

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.154 of 2009

Tariq Mansoor -----Plaintiff.

Versus

**Standard Chartered Bank (Pakistan) Limited
& others-----Defendants.**

Date of hearing: 01.11.2017

Date of Judgment 01.11.2017

**Plaintiffs: Through Mr. Raja Muhammad Safeer
Advocate.**

**Defendant: Mr. Naheed A. Shahid, Advocate for
Defendants.**

J U D G M E N T

Muhammad Junaid Ghaffar, J. This is a Suit Damages to the tune of US \$ 200,000/- claimed by the Plaintiff against the Defendant.

2. The precise facts, as stated appears to be that the Plaintiff was maintaining certain Bank Accounts with Defendant No.1 and according to the plaintiff the accounts were opened jointly by the Plaintiff and Defendants No.2 & 3. It is precise case of the Plaintiff that certain directions were given to the Defendant No.1 for deleting the name of Defendant No.3 from operating the said account, whereas, the Bank also did not act promptly to comply with certain further instructions. It is further stated that due to such failure a cheque was bounced, whereas, certain deductions were also made unlawfully, hence instant Suit.

3. After filing of written statement by Defendant No.1 the following Issues were settled on 30.08.2010, whereas, Defendants No.2 & 3 were declared ex-parte.

- i. **Whether the suit is barred by limitation?**
- ii. **Whether Account No.6101-419593-072, 6101-419593-073 and 6101-419593-090, was jointly owned by the Plaintiff, Defendant Nos. 2 & 3?**
- iii. **Whether two account were clubbed together on a specific instruction of Defendant No.1? If so, its effect.**
- iv. **Whether the charging of any penalty from the accounts maintained by the Plaintiff caused any loss and damage to the Plaintiff? If so, its effect.**
- v. **Whether the plaintiff has suffered any loss or damage? If so, to what amount?**
- vi. **What should the judgment and decree be?**

4. Learned Counsel for the Plaintiff submits that a request was made to Defendant No.1 vide Letter dated 25.07.2003 (Annex-B/1) for removing the name of Defendant No.3 from the said account but such instructions were never complied with. He further submits that another standing instruction was sent to the Bank on 7.4.2003 to transfer a sum of US \$ 450 on the 1st day of every month from the Dollars Account to the Rupee Account commencing from 1st May, 2003; however, the Bank failed to act upon and this resulted in dishonoring of Cheque No.41945 dated 23.06.2006 for US \$ 700 only. Learned Counsel submits that this inaction on the part of the Defendant Bank caused loss to the reputation, mental agony, loss to goodwill, anguish and inconvenience and therefore, the Plaintiff has filed this Suit for damages. Learned Counsel has also referred to the Affidavit in Evidence as well as documents exhibited along with it.

He submits that the material on record as well as the stance of the Defendant supports the case of the Plaintiff, therefore, the Suit be decreed.

5. On the other hand, learned Counsel for Defendant No.1 submits that insofar Issue No.1 regarding limitation is concerned she will not press the same, whereas, instant Suit has been filed claiming damages of US \$ 200,000/= but no details and explanation has been given as to what actually caused such huge amount of damages. She further submits that it was only an amount of Rs.2225/- approximately, which was wrongly debited and that stood credited without prejudice which does not entitle the plaintiff to claim such huge damages. She has relied upon the cases reported as 2006 MLD 907 (*Nazir Ahmad and another v. Haji Nazir Ali and 3 others*), 1990 MLD 877 (*Messrs Taj Oil Industries Limitd v. Messrs Bengal Oil Mills Ltd.*), 2008 CLD 85 (*ECHO West International (Pvt.) Ltd. V. Pakland Cement Ltd.*), 2013 SCMR 507 (*Malik Gul Muhammad Awan v. Federation of Pakistan*).

6. I have heard both the learned Counsel and perused the record. My Issue wise findings are as under:-

ISSUE NO.1.

7. Since the Defendant No.1 has not pressed the question of limitation, whereas, even otherwise Suit seems to be within time, therefore, this issue does not require any finding.

ISSUE NO.2.

8. In fact it is the case of the Plaintiff that the account was jointly owned by Plaintiff and Defendants No.2 & 3 and for that the account opening forms have been placed on record and this question is not perhaps in dispute, therefore, Issue No.2 is answered in the affirmative.

ISSUE NO.3.

9. No proper evidence has been led to substantiate this issue, whereas, the Counsel for the Plaintiff also did not made any submission in this regard and therefore, I do not find it appropriate to give any finding on this issue.

ISSUES NO.4 & 5.

10. Insofar as these issues are concerned they are interlinked and are being decided jointly. Counsel for the Plaintiff has referred to various documents and has made his submission that Defendant No.1 had unlawfully debited the account of the Plaintiff without their being any such agreed terms. Though it has admitted on behalf of Defendant No.1 that the amount so wrongly debited has already been credited to the plaintiff's account, however, the same was without prejudice and therefore I am of the view that to that extent this could not be a case of claiming any damages. Moreover, it has come on record through evidence that Plaintiff had not read the terms and conditions of the Account opening Form which clearly gives the mandate otherwise.

Insofar as dishonoring of cheque is concerned, perusal of the record reflect that firstly the said cheque was not a cross cheque issued to any third party but was a cash cheque and it has been contended that it was given to someone and such dishonor has caused loss to the reputation of

the Plaintiff. Firstly, it may be observed that admittedly the cheque was a cash cheque and it has not come in the evidence that it was handed over to someone else as no witness has been brought on record to substantiate such claim. Even otherwise no other confidence inspiring evidence such as any letter, complaint regarding dishonor of cheque or for that matter registration of any FIR or any another material has been brought on record so as to justify that such alleged dishonor of cheque caused any loss of reputation. Notwithstanding this even otherwise the Plaintiff has not quantified the damages separately but a total amount of US\$.2000,000/- has been claimed. The Counsel for the Plaintiff was confronted as to under what head exact damages were caused and quantified to which learned Counsel has no answer. It further appears that nothing has been brought in the evidence to substantiate any such claim of damages. Plaintiff was asked a pertinent question to which he stated that *"It is correct to suggest that I have not filed the breakup of damages"*. He has further stated that *"It is correct to suggest that I have not mentioned in my affidavit-in-evidence regarding beneficiary of cheque and his attitude"*. He has further *"I do not remember the name of the beneficiary of the cheque dated 23.6.2006 neither I mentioned the name of the beneficiary in my affidavit-in-evidence."*

11. In cases of claim for damages firstly it is to be determined that a person had actually suffered loss of reputation, anguish, mental shock and injury, and if yes, then he is entitled to compensation, however, the difficult question is that what should be the amount of damages, as there is no hard and fast rule determined or settled by the Courts, and it is always dependent on the peculiar facts and circumstances of the case. It is always on the basis of the evidence led by the party in that regard as to its

extent and magnitude of suffering, but even in that situation in the end it is left with the discretion vested in the Court to decide and arrive at a just and fair amount of compensation as damages. In this matter I have not been able to persuade myself to a remotest of level that the plaintiff has led any credible and reliable evidence in support of his claim, in respect of mental torture, agony and or loss of reputation. The burden in such cases heavily lay on the plaintiff to prove the damages sustained by him through evidence and all the particulars of the damages are also to be proved by him. Mere general or vague oral assertions in this respect cannot be sufficient to discharge the onus cast upon the plaintiff. See *Messrs Ashrafi (Private) Limited Vs. Abdul Majeed Bawany* (1991 MLD 1101), *Nawar Ali Khan V. Abdul Sattar Abu Bakr* (PLD 1968 Karachi 154) and *Adam Limited V. Muhammadi Steamship Company Limited* (PLD 1962 Karachi 227). Moreover, the plaintiff having failed to produce any evidence as to loss occasioned by such conduct of the defendant as alleged is not entitled even to nominal damages. See *Messrs Muhammad Amin Muhammad Bashir Ltd. versus Messrs Muhammad Amin Bros. Ltd.* (PLD 1969 Karachi 233)

12. In view of hereinabove facts and circumstances of the case and material placed on record, it appears that no confidence inspiring evidence has been led on behalf of the plaintiff to claim such huge amount of damages and therefore, Issues No.4 & 5 are answered in negative.

ISSUE NO.6.

11. In view of above, the Suit of the Plaintiff is hereby dismissed.

Judge