

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

Civil Appeal No.S-03 of 2016

Appellant: Maula Bux Jatoi, through
Mr. Muhammad Afzal Jagirani, Advocate.

Respondent(s): VIIth Additional District Judge, Larkana &
others, through Mr. Khalid Hussain Lakho

State: Muhammad Bux Qazi, State Counsel.

Date of hearing: 24.12.2018

Date of decision: 24.12.2018

J U D G M E N T

KHADIM HUSSAIN TUNIO, J.- This Civil Appeal has been directed against the judgment and decree dated 22.03.2016, passed by the learned VIIth Additional District Judge, Larkana, whereby he decreed the Summary Suit No.10 of 2015 of the appellant for the recovery of Rs.3,100,000/-.

2. Briefly, the facts of the case are that the respondent No.2 filed the Suit Under Order XXXVII Rule 1 & 2 CPC for recovery of Rs.3,100,000/- and contended that the respondent No.2 is a jeweler and the appellant is his customer. In 2014, on the occasion of marriage ceremony of the appellant's family, the appellant purchased gold from the respondent No.2 amounting to Rs.3,600,000/- and only paid an amount of Rs.500,000/- and for the remaining Rs.3,100,000/-, the appellant issued a cheque No. 536701 of account No.CD-0220691 on 02.09.2014. Upon presenting, the bank dishonoured the cheque and affixed a memo

of return with endorsement. Resultantly, the respondent No.2 lodged FIR against the appellant which was disposed of under cancelled class, but later on the respondent No.2 lodged another FIR, No. 61 of 2015, and the same was challenged before the High Court of Sindh and suspended.

3. The learned counsel for the appellant has argued that the impugned judgment and decree passed by the learned respondent No.1 without recording of any evidence is illegal and void; that the learned trial Court miserably failed to appreciate, analyze or even evaluate the material available on record at all; that no substantial material or evidence against the appellant has been brought up; that no transaction had established within the parties, nor was the cheque issued by the appellant, but by the hotel Sapna being a joint account; that no transaction had taken place for the purpose of purchase of gold between the appellant and respondent No.2; that there is no evidence available on record that implies that the appellant was maintaining the account or that he had issued the cheque against the consideration to the respondent No.2, nor that any transaction ever took place between both the parties; that the impugned decree was passed without providing the opportunity of a hearing to the appellant and same is against the spirit of article 10-A of the Constitution of Pakistan.

4. Conversely, learned counsel for the respondents and the State Counsel have supported the impugned judgment and decree.

5. There is no denial of the fact that appellant has failed to file application under Section 148 CPC for enlargement of time for

furnishing requisite security, though application for adjournment has been filed by counsel for the appellant on his behalf for grant of time to furnish the requisite surety on the ground that the appellant is heart patient and was admitted in the hospital for some time as informed by him on telephone that he is not in position to attend the court hearing, therefore he requested for grant of time which was allowed. The appellant has failed to annex any documentary proof regarding illness as well as admission of him in the hospital, being heart patient either with the application for adjournment or with memo of present appeal.

6. On failure of the application for extension in time filed by the appellant, the learned trial Court recorded ex-parte evidence and respondent-plaintiff filed affidavit in ex-parte proof who produced original cheque and memo issued by the concerned bank. It is also noteworthy that even the appellant had not denied issuance of the cheque and his signatures thereon, in his application for leave to appear and defend the suit. The version of the respondent has gone unchallenged and unrebutted as nothing has been brought on the record in the rebuttal of the oral as well as documentary evidence adduced by the respondent/plaintiff in support of his claim. No illegality or irregularity pointed out by the counsel for the appellant in the impugned judgment and decree which has been passed by the learned trial Court after proper application of mind and evaluation of the evidence/material available on the record and decreed the suit of the respondent/plaintiff to which no other exception can be

drawn. This appeal being devoid of merits, therefore, the same was dismissed and impugned judgment and decree was upheld by short order even dated, for which these are the reasons.

JUDGE