

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.248/2002

Date Order with signature of Judge

For hearing of Main Case

12.04.2016

Mr. Muhammad Zahid Hussain, advocate for applicant.
Mr. Muhammad Sarfarz Sulehry, advocate for the Respondent.

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1. This revision is directed against the concurrent findings of the courts below. The applicant has filed suit No.403/1997 for recovery of Rs.3,29,800/- against the respondents on the ground that after acceptance of the tender offered by the applicant for supply of billiard/snooker table, the applicant has prepared the same. However, when the applicant delivered the goods to the respondents, they refused to accept the same on different pretexts. The applicant has also sent legal notice which was evasively replied and therefore, the applicant filed suit for recovery of the losses. The respondents filed written statement in which they took similar plea. Learned trial court framed the followings issues and dismissed the suit on merits.

- i. Whether the Plaintiff undertook to supply Relly Type Snookers Table or Relly Snooker and Billiard table to the Defendant if yes, what is its effect?
- ii. Whether the suit is not maintainable U/s.87 of KPT Act R/W Sec.42, 21 and 56 of the Specific Relief Act?
- iii. Whether any specification catalogue or any other detailed was published or specified by the Defendants in their tender if not, whether Plaintiff supplied the Relly Snookers and Billiard Table according to the tender of the Defendant, what its effect?

- iv. Whether due to unlawful act of Defendant Plaintiff has suffered heavy monetary loss and mental torture, if yes, what is its effect?
- v. Whether the Plaintiff is at fault and breached the terms of the agreement or tender if so what its effect?
- vi. Whether the Plaintiff entitled to claim damage from the Defendant if yes, at what rate?
- vii. Whether any cause of action arose to the Plaintiff against the Defendant and whether Plaintiff came to this Court with clean hand?
- viii. To what relief the Plaintiff entitled?
- ix. What should the order / decree be?

2. The applicant examined only himself and filed his affidavit-in-evidence and produced documents as annexure A to

I. The applicant was cross examined by the counsel for the respondent. The Defendant filed affidavit-in-evidence of Munawar Din alongwith document annexures B/1 to B/6. Counsel for the Plaintiff cross examined the representative of Defendant.

3. The trial court after recording evidence and hearing counsel for the parties decided all the issues against the applicants. The applicant preferred appeal against the dismissal of his suit which was also dismissed by the District & Sessions Judge, East, Karachi on **15.7.2002**. The applicant against the two findings has preferred instant civil revision which is pending since **08.11.2002**.

4. Heard learned counsel for the parties and perused the record.

5. The learned counsel for the applicant has attempted to show lacuna in the evidence of the respondents and claim that

he has established his case, since there was no serious defense from the respondent side. Be that at it may, first burden was on the applicant/Plaintiff and record shows that he has examined only himself and produced certain documents which were receipts of different payments made by him to different persons. According to him these receipts were about expenses incurred in manufacturing of the required snooker tables. He has admitted in the evidence that he has sold the tables to some other customers against payments of Rs.90,000/-. However, by solitary statement, the burden of proof in accordance with Article 17 of Qanoon-e-Shahdat, 1984 was not discharged since it was case of recovery of money based on certain receipts of payments made by the applicants to different persons for incurring the expenses. None of the supplier of goods or even the shopkeepers who issued so-called receipts to the applicant was examined or produced in court to confirm receipts. Therefore, the applicant has failed to discharge burden of proof of incurring expenses/damages to the tune of Rs.3,29,800/- since burden on the applicant was not discharged, therefore, question of any burden to proof on Defendant does not arise.

6. In the above facts and circumstances, this revision is dismissed with no order as to costs.

JUDGE