JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

REGULAR FIRST APPEAL NO. 369 OF 2024

Huma Hasnain
Versus
Askari Bank Limited and others

Appellant by	**:**	**Mr. Imtiaz Ali, Attorney for Appellant, in person.**
Respondents by	**:**	**Mr. Rahil Sikandar, Advocate for Respondents No. 1 to 4.**
Date of hearing	**:**	**22.10.2026**

Muhammad Azam Khan, J. Through this Regular First Appeal filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (**"the Ordinance"**), the appellant, Huma Hasnan, through her attorney, has assailed the judgment and decree dated 08-07-2024 passed by the learned Judge Banking Court-I, Islamabad. By the impugned judgment and decree, the suit instituted by the appellant was partially decreed to the extent of the insurance amount charged by the respondent bank, while her prayer for a declaration that the mark-up charged by the bank was illegal was dismissed. The appellant is aggrieved only by the latter part of the judgment and decree and has therefore challenged it to the extent of the charging of mark-up.

2. The facts necessary for the disposal of this appeal are that the appellant approached respondent No.1, Askari Bank, for financing for the purchase of a motor vehicle, Chery Tiggo-8, under its auto loan facility on a mark-up basis. Pursuant to the Facility Offer Letter dated 09-05-2022, an "Agreement for Financing Motor Vehicle on Mark-up Basis" of the same date was executed between the parties. The total price of the vehicle was Rs. 6,599,000/-, of which Rs. 2,969,550/- was to be financed by the bank and a down payment of Rs. 3,848,448/- was paid by the appellant. The bank paid the invoice price to its authorized dealer, M/s Chery Central, Islamabad, against Invoice No. 193 dated 24-05-2022, issued jointly in the names of the appellant and the bank. The vehicle was, however, never delivered to the appellant. The bank nonetheless continued to deduct monthly installments comprising principal, mark-up and

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insurance. The appellant approached the Banking Court, which granted relief regarding insurance but declined relief regarding mark-up, hence this appeal.

3. The appellant's Attorney, Imtiaz Ali, appeared in person and contended that the impugned judgment and decree, to the extent of the dismissal of the claim regarding mark-up, is contrary to the facts and the law. It was argued that, under clause (iii) of the governing clauses of the finance agreement, the bank was bound to purchase the vehicle from its authorized dealer and sell and deliver it to the appellant on a mark-up basis, and that mark-up is chargeable only in consideration of the vehicle provided to the customer. Since the vehicle was booked by the bank itself, the original invoice and documents remain in its custody, and the appellant cannot approach the dealer without a No Objection Certificate (NOC) from the bank, the responsibility for delivery rests squarely on the bank. The finding of the learned Banking Court that the bank was under no obligation to ensure delivery because the matter lay between the customer and the manufacturer was therefore stated to be erroneous and contrary to the agreement. Appellant's attorney submitted that the Banking Court, having waived the insurance amount on the ground of non-delivery, failed to apply the same principle to mark-up, which is inconsistent and unjust. Reliance was placed on Regulations R-13 and O-8 of the State Bank of Pakistan's Prudential Regulations for Auto Financing and on Principles 3 and 6 of the Guiding Principles on Fairness of Service Charges, which provide that a customer should not be charged for services not rendered. It was also argued that the dealer's demand of an additional Rs. 2.978 million on account of a price increase was untenable in view of the final order of the Consumer Court, Islamabad, dated 07-07-2023, to which the bank was a party, holding that any price increase would not apply retrospectively. Learned counsel also submitted that the Banking Court, having granted leave to defend to the bank on substantial questions of fact and law, failed to frame issues and record evidence as required by Section 10(11) of the Ordinance, and thus decided the matter in haste and in violation of the principles of natural justice and Articles 4 and 10-A of the Constitution. Finally, it was submitted that the appellant is willing to pay the

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balance principal amount in lump sum after adjustment of the mark-up and insurance amounts already recovered. The bank should then be directed to issue the NOC and release the original documents, and to compensate the appellant for the Rs. 3.85 million held by it for over two years. Attorney accordingly prayed that the appeal be allowed and the impugned judgment and decree be set aside to the extent of the mark-up.

4. Learned counsel for the respondents, Mr. Rahil Sikandar Khawaja, controverted the submissions of the appellant and supported the impugned judgment and decree to the extent challenged. He submitted that the appellant herself approached the respondent bank for an auto finance facility, which was granted under the Facility Offer Letter dated 09-05-2022, and that she thereafter executed the repayment schedule and the Agreement for Financing Motor Vehicle on Mark-up Basis of the same date, fixing the mark-up at 15.24% per annum (12-month KIBOR plus a bank spread of 1.75%), subject to annual review. According to learned counsel, the bank deducted installments of principal, mark-up and insurance strictly in accordance with these duly executed documents. It was argued that the choice of vehicle and dealership rested entirely with the appellant, who booked the vehicle with an authorized dealer of her own choice; the bank's obligation was confined to financing, which it fully discharged by paying Rs. 2,969,550/- to that dealer, whereas delivery of the vehicle, its timing and the freezing of its price were never the bank's responsibility. Mr. Khawaja therefore maintained that the bank committed no breach of the agreement, was entitled to recover mark-up on the amount financed, and that the Banking Court rightly held that the question of delivery lay between the customer and the manufacturer or dealer. As regards the additional amount demanded on account of the increase in the vehicle's price, he contended that the appellant was duty-bound to bear it and had executed an undertaking to indemnify the bank, and that the bank had at all times complied with the regulations of the State Bank of Pakistan. He further submitted that the appellant had not approached the Court with clean hands, had suppressed material facts, and, having herself contravened the terms of the security

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documents, was not entitled to discretionary or equitable relief; that her suit was defective for want of the mandatory statement of account and proper court fee; and that the statement of account annexed by the bank reflects the amounts availed, paid and payable. Learned counsel lastly contended that the appellant had no cause of action and prayed that the appeal, being devoid of merit, be dismissed.

5. We have heard the appellant's attorney, appearing in person, as well as learned counsel for the respondents, and have examined the record with their assistance.

6. The record reveals that the appellant instituted a suit before the learned Banking Court seeking, inter alia, a declaration that the respondent bank was not entitled to recover mark-up and insurance charges in respect of a vehicle which had never been delivered to her. The respondent bank contested the suit, disputed its liability for delivery of the vehicle, and asserted its entitlement to recover the agreed mark-up on the financed amount. It is not disputed that the learned Banking Court granted leave to defend to the respondent bank upon finding that substantial questions of fact and law required determination. Notwithstanding the grant of such leave, the learned Banking Court proceeded to decide the suit through the impugned judgment and decree dated 08.07.2024 without formally framing issues or providing the parties an opportunity to adduce evidence upon the disputed questions. The suit was consequently decreed to the extent of insurance charges but dismissed insofar as the appellant's claim concerning mark-up was concerned. The legality of this course of proceedings constitutes the central question in the present appeal.

7. The Financial Institutions (Recovery of Finances) Ordinance, 2001 establishes a special mechanism for the adjudication of disputes arising out of financial transactions. The legislative purpose underlying the Ordinance is to provide an expeditious and effective remedy for the recovery of finances while ensuring that genuine disputes between financial institutions and their customers receive judicial determination in accordance with law. The procedure prescribed

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by the Ordinance undoubtedly differs from that applicable to ordinary civil suits, particularly at the initial stage when a defendant is required to obtain leave to defend. Nevertheless, the objective of expeditious disposal cannot be understood as authorizing the Banking Court to dispense with those procedural safeguards which the legislature has expressly incorporated into the statutory scheme. The special nature of the jurisdiction does not diminish the obligation of the Court to adjudicate disputed questions through a fair and legally recognized process. In this context, Section 10 of the Ordinance assumes particular importance. The provision regulates the grant of leave to defend and the subsequent conduct of proceedings before the Banking Court. Subsection (11) specifically contemplates that, where leave to defend has been granted, the Banking Court shall proceed to frame issues and, subject to the provisions of the Ordinance, fix a date for recording evidence. For reference, Sections 10 and 11 of the Ordinance are reproduced as under: -

> *10. Leave to defend. (1) In any case in which the summons has been served on the defendant as provided for in sub-section (5) of section 9, the defendant shall not be entitled to defend the suit unless he obtains leave from the Banking Court as hereinafter provided to defend the same; and, in default of his doing so, the allegations of fact in the plaint shall be deemed to be admitted and the Banking Court may pass a decree in favor of the plaintiff on the basis thereof or such other material as the Banking Court may require in the interests of justice.*
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> *(2) The defendant shall file the application for leave to defend within thirty days of the date of first service by any one of the modes laid down in sub-section (5) of section 9: Provided that where service has been validly effected only through publication in the newspapers, the Banking Court may extend the time for filing an application for leave to defend if satisfied that the defendant did not have knowledge thereof.*
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> *(3) The application for leave to defend shall be in the form of a written statement, and shall contain a summary of the substantial questions of law as well as fact in respect of which, in the opinion of the defendant, evidence needs to be recorded.*
>
> *(4) In the case of a suit for recovery instituted by a financial institution the application for leave to defend shall also specifically state the following: -*

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(a) the amount of finance availed by the defendant from the financial institution;

(b) payments; the amounts paid by the defendant to the financial institution and the dates of the amount of finance and other amounts relating to the finance payable by the defendant to the financial institution upto the date of institution of the suit;

(c) the amounts of finance and other amounts relating to the finance payable by the defendant to the financial institution upto the date of institution of the suit;

(d)the amount if any which the defendant disputes as payable to the financial institution and facts in support thereof:

Explanation. For the purposes of clause (b) any payment made to a financial institution by a customer in respect of finance shall be appropriated first against other amounts relating to the finance and the balance, if any, against the principal amount of the finance.

(5) Where application for leave to defend submitted under the preceding sub-section is found to be materially incorrect at any stage of the proceedings, the defendant shall lose the right to defense and shall also be liable to pay penalty of not less than five percent of the amount of the claim, unless the defendant can establish that incorrect information was submitted as a result of a bona fide mistake.

(6) The application for leave to defend shall be accompanied by all the documents which, in the opinion of the defendant, support the substantial questions of law or fact raised by him.

(7) An application for leave to defend which does not comply with the requirements of sub-sections (3), (4) where applicable and (5) shall be rejected, unless the defendant discloses therein sufficient cause for his inability to comply with any such requirement.

[(8) The plaintiff shall be given an opportunity of filing a reply to the application for leave to defend, in the form of a replication.

(9) Subject to section 11, the Banking Court shall grant the defendant leave to defend the suit 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.

(11) Where the application for leave to defend is accepted, the Banking Court shall treat the application as a written statement, and in its order granting leave ***shall frame issues relating to the substantial questions***

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> ***<u>of law or fact</u>**, and, subject to fulfillment of any conditions attached to grant of leave, fix a date for recording of evidence thereon and disposal of the suit."*

8. The statutory direction is not merely an administrative formality intended for the convenience of the Court; rather, it prescribes the procedure through which disputed questions, once recognized as requiring trial, are to be resolved. The grant of leave to defend marks the transition from the preliminary scrutiny of the defense to the adjudication of the controversy through the prescribed trial process. Once that stage is reached, the Banking Court is required to identify the material propositions upon which the parties are at variance and afford them an opportunity to establish their respective claims through legally admissible evidence. The significance of framing issues cannot be overstated. Issues define the precise boundaries of the controversy, identify the questions requiring adjudication, and enable the parties to understand the case they are required to prove or rebut. They also assist the Court in determining the relevance of evidence and in recording findings upon each material question arising from the pleadings. A judgment delivered without identifying and determining the disputed issues may result in the adjudication of matters upon assumptions which have neither been established through evidence nor subjected to proper judicial scrutiny. The requirement becomes particularly important where the controversy is not confined to the interpretation of an admitted document but extends to disputed contractual obligations, the conduct of the parties, the performance or non-performance of contractual stipulations, and the financial consequences arising therefrom. In such circumstances, the omission to frame issues and provide an opportunity for evidence cannot ordinarily be treated as an inconsequential procedural irregularity.

9. The question then arises whether this Court should itself undertake determination of the disputed matters or remit the case to the learned Banking Court. Although an appellate Court possesses jurisdiction to examine the correctness of the judgment and decree under challenge, the exercise of that jurisdiction must remain consistent with the nature of the controversy and the

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state of the record. In the present case, the parties have not undergone the trial contemplated by Section 10(11) of the Ordinance. No issues were framed, no opportunity was afforded for recording evidence upon the disputed propositions, and no findings founded upon such evidence are available for appellate examination. Were this Court to determine the substantive controversy at this stage, it would effectively assume the function of the trial Court and adjudicate disputed factual questions without the benefit of a properly developed evidentiary record. Such a course would neither serve the interests of justice nor adequately protect the procedural rights of the parties.

10. For the foregoing reasons, we are of the considered view that the learned Banking Court committed a material procedural irregularity in deciding the suit without framing issues and affording the parties an opportunity to lead evidence, notwithstanding the grant of leave to defend. Consequently, the instant Regular First Appeal is **ALLOWED**. The judgment and decree dated 08.07.2024 passed by the learned Banking Court, Islamabad, insofar as the same have been challenged in the present appeal, are hereby **SET ASIDE**, and the matter is remanded to the learned Banking Court for fresh adjudication in accordance with law. The learned Banking Court shall frame appropriate issues arising from the pleadings of the parties, in terms of Section 10(11) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, afford the parties a reasonable opportunity to produce their respective evidence, and thereafter decide the controversy afresh through a reasoned judgment, uninfluenced by any observation made herein touching upon the merits of the dispute. Since the transaction dates back to May 2022 and the parties have already undergone a substantial period of litigation, the learned Banking Court shall endeavor to conclude the proceedings expeditiously, preferably within a period of four months from the date of receipt of this judgment.

11. Before parting with this judgment, it is considered appropriate to summarize the principal points of law arising from this appeal, for the guidance of the Banking Courts and the litigants who come before them. It is held that

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where a Banking Court grants leave to appear and defend under Section 10 of the Ordinance on the footing that the application raises substantial questions of fact or law, the summary stage of the proceedings comes to an end, and the Court is bound by Section 10(11) to proceed with the suit as an ordinary civil suit by framing issues on the pleadings, affording both parties a full opportunity to produce evidence, and hearing them on those issues before passing judgment. A Banking Court which grants leave and thereafter decides the suit on the pleadings and documents alone contradicts its own finding and renders the statutory procedure meaningless, and a judgment so passed is not a mere irregularity of form but is delivered without lawful procedure, offends the right to a fair trial and due process under Articles 4 and 10-A of the Constitution, and cannot be maintained, notwithstanding the strength of the arguments advanced on the merits.

(MUHAMMAD ASIF)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on _____ day of November, 2026.

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Sajid/--

Approved For Reporting