

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Dr. Syed Fiaz Ul Hassan Shah

Ist Appeal No.74 of 2024

Muhammad Latif s/o Muhammad Shafi
Vs.
Haji Khilawat Khan s/o Haji Bahadur Khan Afridi

APPELLANT : Through Mr. Ghulam Qasim Joiya,
Advocate

RESPONDENT : None is present on his behalf.

Date of Hearing : 13.11.2025

Date of Order : 13.11.2025

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ORDER

Dr. Syed Fiaz Ul Hassan Shah, J :-- The Appellant has challenged the Judgment dated 04.05.2024 and Decree dated 13.05.2024 (**impugned Judgment & Decree**) passed by the learned VIIIth Additional District Judge, Karachi South (the **trial Court**) in Summary Suit No.44 of 2020 against the Appellant.

2. Briefly, the facts as stated in the plaint of suit are that the respondent claims to be a businessman and carrying on his business of fabrics/cloths at Shop No.4, 2nd Floor, Lakhno Al-Jadeed Market near Allah Wala Market, M.A. Jinnah road, Karachi for last so many years and he has a reputed name in Karachi City amongst his

competitors due to fair business deal etc. It is alleged that the appellant purchased different kinds of fabrics and clothes from the Respondent against amount Rs.40,00,000/- and the respondent against the said goods (fabric/cloths) has issued four cheque with the promise to repay the amount, which is payable on account of receiving of goods (fabric and cloths). The details of cheque are mentioned at paragraph-2 of the impugned judgment. The Respondent pleaded that he has maintained a Stock Register about the goods (fabric & cloths) as well as payable and receivable amount of each transaction of sale or purchase and the transactions of the sale of fabrics/cloths to the Appellant are mentioned in the said Register which stand in the name of appellant as payable amount. On the relevant date, the respondent presented all said four cheque in his own account, which were dishonored with remarks “balance insufficient funds in account”. According to the Respondent, the appellant did not fulfill his obligations and he has fraudulently issued said cheque against the amount of goods (cloth fabric) which the said Appellant has already been utilized. Upon dishonored of these four cheque, the Respondent sent him legal notice on 26.10.2019 through TCS asking him to repay the outstanding amount, however, the appellant did not respond to such notice, therefore, respondent has filed the present summary suit before the trial court.

3. It appears that after service of summon, the appellant filed an application for leave to defend, which after hearing was allowed vide order dated 19.11.2021 and consequently written-statement was filed

by the appellant denying all the allegations leveled by the respondent against him. As per averment of appellant in written-statement, suit of the respondent was not maintainable and the said respondent has filed suit without any cause of action and in order to provide blanket cover to his illegal and criminal actions of defrauding the appellant; that there is no privity of contract between the parties and the suit has no merits and liable to be dismissed. From the pleadings of the parties, following issues were framed by the Court:

- 1. Whether the suit is not maintainable under the law?*
- 2. Whether the defendant has issued five cheques viz. cheque No.C-20243208 amounting to Rs.10,00,000/- dated 10.10.2019, cheque No.C-20243209 amounting to Rs.10,00,000/- dated 15.10.2019, cheque No.C-20243206 amounting to Rs.10,00,000/- dated 01.10.2019 and cheque No.C-20243207 amounting to Rs.10,00,000/- dated 05.10.2019 as claimed by the plaintiff?*
- 3. Whether the plaintiff is entitled for the recovery of amount of Rs.40,00,000/- (Rupees Forty Lacs only) as claimed by him with markup?*
- 4. What should the judgment be?*

4. The Respondent filed affidavit in evidence and produced the documents and he was cross-examined by Appellant's counsel. Thereafter, the Appellant filed affidavit-in-evidence and produced documents and he was cross-examined by Respondent's counsel. After hearing the parties, the learned trial Court has decreed the suit in favor of the Respondent (Plaintiff).

5. Learned counsel appearing on behalf of the appellant while reiterating the aforesaid facts has vehemently argued that the

impugned judgment and decree have been passed by the learned trial Court without applying its judicious mind; that the impugned judgment and decree passed by the trial Court is not sustainable because the same has been passed without consideration of version of the appellant and it is settled principle of law that every person has right to produce his version before the Court of law for fair trial and the trial Court has not considered the material evidence produced by the appellant to prove his version; that the trial Court has failed to consider the real and actual facts of the case and decreed the suit of respondent without applying judicial mind; that trial Court has misreading and non-reading the evidence and did not appreciate the evidence which already on record and did not consider the facts which was elaborated by the appellant; that the trial Court has erred in law as so much so that the appellant had led his evidence and also produced in support of his case and had proved his case, but the trial Court committed gross illegality in disbelieving the oral and documentary evidence placed on record, which is liable to be set aside.

6. We have considered the arguments advanced by the learned counsel for the appellant and minutely perused the record of the case with his assistance.

7. We do not find merit in the argument of the learned counsel for the Appellant that four cheques were issued in favor of Haji Barkat an unidentified third party as security, and that Haji Barkat

subsequently passed those cheques to the Respondent without the Appellant's consent. This defensive plea is untenable for two distinct reasons: *One* the Appellant has asserted that the cheques were handed over to Haji Barkat as security. However, he has failed to produce or call to summon Haji Barkat as a witness to corroborate this claim and the appellant has not furnished any evidence regarding the nature, scope, or terms of the alleged security arrangement. Moreover, no documentation or record has been presented to establish any business dealings, the quantum of the amount involved, the duration of enforcement, or the expiry date of the purported security agreement between the Appellant and Haji Barkat. *Second*, the Respondent/Decree Holder, in his pleadings and evidence, has produced the four cheques (Exhibits P/1B, P/1C, P/1D, and P/1E), along with detailed business transaction records—Exhibit P/1F (covering 27.02.2014 to 26.09.2014), Exhibit P/1/G (22.09.2016 to 22.08.2017), and Exhibit P/1/H (22.08.2017 to 29.01.2019). These documents clearly establish that there were ongoing business dealings between the Appellant and the Respondent. Despite being granted leave to defend, filing a written statement, framing of Issues, and availing the opportunity for cross-examination, the Appellant has failed to rebut or discredit the Respondent's evidence. The documentary record produced by the Respondent remains unchallenged and uncontroverted, thereby reinforcing the validity of his claim as rightly appreciated by the trial Court coupled with the admissibility and proved of document Exh.P/1-G which has been admitted in affirmative by the Appellant before the trial Court.

Therefore, we hold that the Appellant has failed to prove that four cheques issued by him was not payable to the Respondent—instead such four cheques were given to third person (Haji Barkat) on account of security and the Respondent has proved that the cheques were handed over by the Appellant against the goods (fabric and clothes) and payable to the Respondent.

8. Furthermore, presumption is a logical inference regarding the existence of a particular fact, drawn from the establishment of other proven facts. In making such an inference, the court engages in a process of rational deduction, akin to the reasoning that a prudent person would apply under similar circumstances. In terms of Article 129 of the Qanun-e-Shahadat Order, 1984, a court is empowered to presume the existence or non-existence of certain facts based on the evidence and circumstances of the case. The issuance of a cheque creates a **strong statutory presumption** of a legally enforceable debt or liability and, in commercial contexts, of **privity of contract under the Negotiable Instrument Act, 1881**. To prove "no privity" or the absence of liability, the person who issued the cheque (the drawer) needs to provide **strong, convincing evidence** that rebuts this legal presumption; a mere denial is insufficient. Exercising this discretion, we are inclined to draw the inference that the parties were engaged in a course of business involving the supply and purchase of fabrics and clothes. The issuance of four cheques by the Appellant in favor of the Respondent is consistent with this commercial relationship. The record further reveals that the Appellant failed to fulfill his financial

obligations after receiving the goods, thereby substantiating the Respondent's claim and we have not found any illegality or material irregularity in the impugned Judgment which is well-reasoned and does not warrant interference. Consequently, this appeal is hereby dismissed with pending application.

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