

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

## II<sup>nd</sup> Appeal No.16 of 2011

[Pir Shahab Ghous Shah through Legal Heirs versus M/s Matiari Sugar Mills Limited]

Appellant(s) : Through Mr. Sunder Das advocate

Respondent : Through Mr. Aslam Sipio advocate

Date of hearing : 21.10.2022

Date of Order : 28.11.2022  
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### JUDGMENT

**ADNAN-UL-KARIM MEMON, J.-** This second appeal impugns the concurrent findings of the Courts below. The respondent/plaintiff M/s Matiari Sugar Mills had filed a Suit bearing No.416 of 2000 (wrongly mentioned by the trial Court as Suit No.18 of 2007) [*Re: M/s Matiari Sugar Mills Ltd Matiari versus Pir Shahab Ghous Shah*] for recovery of the loan amount of Rs.9,17,252.65/- against the appellant before the Court of learned V<sup>th</sup> Senior Civil Judge Hyderabad on the premise that appellant/defendant had availed a loan facility from the plaintiff/respondent; however, he failed to clear the same along with mark-up though he executed the stamp paper, confirming that an amount of Rs.8,65,197.54/- is outstanding against him. The learned trial Court after due process of law and hearing the parties decreed the suit, as prayed vide Judgment dated 17.10.2008 & Decree dated 20.10.2008, against which the present appellant preferred Civil Appeal No.158 of 2008 [*Re: Pir Shahab Ghous Shah versus M/s Matiari Sugar Mills Limited*] before learned VII<sup>th</sup> Additional District Judge Hyderabad; however, same was dismissed vide Judgment dated 28.10.2010 and Decree dated 08.11.2010, hence he preferred the instant second appeal. During the pendency of this second appeal, the appellant had expired and his legal heirs were joined in compliance with the order dated 02.09.2016.

2. Mr. Sunder Das learned counsel, though at the initial stage represented the appellant who passed away during the pendency of the appeal and his legal heirs were brought on record. However, learned counsel assisted and briefed this court with the narration that the judgments and decrees passed by both Courts below are against facts, law, and equity; that

learned trial Courts had failed to determine the jurisdiction under the negotiable instrument, as provided under order 37 of CPC and plaint ought to have returned to the respondent to file before the learned District Judge and before the learned senior civil court. Even the learned appellate court failed to determine the points of determination while deciding the appeal without discussing the evidence on record; that decision of learned Appellate Court is against the provisions of order 41 rule 31 CPC; that learned Appellate Court failed to assign any valid reason or justification in dismissing the appeal; that decisions of Courts below are in slipshod, nonspeaking and without any application of judicious mind; that learned Appellate Court had committed illegality in repeating the same reasoning of the judgment and decree of learned trial Court; that in the plaint respondent claimed to be limited company; however, respondent failed to produce any document to establish the said position and the learned trial Court had no jurisdiction to entertain and decree the suit, as such decisions of learned lower Courts on Issue No.3 is result of misreading and non-reading of pleading and evidence on record; that admittedly appellant is agriculturists and heavy burden was upon the respondent to produce and prove entire accounts of transactions from 1986 which the respondent failed; that the suit was filed by unauthorized person and the learned trial Court committed illegality to entertain the suit; that admittedly no loan was advanced to appellant on 20.04.2000; that alleged acknowledgment Ex-26/A does not contain date on stamps and promissory notes Ex-26/3 and 4, all the stamps of which are cancelled, are bogus and do not prove the case of respondent. Per learned counsel, lower courts committed error in basing their judgments and decrees on the said paper; that Ex-56 proves the case of the appellant, which shows that the appellant had obtained the loan of Rs.1,00,000/- only in the year 1996 and then the appellant had supplied sugarcane, etc. worth of Rs.1,40,348.85 to respondent; however, it was not considered by the learned Courts below. He prayed for allowing this appeal and setting aside impugned Judgments and Decrees.

3. Mr. Aslam Sipio learned counsel for the respondent; however, opposed the appeal and submits those concurrent findings available in the matter, which does not require any interference by this Court; that appellant/defendant executed stamp paper in favor of respondent/plaintiff whereby he admitted that an amount of Rs.8,65,197.54/- was/is outstanding against him; he added that due to non-payment of the loan amount, it accumulated to Rs. 9, 17,252.65/- on 31.8.2000; that decisions of both Courts below are based on sound reasoning. He prayed for the dismissal of the present appeal.

4. I have heard the learned counsel for the parties and perused the record with their assistance.

5. The questions involved in the present proceedings for determination are whether the late Pir Shahab Ghous Shah/appellant obtained a loan facility for the amount of Rs. 9, 17,252.65/- from M/s Matiari Sugar Mills Limited and whether the appellant executed a promissory note in favor of the respondent to pay off the loan in terms of the negotiable instrument.

6. It appears from the record that the respondent filed suit for recovery of the Loan amount of Rs. 9, 17,252.65/- against the appellant before the learned Senior Civil Court Hyderabad on 12.10.2000, with the narration that the respondent- Sugar Mills granted the loan to the appellant from time to time, however, he failed to clear the outstanding amount of loan in spite approach by the respondent. Further respondent narrated that in April 2000, the appellant promised to pay the loan amount to the respondent and gave an undertaking, acknowledging and confirming the sum of Rs.8,65,197.54/- outstanding against him, however, he failed to pay, compelling the respondent to file Suit for Recovery of Loan. The appellant filed the written statement and denied the allegations with the factum that he only obtained the loan amount of Rs. 100000/-in the year 1996 and the respondent obtained his signatures on the printed form, and promissory note at the time of grant of the loan amount of Rs. 100000/-. The learned trial court on divergent pleas of the parties framed seven issues and recorded evidence of the parties.

7. The respondent examined Dost Muhammad resident director, who produced stamp paper containing Acknowledgement of Loan, however that stamp paper does not contain any date and in cross-examination, he deposed that since he was competent authority as such there was no requirement of submitting authorization letter to file suit. So far as a promissory note is concerned, he deposed that the appellant signed the promissory notes in his presence, one amounting to Rs. 06, 26-50-, executed on 30.9.1997 and the second one amounting to Rs. 865197/54 on 20.4.2000. The second witness Syed Anwar Shah Can manager was examined and he supported the version of Dost Muhammad and deposed that he did not know whether the stamp paper contained no date. He admitted that the appellant undertook to return the loan in his presence and he was the witness of that undertaking. The third witness Abdul Subhan deputy Can manager was examined, he also supported the version of Dost Muhammad

and deposed that he was not aware who purchased the stamp paper and said probably it could be the respondent.

8. The evidence of the appellant explicitly shows that put his signature on loan documents i.e Ex. 26/1 and 26/3 voluntarily and the same was confronted to him in court and he admitted his signature on it. Finally denied to have obtained the said loan amount but admitted that he obtained the loan of Rs.100000/- from the respondent. Since the appellant admitted that he signed the loan documents voluntarily. Primary in such a situation burden shifted upon him to prove the contrary, which he failed to do so by producing convincing evidence to rebut the allegations leveled against him. So far as mere denial is concerned, it is not sufficient to discard the evidence brought on record by the respondent by producing three witnesses who supported the case of the respondent.

9. From the above evidence brought on record, it could be inferred that the entire case of the respondent is based on two promissory notes and according to Section 4 of the Negotiable Instruments Act, a promissory note is an instrument in writing (not being a banknote or a currency note) containing an unconditional undertaking, signed by the maker, to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of, a certain person, or the bearer of the instrument. An instrument that fulfills all the conditions mentioned in Section 4 of the Negotiable Instruments Act would be termed a promissory note.

10. Ordinarily, a promissory note simply contains a promise to pay and nothing else. The true import of the words "on demand" is that the debt is due and payable immediately. The endorsement does not mean that it is not payable immediately or without any demand.

11. The trial court, in this case, primarily has tried the suit as an ordinary suit and not in a summary chapter based on the negotiable instrument; however it was the choice of the respondent not to invoke special jurisdiction under Order XXXVII Rules 1 & 2 C.P.C. It is well settled that whenever any jurisdiction is conferred to any court of law subject to several prerequisites, then such prerequisites should be complied with. In this case, the appellant had not objected to the jurisdiction of the learned trial court to entertain or try the suit.

12. Here the appellant also admitted that he signed the blank documents, and the amount that ought to have been paid was Rs.100000/- and not to the extent of Rs.8,65,197.54/-, per appellant that has been

manipulated by the respondent. The PWs supported the case of the respondent that the appellant availed loan facility provided by the respondent, which he failed to pay off compelling the respondents to institute suit for recovery of the loan amount of Rs.9,17,252.65, which was decreed on 20.10.2008. The appellate Court concurred with the view of the learned trial Court on the premise that the appellant obtained a loan amount of Rs.8,65,197.54/- from the respondent and executed documents acknowledgment of loan and promissory notes in presence of witnesses Syed Anwar Shah and Abdul Subhan, who were produced before the trial Court.

13. There are concurrent findings against the appellant. The appellant contested the matter and could not convince the learned Trial Court on the issue of the loan obtained by him from the respondent. He executed the promissory note which was produced in evidence and nothing could be brought on record to suggest contrary to the stance of the respondent. The Appellate Court concurred with the view of the learned Trial Court and dismissed the appeal of the appellant, therefore, requires no interference of this Court.

14. In view of the foregoing, the Judgment dated 17.10.2008 and decree dated 20.10.2008 passed by the learned Trial Court and Judgment and Decree dated 28.10.2010 & 08.11.2010 passed by the learned VII-Additional District Judge Hyderabad are maintained, and this appeal is dismissed with no order as to costs.

JUDGE

Sajjad Ali Jessar