

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Present:

Mr. Justice Jawad Akbar Sarwana

1st Appeal No.S-35 of 2023

Appellant : Dileep Kumar son of Sawan
Through Mr. Hemandas S. Sanghani,
advocate.

Respondent : Dileep Kumar son of Heera Nanad
Through Mr. Mohammad Jamil Ahmed,
advocate.

Date of hearing : 13.08.2026.

Date of Decision : 13.08.2026.

JUDGMENT

JAWAD AKBAR SARWANA, J:- The appellant-defendant, Dileep Kumar son of Sawan (“DK-S/defendant”), is aggrieved by the judgment dated 28.04.2023 and decree dated 03.05.2023 passed by the Additional District Judge-III, Hyderabad, in Summary Suit No.45 of 2021 filed by the respondent-plaintiff, Dileep Kumar son of Heera Nand (“DK-H/plaintiff”).

2. The principal ground of defence raised by the Counsel of DK-S/defendant is that while, admittedly the bounced cheque along with memo of dishonour which was produced in evidence during trial proceedings proved that the cheque was dishonored; the issue was irrelevant given that the said bounced cheque was issued and presented to DK-H/plaintiff in relation to a Voluntary/Bachat Committee (“VC-BC Committee”), and was never part of any commercial transaction as alleged by DK-H/plaintiff. As such, the dispute in hand falls outside the scope of Order 37 CPC, and DK-H/plaintiff could, at best, only agitate his grievance before the civil court under ordinary civil jurisdiction, alone. Counsel submitted that the learned Additional District Judge-III, Hyderabad, both misread and disregarded the evidence brought on record and that, specifically, the observations made and conclusion drawn in paragraph 12

of the impugned judgment were entirely erroneous, and contrary to the evidence presented in the proceedings.

3. Counsel for DK-H/plaintiff vehemently opposed the contentions of DK-S/defendant. He contended that this (High) Court had suspended the impugned judgment and decree as on 20.10.2023, and the DK-S/defendant had been enjoying the fruits of the (High) Court's interim Orders for the last almost four (4) years. He submitted that the impugned judgment and decree were in accordance with law and liable to be upheld.

4. Heard learned counsel for the parties and perused the record. The entire defence raised by the Counsel for DK-S/defendant related to issues nos. 3, 5 and 6, as framed by the Court vide order dated 13.04.2022. The three issues were framed as follows:

- “3) Whether the plaintiff gave amount of Rs.1400,000/- to the defendant in respect of supply of feed?
- 5) Whether the defendant neither borrowed the above sum from the plaintiff nor issued cheque in respect of supply of feed?
- 6) Whether the defendant kept committee / V.C with the plaintiff and the cheque of Rs.500,000/- was given to the plaintiff as surety in the committee and but plaintiff misused the said cheque?”

5. The observations and conclusion mentioned in paragraph 12 of the impugned judgment, essentially address all three issues, i.e. namely, issue nos.3, 5 and 6, above. The relevant paragraph 12 reads as follows:

“12. The witness of the plaintiff namely Nandlal has supported the claim of the plaintiff that there were business relations between plaintiff and the defendant in respect of animal feed. The defendant in order to prove his case and dislodge the case of plaintiff, has failed to produce documentary evidence, except his version that he had kept V.C / Committee with the plaintiff and was paying Rs.50,000/- per month. He has not given detail about the members of the V.C / Committee. He has also not adduced in his evidence

the total amount of the V.C / Committee. Defendant has also admitted that he did not move application to the Bank Authorities to stop payment of the cheque and also not file any suit for cancellation of the cheque.”

6. In order to determine, as alleged by the Counsel for DK-S/defendant, that the evidence brought on record was misread and disregarded and that, specifically, the observations made and conclusion drawn in paragraph 12 of the impugned judgment were entirely erroneous and contrary to the evidence presented in the proceedings, calls for the re-examination of the evidence brought on record.

7. One can commence such review by turning first to the evidence of DK-H/plaintiff. In this regard, of course, during his examination-in-chief, DK-H/plaintiff entirely ignored any mention of the BC-VC Committee. However, during the cross-examination, counsel for DK-S/defendant cross-examined DK-H/plaintiff on the same issue, which is reproduced herein below:

“It is incorrect to suggest that I also run a VC Committee. It is incorrect to suggest that the defendant put V.C with me. It is incorrect to suggest that the above said cheque were given as security / surety in connection of V.C. It is incorrect to suggest that the date over the cheque NIB Bank is written by myself and not by the defendant. It is incorrect to suggest that after completion of VC the defendant demanded the amount of the VC deposited by him then I misused the cheques in question.”

8. Additionally, brother of DK-H/plaintiff also stepped into the witness box, and he too was cross-examined by counsel for DK-S/defendant. The relevant evidence, viz. BC-VC Committee, is reproduced hereinbelow.

“It is incorrect to suggest that the plaintiff who is my brother run a VC Committee in the name of Friend Business Committee. It is incorrect to suggest that the plaintiff did not give the amount of the VC Committee. It is incorrect to suggest that the defendant handed over the cheques as

surety in the VC Committee which the plaintiff malafidely presented in the bank and got dishonoured.”

9. The plaintiff's above evidence mandates further discussion. It is apparent from the selected reproduction of the cross-examination of the plaintiff's (two) witnesses concerning the issue of BC-VC Committee, that the plaintiff entirely denied the allegations raised by the defendant related to the issue of BC-VC Committee and the plaintiff's stance as set up in the claim/plaint remained unshaken. Counsel for DK-S/defendant failed to weaken the plaintiff's stance. No evidence came on record, by way of putting questions or material to the plaintiff's witnesses, compelling them to either admit or deny the details of contribution and mode of contribution to or the composition of members of the BC-VC Committee, etc. Perhaps for this reason, the cross-examination of plaintiff's witnesses did not inspire confidence in DK-S/defendant's defence to the IIIrd Addl. District Judge, Hyderabad. Nevertheless, the entire burden of proof concerning the BC-VC Committee and its nexus with the bounced cheque now came to rest entirely on DK-S/defendant's shoulders.

10. To this end, in order to meet the challenge put up by the plaintiff, DK-S/defendant, in his examination-in-chief, reiterated the stance taken in the Leave to Defend/Written Statement, until DK-S/defendant stepped into the witness box and was cross-examined by the counsel for DK-H/plaintiff. The cross-examination on the issue of BC-VC Committee is/was recorded as follows:

“It is correct that in my written statement so also in my examination in chief I have not described the number and the names of members of VC Committee. It is correct that in my written statement I have not clarified the amount of the VC Committee. . .

. . .It is correct that in my written statement nowhere it is stated that sometime I used to deliver the installment of VC in cash to the plaintiff on his request. It is correct that in my legal notice I have not mentioned about VC committee but the word Lottery is used in legal notice.”

11. On consideration of the above-mentioned cross-examination of DK-S/defendant, it is apparent that the plaintiff counsel poked several holes in DK-S/defendant's defence, leading to doubt concerning the BC-VC Committee, viz. the dishonoured cheque. DK-S/defendant deposed to his detriment that he:

neither:

"describ[ed] the number and the names of members of VC Committee"

nor

"I have not clarified the amount of the VC Committee"

nor

"in my legal notice I have [~~not~~] mentioned about VC committee"

12. Thus, no meaningful evidence was brought on record by the defendant in support of his defence that the bounced cheque of Rs.500,000 was in connection with any BC-VC Committee, and not in relation to the underlying business/commercial transaction between the parties. Whereas, the plaintiff's claim that the bounced cheque was dishonoured for lack of sufficient funds had stood proved/proven.

13. Indeed, even after recording his (DK-S/defendant's) evidence on 14.03.2023, a week later, on 21.03.2023, when DK-S's brother deposed evidence in support of his brother's defence, yet, as per his examination-in-chief, as available on record, too, the veracity of the defendant's version of events remains questionable.

On 14.03.2023, DK-S/defendant deposed that:

"It is correct that in my written statement nowhere it is stated that sometime I used to deliver the installment of VC in cash to the plaintiff on his request."

Whereas, on 21.03.2023, the defendant's brother deposed that

“ . . .Sometime the defendant also sent cheque on account of installments of BC committee to the plaintiff. . . . Might be, it is possible that after payment in the cash the defendant did not seek the cheque back from the plaintiff. . . .”

14. DK-S/defendant's brother's evidence is both contradictory and also attempts to expand/clarify and/or build upon his brother's evidence. Yet, as per law, such evidence cannot now come to the rescue of DK-S/defendant. When DK-S/defendant failed to raise his defence at the material time in his pleadings and also did not depose to set up such defence during his own evidence, nothing can come to his aid, including his brother's attempt to introduce and/or clarify the principal defence taken up by DK-S/defendant. As the material witness in the case, DK-S/defendant himself deposed first; and after his deposition, the Court cannot entertain and/or rely upon the defendant's brother, as DW-2, fresh evidence, particularly at such a late stage, given the above-mentioned shortcomings and lacunae. Thus, DK-S/defendant's brother's witness lost both its evidentiary value and credibility.

15. Given the above, I am not inclined to accept contentions raised by counsel for the appellant, DK-S/defendant, that the dishonoured cheque was in relation to the BC-VC Committee. In the circumstances, I do not find any ground or legal lacuna in the impugned judgment and decree to interfere with the impugned judgment and/or to set it aside.

16. The upshot of the above discussion is that the impugned judgment and decree are sustained and upheld, and, this 1st appeal stands dismissed in the above terms.

JUDGE