

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1203 of 2016

[Ehtisham Zubair v. Ashraf Hussain and others]

None present for the Parties.

Date of hearing : 25.01.2019

Date of Judgment : 25.01.2019

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Plaintiff has brought this action at law against the Defendants, *inter alia*, for Declaration, Recovery, Cancellation of Documents and Permanent Injunction, with the following prayer clauses_

“The Plaintiff prays for Judgment and Decree in favour of Plaintiff and against the Defendants as under: -

- “1. That to declare that the (1) Cheque No.A-66840202, for Rs.30,00,000/- dated 25.03.2016, (2) Cheque No.A-66840209, for Rs.47,00,000/- dated 25.04.2016 (3) Cheque No.A-66840205, for Rs.33,00,000/-dated 15.6.2016 and (4) Cheque No.A-66840203 for Rs.31,00,000/- dated 15.07.2016 all drawn on Meezan Bank, Block-1, Gulistan-e-Jauhar Branch, Karachi, are illegal, void, void ab-initio voidable cancelled and obtained forcibly from the Plaintiff and in the result of treats and fraud and further direct the Defendant No.1 to return the above 4 cheques to the Plaintiff.*
- ii. That the Defendant No.1 may be directed to return Rs.30,00,000/- (Thirty Lacs) obtained cash/through cheque*

No.(1) A-70353065, (2) A-66840217 and (3) A-70353066 from the Plaintiff against the cheque No.66840202 fraudulently which was obtained forcibly and be extended threats.

- iii. That it further prayed the Defendant No.2, 3, 4, 5 and 6 may be directed to return the amount paid by the Defendant No.1 directly to the Defendants No.2 to 6 and if they failed to pay the same amount received from the Defendant No.1 then alternate genuine plots of the society may be allotted to the Defendant No.1.*
- iv. The Defendant No.7 may also be directed to order his subordinate SHO Gulistan-e-Johar, SHO Shahrah-e-Faisal and other official not to initiate any criminal proceeding regarding the cheque, which is forcibly taken from the plaintiff on the instance of defendant No.1 against the Plaintiff and further directed not to threats, harass, blackmail, visit his house in the matter without the course of law.*
- v. Any other relief(s) which deemed fit and proper under these circumstances.”*

2. From the record, it appears that on the last date of hearing, in the interest of justice, direct notice was issued to the Plaintiff as his counsel pleaded no instructions. Bailiff has filed his report that Plaintiff has shifted from the premises. It is the obligation of a party who invokes the jurisdiction of a Court to pursue the matter diligently despite engaging the service of an Advocate. Even if the Plaintiff was shifted to some other place, he should have filed his fresh address through his counsel, as it is a requirement under the Civil Procedure Code in terms of Rule 24 of Order VI of CPC; whereas, Order VI, Rule 21 of CPC, relating to filing of address of Plaintiff for service, is mandatory as it entails the penalty of dismissal of Suit, if the correct address is not filed.

3. The aforementioned Rules in respect of filing address by the Plaintiff if read together, then non-compliance of Rule 24 (informing the Court about changing his/her address), is also a default on the part of Plaintiff.

4. On 15.05.2018, the present suit against the Defendants No.2 to 7 was dismissed as Plaintiff failed to get summon issued against these Defendants, whereas, the Defendant No.1 was debarred from filing Written Statement on 04.05.2017.

5. The controversy in the present suit as pleaded, revolves around the different cheques purportedly issued by Plaintiff and drawn on Meezan Bank at its Gulistan-e-Jauhar Branch, Karachi; Plaintiff is seeking cancellation of these instruments, besides praying that the Defendant No.1 should return Cheque Nos. (1) Cheque No.A-66840202, for Rs.30,00,000/- dated 25.03.2016, (2) Cheque No.A-66840209, for Rs.47,00,000/- dated 25.04.2016 (3) Cheque No.A-66840205, for Rs.33,00,000/-dated 15.6.2016 and (4) Cheque No.A-66840203 for Rs.31,00,000/- dated 15.07.2016, all drawn on Meezan Bank, Block-1, Gulistan-e-Jauhar Branch, Karachi.

6. It is the claim of Plaintiff that all the above cheques were obtained by Defendant No.1 under duress.

7. 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 is the present case, in view of the above discussion.

8. 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 prove his claim. The reported decision of 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 Defendants, thus the former (Plaintiff) is not entitled to any relief.

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

JUDGE

Dated 25.01.2019

M.Javaid.PA