ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

R.F.A. No. 198 of 2016

Bank Al-Falah Limited
Versus.
Abu Ammar Sehri

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	08.12.2016	Mr. Abdul Hameed Baloch, Advocate for the appellant. Mr. Iftikhar Ahmed Bashir & Mr. A.A. Sehri, Advocates for the respondent.

Through the instant Regular First Appeal, the appellant, Bank Al-Falah Limited, impugns the judgment and decree dated 21.09.2016, passed by the learned Judge, Banking Court, Islamabad, whereby, the respondent's suit for declaration and mandatory injunction was disposed of.

2. The learned counsel for the appellant submitted that the learned Banking Court erred by not appreciating that other than the principal amount, the respondent was also under an obligation to pay the mark-up, termination charges, late payment charges, federal excise duty and over due installments; that in this way, the total amount payable by the respondent to the appellant as on 31.05.2016 was Rs.927,873/-; and that the learned Banking Court disposed of the suit with undue haste and without waiting for a reply to the appellant's application for leave to appear and defend the suit. Learned counsel for the appellant prayed for the impugned order dated 21.09.2016, to be set aside. In support of his submissions, the learned counsel for the appellant placed reliance on the law laid down in the cases tiled as Umer Shariq Vs. Messrs SME Bank Limited (2016 CLD 1821), and Iyaz-ul-Haq Chaudhry Vs. NIB Bank Limited (2016 CLD 1741).

3. On the other hand, learned counsel for the respondent submitted that in view of the statement of account filed by the appellant before the learned Baking Court, the respondent was only supposed to repay Rs.5,73,068/-; that in order to establish his *bonfide*, the respondent had deposited Rs.6,28,347/- in the form of a pay order; and that the suit had been instituted by the respondent for the early termination of the finance facility for the purchase of a vehicle. The learned counsel for the respondent further submitted that impugned order dated 21.09.2016 is strictly in accordance with the law.

4. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The record shows that on 25.04.2016, the respondent filed a suit for declaration and mandatory injunction against the appellant before the learned Judge Banking Court, praying for the following relief:-

"a). Declaration to the effect that the non-issuance of the NOC to the plaintiff by the Defendant Bank regarding the suit vehicle is illegal, unlawful and without any force of law.

b). Mandatory and Permanent injunction to the effect that the Plaintiff is the lawful owner in possession of the vehicle Toyota Corolla, Altis 1.8 bearing Registration No.BE-093 (ICT).

c). Mandatory and Permanent Injunction to the effect that nothing is outstanding against the Plaintiff in respect of the suit vehicle after payment of Rs.628,347/-.

d). Mandatory and Permanent Injunction to the effect that there is no cavil if the said vehicle be transferred by the Excise and Taxation Authorities in the name of the Plaintiff hence-forth without prejudice"

6. The respondent's case was that he had purchased a (Toyota Corolla Altis 1.8 (A.T.)) through the appellant on 11.03.2015; that the appellant had provided part of the finance for the purchase of the said vehicle; that substantial part of the loan had

been repaid by the respondent; that the respondent requested the appellant to terminate the loan facility, because the respondent wanted to pay the remaining amount and clear the vehicle from all liens and encumbrances; that the finance facility was availed only for a period of two years; that vide letter dated 14.04.2016, the appellant informed the respondent that the principal outstanding amount came to Rs.6,28,347/-; that despite reminders, the appellant did not inform the respondent as to the mark-up payable by the respondent on the said finance facility; that the respondent was ready to deposit the outstanding principal amount in order to establish his bonafide; and that the respondent did not agree with the amount of the mark-up etc. mentioned in the said letter. The respondent had already deposited an amount of Rs.6,28,347/- before the learned Judge Banking Court, Islamabad.

7. The appellant's case was that the respondent had availed an auto loan facility from the appellant by accepting the terms and conditions of the finance agreement; that the respondent had committed a default in the re-payment of the loan; that the total amount outstanding against the respondent was Rs.9,27,873/-; that the respondent never visited the appellant for the settlement of the loan account; that the loan account of the vehicle was in default since January, 2016; that the respondent was under a legal and contractual obligation to pay the entire outstanding amount of Rs.9,27,873; and that the respondent was under an obligation to pay not just the outstanding principal amount but over due installments, over due mark-up, termination charges, late payment charges and federal excise duty to the appellant.

8. The appellant filed an application for leave to appear and defend the suit under Section 10(2) of

the Financial Institutions (Recovery of Finances) Ordinance, 2001.

9. It appears that the respondent did not file a reply to the appellant's application for leave to appear and defend the suit. However, on 09.09.2016, the respondent submitted pay order dated 08.09.2016, for an amount of Rs.6,28,347/- drawn on Bank Al-Falah, F-10 Markaz Branch, Islamabad, before the learned Banking Court.

10. In the order dated 21.09.2016, the learned Banking Court observed that since the appellant's statement of account dated 31.05.2016, showed that the outstanding principal amount to be Rs.5,73,068/-, and since the respondent had already deposited Rs.628,347/- in the form of a pay order, the remaining amount of Rs.55,279/- was to be returned to the respondent.

11. There is no denial to the fact that the respondent is under an obligation to repay the loan in accordance with the terms and conditions of the finance facility extended to him by the appellant for the purchase of vehicle. The learned counsel for the contesting parties are in unison on their submissions that the amount liable to be repaid by the respondent is not limited to the principal amount. This being the case, the impugned order dated 21.09.2016, is obviously erroneous since it only takes into account the principal amount liable to be repaid by the respondent. At this stage, we are not inclined to determine the various heads (in addition to the principal amount) under which the respondent was supposed to repay the loan. This would be for the learned Banking Court to do so after appreciating the terms and conditions of the finance facility availed by the respondent. Therefore, the impugned order dated 21.09.2016, is not sustainable. Additionally, the learned Banking

Court ought to have given the respondent an opportunity to file a reply to the appellant's application for leave to appear and defend the suit, before passing the impugned order.

12. Since, the respondent had submitted the pay order dated 08.09.2016, for an amount of Rs.6,28,347/- to establish his bonafide, the respondent is at liberty to take/withdraw the said amount/pay order.

13. In view of the above, the instant appeal is allowed, and in consequence thereof the matter is remanded to the learned Banking Court, which may afford an opportunity to the respondent to file a reply to the appellant's application for leave to appear and defend the suit. There shall be no order as to costs.

(ATHAR MINALLAH)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sanaullah*

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