

IN THE HIGH COURT OF SINDH, KARACHI

Ist Appeal No. 107 of 2018

Date

Order with signature of Judge

**Present: *Mr. Justice Muhammad Junaid Ghaffar*
*Mr. Justice Agha Faisal***

Appellant: Abdul Mujeeb, in person.

Respondents: Sami-ur-Rehman & Another,
Through Mr. Waqar Ahmed Abbasi,
Advocate.

Date of hearing: 13.10.2022

Date of Order: 13.10.2022.

ORDER

Muhammad Junaid Ghaffar, J: Through this First Appeal, the Appellant has impugned Judgment dated 18.09.2018 passed in Suit No. 45 of 2017 by IVth Additional District Judge, Karachi East, whereby, the Suit filed by the Respondent No. 1 under Order XXXVIII CPC has been decreed.

2. Appellant is present in person and submits that his Counsel is not available, whereas, he cannot read English; however, according to him the impugned Judgment is not proper and legal inasmuch as the Appellant has been acquitted in Criminal Case registered at the behest of Respondent No. 1 under Section 489-F PPC in respect of dishonor of cheques; hence, it is liable to be set-aside.

3. We have heard the Appellant and perused the record. It appears that the Suit filed by Respondent No. 1 was premised on some postdated cheques issued by the Appellant which according to the record available were dishonored; hence, a Suit under Order XXXVII CPC was filed for

recovery of Rs. 29,00,000/-. The learned trial Court issued summons whereupon the Appellant entered appearance and filed an application for leave to defend. The said application was allowed by the trial Court vide order dated 05.04.2018 subject to furnishing solvent surety of Rs. 29,00,000/- however, the Appellant failed to furnish the requisite surety within the stipulated time, therefore, his defence was struck off and was declared Ex-parte. Thereafter, Respondent No. 1 filed his Affidavit-in-Ex-parte Proof. The only argument which has been made by the Appellant appearing in person is that since he has been acquitted in the criminal case, therefore, the impugned Judgment is liable to be set aside. However, we are not inclined to agree with his submission inasmuch as mere acquittal in a criminal case does not absolve the Appellant from the liability already adjudged by way of Judgment and Decree, whereas, the Appellant despite grant of leave to defend application failed to secure the amount and never made any efforts to contest the case on merits. Even no sincere efforts were made to seek enlargement of time for deposit of security as ordered by the trial Court. The Respondent No. 1 produced its evidence which has gone unrebutted and no case for indulgence is made out. It is needless to state that preponderance of evidence in a criminal matter, per-se cannot be applied or appreciated ipso facto in a civil case, which has its own parameters for appreciation for the reason that criminal cases require proving a case beyond reasonable doubt. There are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires an higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to maintain

safe administration of criminal justice out of abundant caution¹. It is well established principle of law that a party must succeed on the strength of his own case and cannot be allowed to take advantage of the weakness of the other side². In civil proceedings an issue is to be decided by preponderance of evidence and in case where there is a word against a word it is the party on whom lay the onus must fail³.

4. In view of hereinabove facts and circumstances of the case it appears that the learned trial Court has passed an appropriate reasoned judgment, whereas, the conduct of the Appellant has all along been to avoid honoring his commitment; hence, no case for indulgence is made out, and therefore, by means of a short order in the earlier part of the day this Appeal was dismissed and these are the reason thereof.

J U D G E

J U D G E

Arshad/

¹ The District Police Officer v Amir Abdul Majid (2021 SCMR 420)

² Kazi Noor Muhammad v Pir Abdul Sattar Jan [PLD 1959 (W.P) Karachi 348]

³ ALLAH DIN v HABIB (PLD 1982 SC 465)