

## IN THE HIGH COURT OF SINDH, KARACHI

Suit No.160 of 2010

*[Fahim Zafar Lari v. M/s. Sandal Dyestuff Industries Ltd.]*

None present for the Parties.

Date of hearing : 04.02.2019

Date of Judgment : 04.02.2019

### JUDGMENT

**Muhammad Faisal Kamal Alam, J:** The Plaintiff (*Fahim Zafar Lari*) has brought this action at law against the Defendant (*M/s. Sandal Dyestuff Industries Ltd.*), *inter alia*, for Declaration, Recovery of amount and Damages, with the following prayer clauses\_

*“Under the above circumstances, it is respectfully prayed that this Hon’ble Court may kindly be pleased to pass judgment and decree in favour of the Plaintiff and against the Defendant as follows: -*

- (i) *Directing the Defendant to pay loss amount of Rs.50,00,000/- (Rupees Fifty Lac Only) to the Plaintiff.*
- (ii) *Declaring that the act and omissions of the Defendant as per description of Plaintiff constituted actionable civil wrongs on the part of the Defendants the Plaintiff sustained mental torture agony and perplexities and monetary loss, for which the Defendant is liable to compensate the Plaintiff in terms of money in the tune of Rs.50,00,000/- (Rupees Fifty Lac Only).*
- (iii) *Directing the Defendant to pay an amount of Rs.50,00,000/- (Rupees Fifty Thousand Only) to the Plaintiff as damages / compensation.*
- (iv) *Declaring the Blank Cheque (without dated) bearing No.6019516, 0501431 8960455113 of RBS Bank (North Karachi Branch) duly*

*signed by the Plaintiff which is lying in the possession of the Defendant is null, void and ab-initio and being issued without consideration to the Defendant for Security Purpose.*

(v) *Cost of the Suit.*

(vi) *Any other relief or reliefs which may deem fit and proper by this Hon'ble Court under the circumstances of the Suit."*

2. The grievance of Plaintiff primarily is that he being the proprietor is carrying on his business in the name and style of "**HABIB PROCESSING**", relating to textile dyeing and printing. It is further averred that in the year 2008, the Plaintiff purchased the Dyeing product from the Defendant but the Defendant failed to supply the same within stipulated time despite several demands and due to delay in supplying the said product / stuff, the Plaintiff sustained a huge monetary loss. Resultantly, the Plaintiff is liable to be compensated in terms of money to the tune of Rs.50,00,000/- (*Rupees Fifty Lac Only*). It is further submitted that the Defendant as 'security' had also kept a Blank Cheque (*undated*) bearing No.6019516, 0501431 "8960455113" of RBS Bank, North Karachi Branch, duly signed by the Plaintiff, which still is in the possession of the Defendant. It is seriously apprehended that the Defendant in order to cause harassment to the Plaintiff may use the said cheque with *mala fide* intention.

3. Upon the service of summons, the Defendant filed Written Statement on 15.04.2010, wherein, all the allegations leveled against it in the Plaint were denied. It is stated that in fact the Plaintiff is a habitual defaulter in respect of making payment(s) against the product(s) purchased from the Defendant; resultantly, an amount of Rs.46,26,987/- (*Rupees Forty Six Lacs Twenty Six Thousand Nine Hundred Eighty Seven Only*) is outstanding against the Plaintiff. It is further averred that the Plaintiff had earned debit amount of Rs.25,42,761/- (*Rupees Twenty Five Lac Forty Two Thousand Seven Hundred Sixty One Only*) due to non-payment against other products from the

Defendant, hence the Defendant served a legal notice dated 1<sup>st</sup> March, 2007 to the Plaintiff through his Advocate wherein Defendant called upon the Plaintiff to clear the liability amounting to Rs.25,42,761/- (*Rupees Twenty Five Lac Forty Two Thousand Seven Hundred Sixty One Only*). It is further submitted that the Plaintiff instead of making payment to the Defendant, filed the present Suit with *mala fide* intention and ulterior motives in order to usurp the amount of Rs.46,26,987/- (*Rupees Forty Six Lac Twenty Six Thousand Nine Hundred Eighty Seven Only*) of the Defendant.

4. On 17.01.2011, following Issues were settled by the Court\_

- “1. Whether the Defendant failed to supply demanded stuff pursuant to the orders placed by the Plaintiff within time? If so, its effect.***
- 2. Whether the Plaintiff has suffered any loss or damage? If so, to what amount.***
- 3. Whether the Defendant is liable on account of loss, if any, caused to the Plaintiff as claimed in the Plaint? If so, to what amount.***
- 4. Whether the Defendant is holding possession of blank cheques signed by the Plaintiff as a security? If so, to what consequence.***
- 5. What should the Judgment and Decree be?”***

5. After settlement of Issues, the matter was adjourned for want of evidence but till date the Plaintiff's side has failed to adduce his evidence. On 10.04.2018, intimation notice to the parties as well as their counsel was also issued but no one has come forward to adduce their respective evidence. In the interest of justice, the matter was adjourned to 25.01.2019, but on the said date also no one was present. In the interest of justice, the matter was again adjourned for today, that is, 04.02.2019. Today, in the first round no one was present on behalf of Plaintiff, therefore, the matter was kept aside to be taken up after Tea Break; where after, the matter was again called but no one was present.

6. The Plaintiff's side has not pursued the matter diligently nor has come forward to lead the evidence, *inter alia*, at least Plaintiff could have examined

himself, but he did not. It appears that the Plaintiff has lost interest in the matter. Unnecessarily a case for want of evidence should not be kept pending if the conduct of the parties does not seem to be *bona fide*, as in the present case, in view of the above discussion.

7. It is an established Rule that pleadings themselves cannot be considered as evidence unless the Plaintiff or Defendant, as the case may be, enters the witness Box and lead the evidence in support of his / her claim or defence. In the present case, despite providing ample opportunities, the Plaintiff has not come forward to testify and discharge the onus to proof. The reported decision of the Hon'ble Supreme Court handed down in the case of *Rana Tanveer Khan v. Naseer Khan*-2015 SCMR page-1401, is relevant. Since Plaintiff has failed to prove the allegations against the Defendant, thus the former (Plaintiff) is not entitled to any relief.

8. Consequently, this suit is dismissed, with no order as to costs.

**JUDGE**

**Dated 04.02.2019**

M.Javid.PA