

IN THE HIGH COURT OF SINDH AT KARACHI

**IInd Appeal No.43/2013**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Appellant : Lillian D'Souza through  
Mr. Javed Akbar Bhatti, Advocate.  
Respondent No.1 : M/s. Travel Waljis (Pvt.)Ltd. (Nemo)  
Respondent No.2 : VIth Sr. Civil Judge, South, Karachi.  
Respondent No.3 : Vth Addl. District Judge, South Karachi.

Date of hearing : **22.10.2018**

Reasons/Decision: **19.11.2018**

**JUDGEMENT**

**NAZAR AKBAR, J.** The appellant through this IInd Appeal has challenged the judgment and decree dated **29.02.2012** and **10.3.2012** passed by VIth Senior Civil Judge Karachi South in Civil Suit No.990/2007 whereby the suit filed by the Appellant was dismissed and the dismissal was upheld by Vth Additional District Judge in Civil Appeal No.98/2012 by judgment and decree dated **19.1.2013** and **28.1.2013** whereby the appeal was also dismissed.

2. Briefly stated the facts of the case are that the Appellant filed suit No.990/2007 before the VIth Senior Civil Judge Karachi South for recovery of Rs.576,700/- alongwith interest/markup against Respondent No.1 stating therein that she deals in Car Rental business under the name and style of LEON's Transport Services, whereas Respondent No.1 is a travel agent and Tour Operator. She provided the services of two cars bearing Nos.ACG-858 & AFY-750 to Respondent No.1 and submitted bills to him since November, 2005 to

November, 2006 but the same were not paid by Respondent No.1. It was averred that her husband was also in the employment of Respondent No.1 and he was assured by Respondent No.1 for early payment, as such services for rent a car was continuously provided by the Appellant till November, 2006, however, Respondent No.1 withheld payments for the said period, therefore, the Appellant stopped further services to Respondent No.1 w.e.f. 21.11.2006. Thereafter the Appellant requested Respondent No.1 for payment of outstanding amount but Respondent No.1 did not pay the same, therefore, the Appellant sent legal notice dated 29.10.2007 to Respondent No.1 and subsequently she filed said suit.

3. Respondent No.1 contested the suit and filed written statement wherein he denied the claim of the appellant. Respondent No.1 stated that husband of the appellant collected the amount in respect of payment of services of rental cars but he has not perhaps delivered the same to the appellant due to which he was terminated from his services and husband of the appellant has to pay an amount of Rs.24,66,330/- to them.

4. After framing issues, recording evidence and hearing the learned counsel for the parties the trial Court dismissed the suit filed by the Appellant by judgment and decree dated **29.02.2012** and **10.3.2012**. The Appellant filed Civil Appeal No.98/2012 before the V-Additional District Judge, Karachi South which was also dismissed by order and decree dated **19.01.2013**. The appellant has preferred the instant second appeal against dismissal of her first appeal.

5. I have heard learned counsel for the appellant and perused the record.

6. Learned counsel for the appellant has failed to advance a single contention by referring to the evidence in the impugned judgments that the two Courts below have failed to determine any issue of law between the parties or there has been any substantial error as provided by the Code of Civil Procedure in passing of judgments impugned in this second appeal. After reading the judgment of the appellate Court wherein the appellate Court has observed in conformity with the findings of the trial Court that the appellant claimed to have provided car rental services to the Respondent could not even establish the very fact that she has been running any business by the name and style of LEON's Transport Services. She never had any contract in writing for rendering the services with the Respondent. The initial burden of proof of three issues i.e (1) Whether the plaintiff deals in car rental business; (2) Whether there was any business between the parties since 2002 to November, 2006; (3) Whether respondent has ever submitted bills to the defendants, was not discharged by the appellant. The appellant has even failed to prove the delivery of the legal notice to the respondent.

7. In view of above the facts, since no illegality or infirmity in any of the judgments of the two Courts below, consequently this IInd Appeal was dismissed alongwith pending application(s) by short order dated **22.10.2018** and above are the reasons for the same.

JUDGE

Karachi  
Dated:19.11.2018

Ayaz Gul/P.A