Limited [2003 CLD 931].

5.3. Learned counsel further submitted that the plaint is defective as nothing has been mentioned in the plaint that the property is mortgaged. He further submitted that the provisions of section 126 of the Contract Act have not been complied with as the guarantee in the present case is not a valid guarantee as the same is not in accordance with law and hence the plaintiff is not entitled for any markup. He further submitted that the provisions of section 10(4) of the Ordinance have duly been complied with and the plaintiff was not correct in stating that the provisions of the said section were violated by the defendants. He further submitted that no-proof of disbursement of Rs. 90 million has been pointed out by the plaintiff and hence in absence of such proof of

disbursement no relief as claimed by the plaintiff is called for. In the end he submitted that the suit is liable to be dismissed.

6. Mr. Bilal Aziz Khilji adopted the arguments of Mr. Altaf Hussain and invited my attention to the decisions reported as 2001 CLD 408 and 2001 MLD 1317. He, therefore, prayed that as important questions of law and that of facts are involved hence leave to defend application be allowed.

7.1. Mr. Jam Asif Mehmood, counsel representing the plaintiff, on the other hand submitted that the suit is maintainable as availing of finance facility and execution of documents have not been denied by the defendants hence leave to defend application is liable to be dismissed. In support of his arguments the learned counsel has relied upon the judgments in the following cases:-- (1) Bolan Bank Limited v. Baig Textile Mills (Pvt.) Limited. (2002 CLD Lahore 557).

(2) Saudi-Pak Industrial and Agricultural Investment Company (Pvt.) Limited Islamabad v. Mohib Textile Mills Limited Lahore and 3 others (2002 CLD Lahore 1170).

(3) National Development Finance Corporation v. Spinning Machinery Company of Pakistan Limited (2002 CLD Lahore 53).

(4) Industrial Development Bank of Pakistan U. N.T.N. (Pvt.) Limited (2002 CLD Lahore 369).

(5) Allied Bank of Pakistan Ltd., v. Mohib Fabric Industries Ltd. (2002 CLD Lahore 716)

(6) International Finance Corporation v. Sarah Textiles Ltd. and 3 others (2009 CLD Lahore 761)

(7) Industrial Development Bank of Pakistan, Karachi v. Messrs ZAMCO (Pvt.) Ltd. (2007 CLD Karachi 217).

(8) National Bank of Pakistan v. Messrs A.I. Brothers (Private) Limited and others (2007 CLD Karachi 1356).

7.2. He further submitted that the defendants had clearly admitted outstanding #amount in their various letters addressed to the plaintiff Bank hence the suit is liable to be decreed in favour of the plaintiff, as there is a clear admission on the part of the defendants in their own handwriting. regarding obtaining of the credit facility etc. In support of his contention he has relied upon the judgments in the cases of Hajji Ali Khan and Company, Abbotabad and 8 others v. *Messrs Allied Bank of Pakistan Limited, Abbotabad (PLD 1995 SC 362) and United Bank Limited v. Ch. Ghulam Hussain (1998 CLC 816). Learned counsel further argued that since there is a clear admission on the part of the defendants regarding availing of the finance facility, they are legally bound to repay the entire amount and the Bank is duly authorized to recover the same from them. In support of his above arguments the learned counsel has relied upon the decision in the case of National Bank of Pakistan v. EFFE Industries Limited and 11 others (2002 CLD Lahore 1431). Learned counsel further submitted that the statement of accounts clearly show all the debit and credit entries and none of the entries had been identified as either erroneous or fictitious by the defendants hence the present leave to defend application deserves to be dismissed and the suit is liable to be decreed in favour of the plaintiff Bank. In support of. his above contention the learned counsel has relied upon the decision as given in the case of Messrs Saudi Pak Commercial Bank Limited v. Messrs Marvi Agrochem (Pvt.) Ltd. and 9 others (2007 CLD Karachi 1374).

7.3. While replying to the objection raised by the defendants that the mandatory requirement of section 10(3)(4) and (5) of the Ordinance 2001 have not been complied with and hence the leave

to defend application is liable to be allowed, he submitted that all the mandatory requirements as given under these provisions of law have duly been complied with and in this regard invited my attention not only to the above provisions of law but also to section 10(6) of the said Ordinance. In support of his above contention the learned counsel has relied upon the decisions in the following cases:-

- (1) United Bank Limited v. Progas Pakistan Limited (2010 CLD Karachi 828)
- (2) NIB Bank Limited v. Taha Spinning Mills Limited and others [2010 CLD Karachi 635]
- (3) Habib Bank Ltd. v. Paragon Industries (Pvt.) Ltd. (2009 CLD Karachi 1346)
- (4) H.B.L. v. Crescent Softwear Products (Pvt.) Ltd. (2009 CLD Lahore 412)
- (5) Faysal Bank Limited v. Genertech Pakistan Ltd. And 6 others (2009 CLD Lahore 856)
- (6) Habib Bank Limited v. Messrs SABCOS' (Put) (2006 CLD Karachi 244)
- (7) Shahid Farooq Sheikh v. Allied Bank of Pakistan Limited (2005 CLD Lahore 1489)
- (8) Zeeshan Energy Ltd. and 2 others v. Faisal Bank Ltd. (2004 CLD Lahore 1741)
- (9) Bank of Khyber v. Messrs Spencer Distribution Ltd. And 14 others (2003 CLD Lahore 1406)
- (10) Allied Bank Limited v, Sholl International (Pvt.) Ltd. (Unreported judgment in the ease bearing Suit No. B-25 of 2008).

7.4. Learned counsel further submitted that the person who has filed the instant suit has full legal authority to file the same and is a duly authorized representative of the plaintiff Bank, In support of his contention the learned counsel has relied upon Article 95 of the Qanun-e-Shahadat Order. 1984 and further submitted that it is only the principal who can challenge the authority of an agent and no other person. He further submitted that even for arguments sake if it is assumed that no Board Resolution was filed along with the plaint it would not make the present plaint defective as the plaint could not be dismissed merely on this score. He further submitted that firstly there is no defect in statement of accounts and even assuming that there is a defect the same could only be termed as a technical defect by virtue of which the plaint could not be dismissed. In support of his contention the learned counsel has relied upon the following judgments.

- (1) Imtiaz Ahmad v. Ghulam Ali and others (PLD 1963 SC 382).
- (2) Manager, Jammu and Kashmir, State Property in Pakistan v. Khuda Yar and another (PLD 1975 SC 678).
- (3) Ch. Akbar Ali v. Secretary, Ministry of Defence Rawalpindi and another (1991 SCMR 2114).
- (4) North-West Frontier Province Government, Peshawar v. Abdul Ghafoor Khan (PLD 1993 SC 418).
- (5) Riaz Hussain and others v. Muhammad Akbar and others (2003 SCMR 181).
- (6) Mst. Arshan Bi through Mst. Fatima Bi and others v. Maula Bakhsh through Mst. Ghulam Safoor and others (2003 SCMR 318).

7.5. Learned counsel further submitted that even if there is a defect in the plaint the same is curable and- such-defect would not render the whole plaint to be-non-maintainable. In support of his above contention the learned counsel has relied upon the judgments in the following cases:--

- (1) Messrs U.B.L v. Messrs Sindh Tech. Industries Ltd. (1998 CLC 1152 Karachi).
- (2) Messrs Malik and Company v. Muslim Commercial Bank (2002 CLD Lahore 1621).
- (3) Muhammad Mijtaba and 5 others v. The Bank of Punjab (2004 CLD Lahore 712).
- (4) Muhammad Mumtaz and 2 others v. Pakistan Industrial Credit and Investment Corporation Limited and another (2006 CLD Lahore 1384).
- (5) Messrs Saudi Pak Commercial Bank Limited u. Messrs Marui Agrochem (Private) Ltd. and 9 others (2007 CLD Karachi 1374).

7.6. Learned counsel further submitted that the Electronic Transaction Ordinance 2002 brought about significant changes relating to production of electronic documents. He submitted that much water has flown under the bridge as old conventional systems have been replaced by modern and latest techniques and gone are the days when accounts were used to be kept on voluminous journals and ledgers and now all these accounts are kept and maintained electronically and old methods of maintaining the accounts have now been replaced by digital documents. He further submitted that proper cause of action has been mentioned and there are a plethora of judgments on the point that one has to see at the substance and not at the form and in the present case the averments on behalf of the plaintiff have categorically been mentioned and simply by saying that these have not been properly highlighted would not vitiate the substance of the plaint; which on the very face has clearly been mentioned by specifying the amounts of credit facility admittedly availed by the defendants. He in the end prayed that suit be decreed in favour of the plaintiff Bank as prayed for.

8. While making rebuttal to the above arguments of the plaintiff counsel Mr. Altaf Hussain reiterated his above arguments and submitted that since no loan has been given to the defendants by the present plaintiff the suit could not be decreed in their favour and leave to defend application may be allowed.

9. Mr. Bilal Aziz Khilji also while making rebuttal invited my attention to section 4 of the Ordinance and stated that a perusal of the Article and Memorandum of Association of the Bank would reveal that all Directors have to sign the loan documents whereas the same have been signed by only two of such Directors and this being violation of the mandatory provision of law is a fatal defect and hence leave to defend application may be allowed.

10. I have heard the learned counsel for the parties at considerable length and perused the record as well as the law and decisions relied upon by the counsel representing plaintiff and defendants.

11. I, first of all, would take the preliminary issue' raised by the learned Counsel for the defendants that the plaint has been filed by a person who was not competent enough to file the same. An examination, of the record reveals that the plaint has been filed by Muhammad Jameel son of Muhammad Shafi of the plaintiff bank who has duly been authorized by the Metropolitan Bank Limited to act as an attorney of plaintiff Bank vide Power of Attorney dated 18-9-2006 annexed with the plaint as annexure-A. Power of Attorney of the same date has also been attached as annexure-A-I by Metropolitan Bank duly appointing Mr. Farrukh Saeed Javedi to act as attorney of the bank, Both these power of attorneys were duly signed by the directors of concerned bank. A perusal of the above said power of attorneys would further reveal that these power of attorneys have duly been executed by the directors of plaintiff Bank in favour of the above named attorneys. A perusal of section 9 of Financial Institutions (Recovery of Finance Ordinance. 2001) would depict that such section states that a suit. shall be instituted in the Banking Court in the case of Financial Institution by Branch Manager or such other officer of Financial Institution as may be authorized in this behalf by power of attorney or otherwise. In the instant suit also the persons who have signed the present plaint are holding valid power of attorney fulfilling the legal requirements and hence could not be said that they were not the competent persons who have instituted the suit. The decision relied upon by the learned counsel for the defendant reported as 2005 CLC 1126 does not appear to be on all fours as in the instant suit nothing was brought on the record to show that the person who signed the plaint was a competent person whereas in the instant suit sufficient material is brought on the record to prove that the instant suit has been instituted by a duly authorized person. The old Metropolitan Bank has been taken over by Habib Metropolitan Bank with the permission under the rules and

regulations of State Bank of Pakistan, hence the objection taken by the defendants that the present suit has not been instituted by competent person is devoid of any merit. The objection of defendants that the suit is being filed by incompetent person is hereby overruled.

12. Now coming to the second limb of the arguments advanced by the learned Counsel for the defendants that the statement of accounts filed by the plaintiff are not in accordance with law as the same do not bear the signature of the bank official and stamp of the bank. The Electronic Transaction Ordinance 2002 (ETO 2002) was promulgated with the View to provide recognition and facilitation of documents, records, information, communications and transactions in electronic form etc. By virtue of this Ordinance a legal cover has been provided to the electronic forms by categorizing that their legal recognition and admissibility. etc. would not be called in question if the same has not been attested by any witness, in case the same is in the electronic form. It is observed that rapid changes have occurred in the recent years as old and conventional system of banking has been done away with to a great extent. In spite of having conventional and old method banking system latest technology has taken over by way of introduction of electronic and digital methods. It is seen that the defendant has not denied obtaining of credit facility but has only called in question the statements of accounts prepared electronically by submitting that these statements neither bears signature of bank official nor bank seal. Whereas these statements of accounts clearly stipulate that these are electronically generated documents and do not require any signature. Hence in my view these statements of accounts through which complete picture of the credit facility obtained by the defendants is quite visible would not be considered to be a document having no legal authenticity, An examination of these statements of account would show that they contain complete transactions with detail of accounts of the defendant and the same has duly been certified by the bankers.

13. Moreover it is surprising to note that in the instant suit the defendants have not said a single word about advancing of finance and availing of the same. hence from the examination of the submissions made by the counsel for the defendants it appears to be an admitted position that the finance facility by the plaintiff Bank were duly availed by the defendants. Furthermore, this also appears to be an admitted position that the documents mentioned in the plaint were executed by the defendants in respect the above finance facility. It is also established on the record that the defendants have failed to discharge their liability in accordance with the agreed terms of the agreement.

14. The decision relied by the defendants reported as 1968 Lahore 367 regarding "cause of action" also appears to be on different footings as in case cause of action arose due to non-mentioning of the value of subject matter whereas in the instant suit, admittedly in the plaint not only the value of the subject matter was given but full facts constituting the cause of action and when it arose has clearly been mentioned. Hence in my view this case is of no help to the defendants. So far as the decision reported as 2010 CLD 651 is concerned in this case the plaint was rejected on the ground that statements of facts narrating accounts given in the plaint and reflected in the documents was not found to be statement as visualized by the Act, hence it was found that the plaint in the suit was not supported by statements of accounts as per the provision of section 9(2) of the Ordinance Whereas in the instant' suit complete particulars of such statement of accounts as per the above provision of the law has been mentioned.

15. The defendants also relied upon the decision reported as 2007 CLD 678. This. ease also is of no help to the defendants as in this ease it was held that certified copy of the statement be given whereas in the instant suit this requirement of law has duly been complied with as the plaintiff Bank has certified the statement of accounts to be true. The defendants also relied upon PLD 1985 Quetta 269, this ease too is found to be no help to the defendants as in this case material

particulars as to when the cause of action arose to the plaintiff Was not mentioned whereas in the instant suit full particulars of finance facility obtained by the defendants and other material particulars have duly been mentioned. So far as the other judgments relied upon by the defendants are concerned mentioned above these all are found to be distinguishable from the facts obtaining in the present suit.

16. Counsel for the plaintiff. on the other hand has prayed that as leave to defend application filed by the defendants does not fulfill the requirements of section 10(6) of the Ordinance; hence the same is liable to be rejected. It is seen from the leave to defend application filed by the defendants that provision of subsections (4) and (5) of section 10 of the Ordinance 2001 have not been complied with in view of the observations made by me in the above paragraphs. Subsection (6) of section 10 clearly stipulates that if application for leave to' defend does not fulfill the mandatory requirements as enshrined in subsections (3), (4) and (5) of section 10 of the said Ordinance the leave to defend application deserves to be dismissed. In the instant suit also in my view the defendants have miserably field to demonstrate any sufficient cause for their inability to 'comply with the requirements as provided under the law. Not a single word has been said that the facility was either not obtained or statements of accounts carried incorrect entries, hence in my view, the applications filed by the defendants do not fulfill the requirement of section 10 of the Ordinance and same are liable to be dismissed.

17. It is also seen that the defendants have also not denied the execution of documents and thus are not entitled for leave to defend in the instant suit. Since the defendants have not discharged their obligations as per the agreement the present suit appears to be rightly instituted by the plaintiff. Learned Counsel for the defendants have failed to make out any substantial question of law as Well, as facts, subsection (6) of section 10 of the Ordinance clearly provides that if leave to defend application does not fulfill the mandatory requirement of subsections (3), (4) and (5), the same is liable to be rejected until and unless the defendants show sufficient cause to comply with such requirement in the instant suit, it is seen that the defendants have failed to show any sufficient cause to comply with the above mentioned legal provision and it is a trite proposition of law that Where the defendant has not complied with the H mandatory requirement of law. the plaintiff is entitled to have the suit decreed in his favour as in my view the grant of leave could not be considered a matter of routine or a matter of right when there being no sufficient cause arising or no substantial question of law and fact is involved in the suit.

18. In the above circumstances, leave to' defend applications filed by the defendants are dismissed. As a consequence thereof the suit of the plaintiff is decreed against the defendants jointly and severally with a cost in the sum of Rs. 103,251,995 along with costs of funds at the prevailing rate fixed by the State Bank of Pakistan from the date of default till its realization. Decree is to be executed by way of sale of the mortgaged property. The 'present suit is, therefore, decreed in the above terms.