JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT
ISLAMABAD

CASE NO. : RFA NO.52-2020

Sajid Ali & Another

Vs.

Higher Education Commission of Pakistan (HEC) through its Project Director, Islamabad

Appellants by : Mr. Ishtiaq Ahmad, Advocate
Respondent by : Mr. Binyamin Abbasi, Advocate
Date of hearing : 17.05.2021

AAMER FAROOQ J. Higher Education Commission of Pakistan (HEC) filed a suit for recovery of EURO 46,950 and PKR.70,725/- along with penalty against the appellants on the basis that former had granted a Scholarship to appellant No.1 for Postgraduate studies in the form of Ph.D from University of Germany. In this behalf, appellant No.1 proceeded to Germany in August, 2011 and as per averments made in the plaint, he could not successfully complete his studies in time and breached the terms and conditions of Deal of Undertaking executed between appellant No.1 and the respondent, hence Scholarship was revoked prematurely and refund was sought with respect to the amount incurred on the overseas studies of appellant No.1. Appellant No.2 was sued in his capacity as surety/guarantor with respect to the refund/payment of money in case of violation of terms and conditions of the Scholarship. The suit was contested by the appellants and out of divergent pleadings, six issues were framed, which are as follows:-

1. *"Whether the plaintiff is entitled a decree for recovery along with cost as prayed for? OPP*
2. *Whether the plaintiff has cancelled the Scholarship of the defendant No.1 without any intimation, warning a show cause notice etc.? OPD*
3. *Whether the defendant did not violate any term and condition of agreement, therefore, plaintiff has no cause of action to file the suit and suit is liable to be dismissed? OPD*
4. *Whether the suit of the plaintiff is false and frivolous and suit of the plaintiff is liable to be dismissed? OPD*
5. *Whether the defendant No.1 is entitled to get arranged his travelling to Germany for completion of his remaining studies by the plaintiff? OPD*

   OR

   Whether the defendant No.1 is entitled to get transfer his credit hours from the Christian-Albrecht's University of Kiel, Germany, to any recognized university of Pakistan? OPD
6. *Relief*

The parties led their oral and documentary evidence and after the same, suit of HEC was decreed in its favour vide judgment and decree dated 25.04.2019, hence the appeal.

2. Learned counsel for the appellants *inter alia* contended that respondent has failed to prove its case against the appellants inasmuch as it did not bring on record any document evidencing that payment of EURO 46,950 and PKR.70,725/- was made towards studies of appellant No.1. It was added that certain documents were tendered in evidence as 'Mark' which had no evidentiary value in light of judgment of Hon'ble Supreme Court of Pakistan reported as 'State Life Insurance Corporation of Pakistan and another Vs. Javaid Iqbal' (2011 SCMR 1013) and of the High Court reported as 'Umer Tanveer Butt Vs. Muhammad Ibrahim and others' (2020 YLR 2269). It was further added that Scholarship, awarded

by HEC, was revoked prematurely without any justification or basis, as appellant No.1 was granted admission in another institution and credit hours spent in Germany could be transferred; that respondent had breached its part of obligation.

3. Learned counsel for the respondent *inter alia* contended that appellant No.1 violated terms and conditions of Scholarship and returned to Pakistan without permission of HEC and even-otherwise, his Supervisor opined that his performance is not good, hence he would not be able to finish the Programme within the prescribed time. Learned counsel further contended that in the plaint, specific amount has been pleaded as the sum incurred on education of appellant No.1 abroad and said paragraph has not been denied, hence there is an admission to the effect. It was contended that even-otherwise, witness on behalf of respondent, also submitted that sums of EURO 46,950 and PKR.70,725/- are outstanding and no question has been asked in cross-examination with respect to the same which amounts to admission.

4. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The factual background, leading to filing of instant appeal, is mentioned in the preceding paragraphs, hence need not be reproduced.

6. In order to prove its claim, with respect to the default in fulfilling the terms and conditions of Scholarship and the amount incurred by the respondent, HEC led sole evidence of one Ijaz Ahmad, who appeared as PW-1. He categorically stated that appellant No.1 was granted Scholarship in July, 2011 and he proceeded abroad on 03.08.2011 but the Scholar was recalled on 01.04.2014, as the Supervisor had cancelled the supervision, as a result, referred Scholarship was revoked and subsequently, sums of EURO 46,950 and PKR.70,725/- along with penalty, are recoverable.

7. In the documentary evidence, various documents have been tendered as exhibits including the authority letter in favour of Ijaz Ahmad and his application for Scholarship. The deed of agreement between appellant No.1 and the respondent was also tendered in evidence as Ex.P4. Clause-9 of the referred agreement clearly envisages that if the Scholar (appellant No.1 in the instant case), fails to qualify the Course, for which, he was awarded Scholarship, or in case, he discontinues his studies, HEC reserves the right to recover entire expenditure paid to him directly or indirectly including travelling cost, from the Scholar or the guarantor. In clause-10, Scholar had to comply with instructions given by HEC from time to time which are to form part of agreement. The Scholarship was for a period of four years in case of Masters leading to Ph.D and cumulatively for five years. Moreover, under the agreement, if

the Scholar breaches any term of the agreement or of the Scholarship, a penalty would be imposed on him.

8. Appellant No.2, being the father of appellant No.1, executed guarantee in favour of respondent as well as a surety bond along with copy of titled documents of the property. In this behalf, guarantee was executed and tendered in evidence as Ex.P6, surety bond as Ex.P7 and declaration of assets as Ex.P8.

9. The respondent, with respect to its claim regarding the sum incurred, tendered document as 'MARK' (copies of the same). It is trite law that a 'MARK' has no evidentiary value. Reliance is placed on cases reported as 'State Life Insurance Corporation of Pakistan and another Vs. Javaid Iqbal' (2011 SCMR 1013) and 'Umer Tanveer Butt Vs. Muhammad Ibrahim and others' (2020 YLR 2269). Even-otherwise, the documents tendered as 'MARK' as proof of amount incurred by HEC, have been tendered in evidence by the counsel which practice has been deprecated by the august Apex Court in case reported as 'Manzoor Hussain (deceased) through L.Rs. Vs. Misri Khan' (PLD 2020 Supreme Court 749).

10. Despite the above lapses in proving its case by the respondent, it is observed that in the plaint, a categoric statement has been made seeking recovery of sums of EURO 46,950 and PKR.70,725/-. The said averment has been made in paragraph-11 of the plaint. In the written statement, evasive denial has been made; though it has been mentioned that para is

denied yet reasons which followed denial, are not related to the expenses, hence it can safely be inferred that denial, being evasive, amounts to admission. Moreover, it is also an established principle that where, no question is asked in cross-examination with respect to the statement made in examination-in-chief, amounts to admission of the fact. As noted above, PW-1 made a categoric statement that sums of EURO 46,950 and PKR.70,725/- are outstanding yet no question was asked on behalf of appellants questioning or challenging the referred amounts. The appellants, also in their defence, though tendered in evidence a number of documents yet no document was tendered as exhibit except power of attorney in favour of appellant No.1 executed by appellant No.2. In view of above position, proper course should have been that respondent ought to have led the documentary evidence by tendering as exhibits all the documents evidencing the payments made to appellant No.1 for overseas studies. Even if, it did not have the original documents, the proper course could have been, summoning of referred documents, whosoever's custody they may be.

11. Since the respondent, under deal of agreement, is entitled to recover the amounts but due to callous approach towards trial proceedings, have not proved their respective stances and even appellants in their defence qua wrongful termination of scholarship by HEC, therefore we deem it appropriate that an opportunity be granted to

the parties to do so by tendering cogent evidence to prove the quantum and/or wrongful termination of scholarship. Reliance is placed on cases reported as 'Hussain Shah Vs. Ghulam Hussain (2004 SCMR 1844), 'Ashiq Ali Vs. Mst. Zamir Fatima' (PLD 2004 SC 10) and 'Rana Abdul Haleem Khan Vs. Idara National Industrial and Another (2016 SCMR 2067).

12. For the above reasons, instant appeal is allowed and the impugned judgment and decree is set aside; consequently, the matter is remanded to learned trial court to provide an opportunity to the parties to lead documentary evidence in order to prove their respective stance.

13. Since the matter is pending since long, learned trial court shall endeavor to conclude the proceedings within a period of six months from the date of receipt of this judgment.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 10.08.2021

JUDGE

JUDGE

Zawar