

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
IInd Appeal No.48 of 2024

Date	Order with Signature of Judge
<i>Nabeel Ahmed</i>	<i>Appellant</i>
<i>Versus</i>	
	<i>Rana Rizwan Manzoor Ahmed and another.....Respondents</i>
Date of hearing	:02.05.2025
Date of order	:02.05.2025

Mr. Muhammad Khalid, Advocate for the Appellant.  
None for the Respondents.

**J U D G E M E N T**

**MUHAMMAD JAFFER RAZA, J;** - Instant IInd Appeal has been preferred against judgment and decree dated 08.12.2023 passed in Civil Appeal No.342/2022 by the VII-Additional District Judge, Karachi East. The said civil appeal emanated from the judgment and decree dated 08.11.2022 passed in Suit No.897/2019 by the IXth Senior Civil Judge, Karachi East, which was filed by the Appellant. Thereafter, above mentioned Civil Appeal was preferred by the Respondents in which the earlier judgment and decree passed by the learned trial Court was set-aside. Learned counsel for the Appellant has Impugned the conflicting findings vide the instant appeal.

2. It has been stated on behalf of the learned counsel for Appellant that he filed Suit No.897/2019 for recovery of Rs.20,00,000/- with the following prayers: -

- a. A decree by declaring that the plaintiff is entitled to utilize the building viz. School bearing No.105/3, 4 and 5, Zeeshan Society, Drigh Road, Shah Faisal Colony No.3, Karachi, being lawful tenant as well as all and several Articles, fitting, & furniture etc lying therein belongs to the plaintiff.
- b. A Permanent injunction by restraining the defendant from obstructing the plaintiff from use of the School bearing No.105/3, 4 and 5, Zeeshan Society, Drigh Road, Shah Faisal Colony No.3,

Karachi or any other belonging fitting, furniture & fixtures lying therein or dispossessing the plaintiff there from.

- c. A decree by directing the defendant No.1 to refund Rs.20,00,000/- to the plaintiff along with profit at the rate notified by State Bank of Pakistan, from the date of filing the suit.
- d. Costs of the proceeding be awarded.”

3. Thereafter, learned counsel for the Appellant stated that after appreciation of evidence, learned trial Court passed judgment and decree dated 08.11.2022. Learned counsel has submitted that the suit for recovery was for recovery of Rs.2,000,000/-, however, learned trial Court decreed the same for the half amount i.e. Rs.1,000,000/- only. Learned counsel for the Appellant has frankly conceded that this aspect was never Impugned by him and no civil appeal was filed in respect of order of the learned trial Court. Through the instant IInd Appeal he only seeks to set-aside the order of the Appellate Court and is therefore, willing to accept the decretal amount as set out in the judgment and decree dated 08.11.2022. Learned counsel has in respect of his submissions relied upon the admission in respect of receipt of Rs.2,000,000/- made by the Respondent during cross examination. The said admission is reproduced below: -

*“It is correct to suggest that plaintiff had paid an amount of had 20,00,000/- to me through bank transaction.”*

3. I have heard the learned counsel for the Appellant and perused the record with his able assistance. Instant appeal was presented before this Court on 30.01.2024. Thereafter, notices were issued to the Respondents vide order dated 07.02.2024. On 22.02.2024, notices were ordered to be repeated on the Respondents by all modes except publication but including electronic modes. Thereafter, the matter was taken up on 21.03.2025, on which date the Respondents chose to remain absent. It was observed in the said order that if the Respondents chose to remain absent on the next date of hearing, the matter shall be heard and decided with the assistance of learned counsel for Appellant. On 15.04.2025, learned counsel for the Appellant had partly made his submission and the matter

was adjourned in the hope that the Respondents will affect appearance and assist the Court. Unfortunately, same is not the case.

4. As mentioned hereinabove, I have heard the learned counsel for the Appellant and perused the record with his able assistance. I have also examined both the judgments passed by the Courts below and allow the instant appeal for the following reasons.

5. The learned Appellate Court in Civil Appeal No.342/2022 has relied upon the assumption that the case of recovery was not made out on behalf of the Appellant and no cogent proof in this regard was furnished. It is held that the candid admission on behalf of the Respondent reproduced above, is sufficient for the purposes of the amount sought by the learned counsel for the Appellant. It is also a settled principle of law under Article 113 of the Qanoon-e-Shahadat Order 1984, that facts which are admitted need not be proved. The candid admission on behalf of the Respondent, as reproduced above, discharged the burden of the Appellant to prove the recovery of outstanding amount.

6. Further, the learned Appellate Court has gone on to deliberate, quite needlessly, in reference to the quality of education being imparted to the students and the potential failure of the administration to run the school in the light of dispute between the parties. It is held that the same was not the subject matter of the appeal and it was open for the learned Appellate Court to embark upon the said deliberation. Further, the learned Appellate Court in an appeal against final judgement and decree, erroneously held that the Appellants case for injunction was made out and directed the parties to refrain from infringing each other's fundamental rights. It is held that the said finding was beyond the scope of the appeal presented before the learned Appellate Court.

7. In light of what has been held above, the Impugned judgment dated 08.12.2023 is hereby set-aside. Instant IInd Appeal is allowed with no order as to cost.

Judge