

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1195/2002

Date	Order with Signature of Judge
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Present: Justice Nazar Akbar

Plaintiff	:	Afaq Aslam, through Mr. Shahenshah Hussain, Advocate.
Defendant No.1	:	Lt. Col. (Retd) Anwar Haque
Defendant No.2	:	Bashir Ahmed Both Exparte.
Date of hearing	:	07.10.2016
Date of decision	:	01.11.2016

JUDGMENT

NAZAR AKBAR, J. Plaintiff has filed this suit for recovery of Rs.37,54,378.00 against the defendants.

2. Brief facts of the case are that the Plaintiff is engaged in the business of leather processing and also sale and export of leather products. Defendant No1 is also a businessman and deals amongst others in the sale of leather products. In the month of September 2002, Defendant No.1 placed order with the Plaintiff for supply of about 9550 hides and skins, the price of which was mutually agreed at Rs.44,79,378/-. Plaintiff supplied the requisite quantity of hides and skins to Defendant No.2 and deliveries were made during the period between **3.9.2002** to **12.9.2002** in different quantities. The goods were received by Defendant No.1 after being satisfied with their quantity and quality and specifications. The payments were to be made against the delivery of goods. Total amount payable by Defendant No.1 for the goods supplied comes to Rs.44,79,378.00.

3. It is contended that Defendant No.1 issued five post-dated cheques of different amount in favour of the Plaintiff. These cheques were for a total amount of Rs.34,35,018/-. He had agreed to pay the balance amount in cash. These cheques on presentation at the Bank were dishonoured and Defendant No.1 was informed about the same and called upon him to make the payment immediately. Defendant No.1 paid only Rs.8,00,000/- (Rupees Eight Lac) and promised to pay the remaining amount but till date he has not made any further payment. Thus the amount is liable to be paid by the Defendant in respect of the leather supplied to him comes to a sum of **Rs.36,79,378/-** In addition to the aforesaid goods, the Defendant has also purchased from the Plaintiff fleshing machine for Rs.1,00,000/- on 10.8.2002 but has paid only Rs.25,000/- leaving balance of Rs.75000/- which is to be paid but has not paid so far despite repeated request. Therefore, the plaintiff has prayed for the following relief:-

- i) Judgment and decree for Rs.37,54,378.00 against the Defendant.
- ii) Interest at the rate of 20% per annum from the date of the suit till the recovery of the decreetal amount.
- iii) Cost of the suit.
- iv) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.

4. The notices/summons were served upon the defendants. M/s.Umar Qureshi, M.M.Tariq & Ch. A. Rasheed advocates, appeared for Defendant No.1. He has filed written statement on **13.01.2003** through Mr. Umer Qureshi, advocate. But the notices/summons issued to defendant No.2, were not served in due course and after exhausting other modes of service, the

publication was ordered. On the basis of publication by order dated **08.08.2005**, defendant No.2 was declared exparte.

5. By order dated **16.10.2006** issues were framed and Mr.Shafi Ronjho, former Nazir of this Court was appointed as Commissioner for recording evidence. The Plaintiff on **07.03.2007** filed affidavit-in-evidence as Exh.04 and other documents as Exh.PW-5/1 to Exh. PW-5/11 before the Commissioner. The Defendants neither cross-examined the plaintiff nor led their evidence.

6. I have examined the evidence and also heard learned counsel for the Plaintiff.

7. In view of the above facts and not only the lack of interest to contest from the other side, the evidence of delivery of goods to the defendants is not disputed and the cheques issued by the defendants to the plaintiff have also been dishonored. The evidence produced is impeachable and no contest is there.

8. In view of the evidence, I am not left with no option except to decree this suit. The suit is decreed for payment of amount of Rs.37,54,378/- with markup at the rate of 5% per annum on the total amount payable by the defendants to the plaintiff from the date of filing of the suit till realization.

J U D G E

Karachi,
Dated:01.11.2015

Ayaz Gul