

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.462 of 2013
[Sajid Ali Qureshi vs. Saleem Dawood]

Date of hearing : 27.10.2020

Sajid Ali Qureshi
(Plaintiff) : Through Mr. Muhammad Tariq,
Advocate.

Saleem Dawood
(Defendant) : Nemo for Defendant.

JUDGMENT

Muhammad Faisal Kamal Alam, J: This action at law has been filed against the Defendant for monetary claim. Plaint contains the following Prayer Clause_

“In view of circumstances of the facts mentioned above that this Hon’ble Court may be pleased to pass judgment and decree in favour of plaintiff against the defendant as under: -

- a) To direct the defendant to pay Rs.60,00,000/- along with accepted profit of Rs.20,00,000/- total amount Rs.80,00,000/- to the plaintiff along with mark up at the rate of 16% at bank rate per annum.*
- b) To direct the defendant to pay damages Rs.1,00,00,000/- as plaintiff suffered mental agony / disturbance and losses in his business.*
- c) Cost of the suit.*

d) Grant any other relief(s) which this Hon'ble Court may deem fit and proper in the interest of justice in view of the circumstances of the case."

2. Several notices were issued to Defendant but he did not contest the suit. Record shows that vide Diary of Assistant Registrar (O.S) dated 18.02.2014, a Vakalatnama (by Dr. Shah Nawaz, Advocate) was filed on behalf of Defendant and two weeks' time was given to him for filing of Written Statement but the Written Statement was not filed; then finally on 27.05.2014, Defendant was debarred from filing of Written Statement and the suit was directed to be fixed for final disposal.

3. The record further shows that Plaintiff pursued the matter diligently. Plaintiff filed his Affidavit-in-Ex Parte proof but was also examined as PW-1 and he led the evidence in support of his claim; he produced several documents, that is, from Exhibit PW-1/2 to Exhibit PW-1/13. Besides Plaintiff, one Faiz-ul-Hassan son of Syed Tayaab Hassan, Sub-Inspector was also called as Court witness-Exhibit C.W-1, who also produced documents from Exhibits CW-1/1 to CW-1/4.

4. The evidence has been carefully examined. Plaintiff is an Overseas Pakistani having Canadian Nationality. He has invested an amount of Rupees Six Million in the Project of Defendant by the name '*Jinnah Town*'. In lieu of investment of Plaintiff, he was issued some plots in the said Housing Project and the Allotment Orders were also issued, which are Exhibited as Exhibits PW-1/6, PW-1/6-A, PW-1/6-B and PW-1/6-C. In the intervening period, it transpired that No Objection Certificate (NOC) of the said Housing Project has been cancelled by the government functionary. It is then Plaintiff demanded his money back as also averred in paragraph-6 of the plaint.

5. Finally Defendant handed over different cheques to Plaintiff amounting to Rs.6,000,000/- (rupees six million only), however, upon presentation all of them, were dishonored except cheque No.A168126 (*Exhibit PW-1/9 at page-59 of the evidence file*). With regard to one more cheque, bearing No.10711571 drawn on Metropolitan Bank Limited for Rs.49,72,500/-, a FIR No.984 of 2011 was lodged under Section 489-F of Pakistan Penal Code [PPC] against Defendant. Plaintiff produced photocopy of this cheque along with Bank Advice (Memo) of Habib Metropolitan Bank Limited of the said Account, which stated that “**Funds Insufficient**”. The original of this cheque was in the Police Custody and deposited in the Malkhana in which fire broke out and some record was destroyed including the above cheque. This fact was corroborated by the above named Police Officer, who was summoned as Court witness. The said witness has verified the above position and also produced his Reports, which are exhibited as CW-1/1 and CW-1/2. From the record of Criminal Case, it also transpires that present Defendant was an absconder.

6. On last date of hearing, a Report of Bank of Khyber was also perused, which was filed in the intervening period (*presented on 24.09.2019*), in response to the Court Notice, wherein the Bank of Khyber has confirmed that Defendant was operating Account together with one Muhammad Ashraf son of Muhammad Zaman.

7. The above evidence sufficiently proves the case of Plaintiff to the extent that all cheques were given for consideration, which were dishonored except the above *cheque No.A168126*, for which the Bank Advice/Memorandum states that ‘*Payment stopped by drawer*’. **This cheque is of 20-10-2008 for rupees five lacs, ninety eight thousand, eight hundred and seventy five**, whereas, as per the above Bank Report, the Bank Account was closed on 22-8-2017 due to Audit Objection. Since the above

cheque was issued before closure of Account and was not dishonoured, thus, Plaintiff was not entitled to the above amount; *secondly*, no evidence is led that the above cheque was stopped with a dishonest intention; *thirdly*, there is no tangible information about the nature of audit objection of the Bank, otherwise that could have been made basis for an adverse finding against Defendant.

8. Adverting to the claim of damages, *inter alia*, relating to mental agony and business losses, as averred by Plaintiff.

9. Broadly, damages are of two kinds; general and special. Special damages are awarded only when a party successfully proves actual losses suffered by him / her. In the present case, the Plaintiff has not produced convincing evidence with regard to his claim of Rupees Ten Million towards compensation and damages, which fall within the category of special damages. Notwithstanding this aspect of the case, the Superior Courts have held in number of decisions, *Abdul Majeed Khan versus Tawseen Abdul Haleem-2012 CLD {Supreme Court of Pakistan} page 6*, being one of the leading cases, that if circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal rights exists. Although the claim of Plaintiff has gone unchallenged, but still onus in this regard was not discharged. No tangible evidence is led by Plaintiff about his actual business losses, justifying award of special damages.

However, in the case of *Sufi Muhammad Ishaque versus The Metropolitan Corporation, Lahore-PLD 1996 Supreme Court 737*, the damages vis-à-vis mental agony has been discussed and the conclusion is that they can be no yardstick or definite principle for assessing damages in such cases, which are meant to compensate a party who suffers an injury.

The determination criteria should be such that it satisfies the conscience of the Court, depending on the facts and circumstances of the case.

10. It is a matter of record and undisputed facts that Plaintiff is also an Overseas Pakistani and for the past many years, he is running from pillar to post just to get back his investments from Defendant for which he has not only filed the present civil proceeding but also a criminal case with regard to cheque No.10711571 for Rs.4.9 Million. It is logical to conclude that pursuing the litigation for quite some time, the Plaintiff has suffered a certain degree of mental anguish and incurred cost of litigation. Plaintiff has been deprived of his income / investments.

11. In the above circumstances although I do not agree that the special damages of Rs.10,000,000/- (rupees ten million only) be awarded to Plaintiff but he is at least entitled to rupees one million as general damages.

12. Consequently, Plaintiff is entitled to relief to the extent that Defendant is liable to pay an amount of Rs.6,979,125/- (rupees six million nine hundred seventy-nine thousand one hundred twenty-five only), represented by the above mentioned cheques which were issued and subsequently dishonored, together with 10% markup from the date of institution of suit till the realization of amount. Additionally, Defendant shall pay the above amount of rupees one million as damages to Plaintiff.

13. Suit is decreed in the above terms with costs.

JUDGE

Karachi.

Dated : 27.10.2020

M.Javaid.P.A.