

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

1st Appeal No.34 of 2018.

Ghulam Hyder	-----	Appellant.
	Vs.	
Asif Ali Khyber	-----	Respondent

Date of hearing & decision: 21.09.2020

Mr. Shahzad Ali Shah advocate for the appellant.
Mr. Farhad Ali Abro advocate for the respondent.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this appeal under Section 96 CPC, the appellant has impugned the order dated 19.3.2018 and decree dated 24.3.2018 passed by learned Additional District Judge, Matiari in Summary Suit No.3 of 2017.

2. From the perusal of impugned order dated 19.3.2018, it reflects that the respondent filed a Summary Suit No.03 of 2017 [Asif Ali Khyber vs. Ghulam Hyder for recovery of Rs.10,00,000/- in the Court of Additional District Judge, Matiari. Upon service, the appellant applied for leave to defend, but the same was dismissed being hopelessly time-barred and the suit of respondent / plaintiff was decreed as prayed in the sum of Rs.10,00,000.

3. Syed Shahzad Ali Shah, learned counsel for the appellant contends that the order and decree dated 19.3.2018 and 24.3.2018 respectively besides being erroneous have been passed against the law; that the judgment and decree passed in violation of Article 10-A of the Constitution; it is submitted that learned trial court without giving an opportunity of hearing to the appellant has passed the impugned judgment and decree, which is not sustainable under the law and is liable to be set aside; besides that he put all his defence in the application for leave to defend but, the same could not be considered while passing the impugned judgment and decree; in support of his submissions, he relied upon the Promissory Note dated 5.11.2016 and submitted that the very document does not bear his signature, thus his case has been highly prejudiced by the decision of learned trial court which needs attention of this court; that the promissory note in question was a forged document and on the basis of such document the

Summary Suit under Order XXXVII, C.P.C. could not have been decreed without hearing him. It was also argued that respondent had obtained the decree by fraud and misrepresentation of facts and that the trial court lacked jurisdiction. He prayed for setting aside the impugned judgment and decree passed by learned trial court in the aforesaid matter.

4. I have considered the submissions of learned counsel for the parties, gone through the record and perused the relevant law on the subject as well.

5. It is settled law that the proceedings under Order XXXVII, Rules 2 & 3, C.P.C. are summary in nature; however, the learned trial court heavily relied upon the case of "Naeem Iqbal v. Mst. Zarina" (1996 SCMR 1530) and non-suited the appellant on the premise that the appellant had not been able to apply for leave to appear and defend the suit within the period as envisaged in Article 159 of the Limitation Act.

6. I have noticed that the appellant has categorically stated in the application for leave to defend that fraud was committed with him by the respondent in terms of Promissory Note dated 5.11.2016 which was fraudulently and invalidly prepared in his favour to obtain decree which needs to be looked into by the learned trial court in its true perspective without prejudice to his earlier findings on the subject.

7. When confronted with the aforesaid factual aspect of the case, learned counsel representing the respondent has candidly conceded and prayed for directions to the trial court to take a fresh decision on merits.

8. In view of the above, by consent of the parties, the impugned order dated 19.3.2018 and decree dated 24.3.2018 passed by learned Additional District Judge Matiari in Summary Suit No. 03 of 2017 is set aside. The matter is remanded to learned trial court for fresh decision on merits and after recording evidence of the parties within one month from the date of receipt of this order.

9. This appeal stands disposed of in the above terms.

JUDGE