

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

First Appeal 227 of 2017 : Muhammad Ahsan vs.  
The VIth Additional  
District & Sessions Judge  
(South) Karachi & Others

For the Appellant : Mr. M.B. Shakeel  
Advocate  
Mr. M. Ali Phulpoto  
Advocate

For the Respondent : Mr. Syed Abdul Naseer  
Nos. 2 & 3 Shah, Advocate

Dates of Hearing : 06.03.2019 & 16.04.2019

Date of Announcement : 31.05.2019

## JUDGMENT

**Agha Faisal, J:** The present appeal was filed assailing the judgment dated 17.11.2017 (“**Impugned Judgment**”), delivered by the Court of learned VIth Additional District Judge, Karachi South in Summary Suit 42 of 2014 (“**Suit**”), and the decree rendered in presence thereof dated 22.11.2017. It may be appropriate to reproduce the operative constituent of the Impugned Judgment herein below:

“Plaintiff has filed suit for recovery of money on the basis of two cheques dated 20.11.2013 and 5.4.2014 amounting to Rs.35,00,000/- and Rs.4,00,000/- respectively issued by the defendant. During the course of evidence, plaintiff No.1 produced both the cheques along with return memo. The issuance of cheques have not been denied by the defendant, defendant also failed to prove through reliable and cogent evidence that he returned the invested/principal amount to the plaintiffs, therefore, plaintiff is entitled to recover the same. So far as the recovery of profit amounting to Rs.2,50,000/- p.m. mentioned in the agreement are concerned, the same does not come within the domain of this Court by functioning as special Court under summary chapter, further every kind and nature of civil action cannot be instituted under order 37 C.P.C. and claim of plaintiff regarding recovery of profit amounting to Rs.2,50,000/- p.m.

is not maintainable in this suit. This issue is answered as accordingly.

In view of discussion on above issues, I am of the considered view that the plaintiffs have been able to substantiate their claim; as such suit of the plaintiffs is hereby decreed as per prayer clause-A. Plaintiffs are entitled to recover a sum of Rs.39,00,000/- with 6% markup per annum as per rules from the date of institution of the suit. Let such decree be prepared.”

2. Learned counsel for the appellant had based the present appeal primarily on the assertion that no leave to defend application was ever considered by the Court prior to rendering the Impugned Judgment. Learned counsel submitted that the Court had allowed for the amendment of title / pleadings during the pendency of the Suit and thereafter proceeded to decree the same without considering the question of whether leave should be granted to the appellant or otherwise. In addition thereto, the learned counsel argued at considerable length in an effort to demonstrate that the Court has been unable to appreciate the pleadings and evidence in their proper perspective, hence, the Impugned Judgment was in dissonance with the law and merited being set aside forthwith.

3. Syed Abdul Naseer, Advocate argued on behalf of the respondent Nos. 2 and 3 and demonstrated from the record that the issue of leave was not only heard by the Court but the same was decided and the appellant was granted unconditional leave to defend the Suit. Learned counsel demonstrated from the record that every conceivable opportunity was availed by the appellant to present his case and that the Impugned Judgment had been delivered upon consideration of all the evidence and arguments material in such regard. Learned counsel submitted that the Impugned Judgment was in accordance with the sound principles of adjudication, hence, ought to be maintained and upheld.

4. We have considered the arguments arrayed before us and have also undertaken a scrutiny of the R&P of the Suit. The point for determination, in pursuance of Order XLI rule 31 CPC, is hereby framed to determine whether the appellant was precluded from presenting his case in the Suit.

5. It is considered appropriate to record at the very onset that the learned Judge had granted unconditional leave to defend to the appellant, as is apparent from the order dated 25.01.2016. This fact is demonstrated from a bare perusal of the R&P of the Suit and negates the basic argument of the appellant, that no leave was ever considered or granted thereto.

It is noted from the diary sheet dated 24.04.2017, that the application for amendment of pleadings was allowed and the record of proceedings for the very next date, being 28.04.2017, demonstrates that the amended pleadings were filed in the presence of the learned counsel for the appellant, who received a copy of the same and sought time for filing an amended written statement.

It is gleaned from the R&P that the learned counsel for the present appellant sought time on successive dates for filing an amended written statement and subsequently filed the same on 04.05.2017, when such was recorded and the matter was adjourned for filing of amended proposed issues.

On several subsequent dates the learned counsel for the present appellant chose to remain absent, however, the Court graciously adjourned the matter on each successive date in order to ensure the representation of the present appellant at the time when issues were to be framed. It is noted from the diary sheet dated 11.05.2017 that the issues were settled in presence of the learned counsel for the present appellant and the respondents, where after, the matter was adjourned for filing list of witnesses and documents etc.

The R&P demonstrates that the evidence was led by all the parties extensively and after consideration of the same, the Court delivered the Impugned Judgment. The Impugned Judgment has exhaustively considered the evidence led there before and has appropriately highlighted the cross-examination wherein the claim there before was substantiated.

6. It is our deliberated view that the appellant was provided every opportunity, permissible thereto under the law, to substantiate his case in the Suit and that no infirmity has been demonstrated in the process conducted by the learned Judge. The basic argument of the appellant, that no leave was granted thereto, already stands negated by the record and, on the contrary, it is demonstrated before us that the extensive process of adjudication, culminating in the Impugned Judgment, had the active participation and presence of the appellant / appellant's counsel.

7. It is our considered view that the learned Court has precisely framed the issues and exhaustively considered the evidence led there before prior to culminating its findings in the well-reasoned judgment. Learned counsel for the appellant has failed to demonstrate any infirmity with respect to the Impugned Judgment, hence, the same is hereby upheld and maintained. The present appeal, along with pending applications, is hereby dismissed with no orders so to costs.

JUDGE

JUDGE