

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**1st Appeal No.S-66 of 2023
R.A. No.S-86 of 2024**

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case.

27-04-2026

Mr. Aslam Pervez Sipio, advocate for the applicant/appellant.
Mr. Taj Muhammad Memon, advocate for the respondent.

JAWAD AKBAR SARWANA, J:- The appellant/defendant, Abdul Sattar, is aggrieved by the judgment dated 11.11.2023 passed by the learned Additional District Judge, Hala, in Summary Suit No. 08 of 2018. He contends that the learned Additional District Judge, Hala, has misread the evidence, asserting that, in fact, the appellant/defendant paid an amount of Rs.150,000/- to the brother of the plaintiff, namely Abdul Rahim and not to respondent/plaintiff Haji Muhammad Memon. This partial sum was not payable to the respondent/plaintiff and the learned Additional District Judge, Hala did not take this evidence into consideration. Learned counsel relied upon the examination-in-chief of Abdul Rahim, available on page No. 44. He contended that the above evidence was not even expressly denied by the plaintiff/respondent; hence, the learned Additional District Judge, Hala, ought not to have passed the impugned order to the extent of the entire claim amount and adjusted the respondent/plaintiff's claim as against the appellant/defendant to the extent of Rs.150,000/-. He also contended that the original cheque and memo were never produced in evidence, hence the claim fell short of being successfully proven.

Conversely, learned counsel for the respondent vehemently denied the assertions made by the appellant's counsel and submitted that the entire evidence fully supported the claim of the respondent/plaintiff, and that there is no illegality and/or justification for this Court to interfere with the impugned judgment passed by the learned Additional District Judge, Hala, which is in accordance with law.

Heard learned counsel. While it is apparent from reading of the examination-in-chief of Abdul Rahim that an amount of Rs.150,000/- was payable to the plaintiff's brother, however, on perusal of the leave to defend application available on record, no such assertion is/was made in the leave to defend. Learned counsel for the appellant/defendant has also conceded that he could not point out any such defence mentioned in the leave to defend application and/or written statement. Accordingly when the defence was never taken up in the leave to defend, the same defence cannot be taken subsequently in evidence. Accordingly, appellant/defendant's contention falls on this score.

I have also perused the examination-in-chief of Haji Muhammad, available on page No. 33 of the file, as recorded on 21.10.2023. According to his testimony, he produced the original cheque and memo of dishonour. Further, in his own examination-in-chief, Abdul Sattar admitted that he had received the said cheque. The dishonourment thus stood proven. The appellant/defendant's claim that the originals of the dishonored cheque and memo were never produced has no legs to stand.

In view of the above, I do not find any reason to interfere with the impugned judgment in 1st Appeal No. S-66 of 2023 and the impugned order dated 24.02.2024 passed in Revision Application No. S-86 of 2024. Accordingly, both 1st Appeal and Revision Application are hereby dismissed.

J U D G E

Irfan Ali