

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No. 519 of 1997**

Date	Order with signature of Judge
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Plaintiff : Waseem Ahmed Usmani, through LR's  
Through Mr. Ghulam Hussain, advocate.

Defendant No.1 : L & M International (Pvt) Ltd.,

Defendant No.2 : Standard Chartered Bank  
Through Mr. Shahzad Nizam, advocate.

Date of hearing : 28.11.2017

Decided on : 28.11.2017

**ORDER**

**Nazar Akbar.J.-** This suit was filed under summary chapter by the Plaintiff for the recovery of Rs.76,00,000/- against the Defendant No.1 who had issued two postdated cheques (Exh. 2 & 3) for the sum of Rs.76,00,000/-. Both on presentation to Defendant No.2 were not encashed / cleared on the instruction of defendant No.1 who is one of the signatories of the two cheques. However strangely enough Standard Chartered Bank has also been impleaded as Defendant No.2 in the suit under summary chapter with the following prayers.

In view of the above it is most respectfully prayed that this Hon'ble Court may very graciously be pleased to pass judgment and decree in favour of the Plaintiff and against the Defendants, jointly and severally for a sum of Rs.7,6000,000/- together with mark up prescribed by the State Bank of Pakistan as chargeable by commercial banks in regard to commercial loans from the date of institution of the above suit upto the date of final payment of the decretal amount by the said Defendants to the Plaintiff. Costs of the above suit may also very graciously be decreed in favour of the Plaintiff.

Defendant No.1 did not contest the suit and on **28.1.2002**, it was decreed against Defendant No.1 in the following terms.

“Conditional leave to defend was granted to the Defendant No.1 vide order dated 1.10.2001. Defendant failed to comply with the order, despite extension granted by this Court. Under circumstances, since order for furnishing of security has not been complied. The application leave to defend will be considered as dismissed, written statement though filed but same cannot be taken on record on account of failure of the Defendant to furnish security, same is accordingly discarded. The issuance of cheque is not disputed by the Defendant, certain defence in relation of such cheques were raised, but since the defendant No.1 has failed to furnish security such defence cannot be taken into consideration. Plaint is verified on oath. Under circumstances Court is left with no discretion but to decree the suit of the Plaintiff as against the Defendant No.1 only, orders accordingly.”

2. Once the judgment and decree on the negotiable instrument is awarded against Defendant No.1 nothing was left for the plaintiff to pursue against Defendant No.2.

3. However, on 7.4.2003 the following issues were framed by this Court.

- (i) Whether Defendant No.2 was in collusion with Defendant No.1 while acting under unauthorized instructions of defendant No.1 alone in as much as payment against the cheques issued by two signatories could not have been stopped under the instructions of one of the signatories, if so, its effect?
- (ii) Whether in referring encashment of the cheques in question defendant No.2 was in breach of its duty and/or obligation as a drawee bank and if so to what effect?
- (iii) Whether defendant No.2 is to any extent liable for the loss of suit amount for not honouring the cheques in question?

My findings on these issues are as follows:-

4. There is no evidence of collusion against the bank. The admission of defendant No.2 as to stop the payment against a cheque is duty of the bank. Once bank has received an instruction about any instrument / cheque from the customer the payment against it has to be stopped by the bankers as legal obligations. Learned counsel for the Plaintiff claims that the cheques were issued by two persons since it was from a joint account and only one of the account holder had instructed to stop the

payment and therefore, the bankers have acted with malafide intention is misconceived. There is no illegality on the part of the bank, both are customers anyone can stop the payment against any cheque issued by them because bankers is not answerable to both the customers. It has also come on record that the other signatory of the cheque on which decree has already been obtained by the plaintiff has never objected to the instruction from the plaintiff to stop payment by Defendant No.2. In my humble view bankers cannot be a party or held liable for the consequences of nonpayment or non-encashment of cheques issued by their customers to the third party. Decree on negotiable instrument has already been passed and there cannot be two decrees on the same instrument or for the value of the instrument more particularly against Defendant No.2 who is not signatory of the negotiable instrument. Learned counsel for the Plaintiff was unable to assist the Court on any legal proposition, which can be of any help to the learned counsel for the Plaintiff to obtain one more decree against the bank for following the instructions of defendant No.1. He admits there was no privity of contract between Plaintiff and Defendant No.2 (Standard Chartered Bank). He also admits that defendant No.2 was not liable under any provisions of law to honor any request from the Plaintiff side. Therefore, both the issues are answered in **negative**.

5. Issue No.3 whether the Defendant No.2 is to any extent liable for the “**loss of suit amount**” for not honoring the cheques. This issue is answered in the judgment already passed against the defendant No.1 and the Plaintiff, has not sustained by since they have decree against the said value of the cheque in question. Therefore, this issue is also answered in **negative**. Consequently, the suit is dismissed against the Defendant No.2.

JUDGE



