IN THE HIGH COURT OF SINDH AT KARACHI

I.A No. 77 of 2019

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Arshad Hussain Khan

Ghulam Bahauddin Khan
Appellant No.1:

Imaduddin Khan
Appellant No.2: Syed Mohsin Abbas Shah, Advocate for the Appellants.

Muhammad Islamuddin
Through LR's.
Respondents: Nemo for Respondents

Date of hearing: 02.03.2023.

Date of decision: 06.03.2023.

J U D G M E N T

IRFAN SAADAT KHAN, J. The instant First Appeal has been filed impugning the order dated 17.09.2019 passed in Civil Suit No.03/2015.

2. Briefly stated, the facts of the case are that the appellants entered into a deal of purchasing 21 buffaloes from Muhammad Islamuddin (now deceased) in the year 2012 for a sale consideration of Rs.27,81,000/-, out of which an amount of Rs.6,59,000/- was given in cash, whereas in respect of the balance amount of Rs.21,22,000/- six postdated cheques were given to be encashed after six months of the deal. These six cheques were meant to be encashed starting from the month of

February, 2013 and ending in the month of July, 2013 respectively. However, when the first two cheques, pertaining to the period of February & March, 2013 were deposited in the bank account, same were dishonored with the remarks '*insufficient fund*'. Thereafter the Respondents not only instituted present suit for recovery against the present appellants but also registered two FIRs bearing No.117/2013 at P.S Sir Syed Town in respect of cheque No.0065806 amounting to Rs.4,63,000/- and another FIR bearing No.649/2013 at P.S Gulshan-e-Iqbal again in respect of Rs.4,63,500/-. So far as FIR's are concerned it is brought on record that the appellants got bail in respect of these matters. However in respect of the suit filed against the appellants by the Respondent, same was decreed in the sum of Rs.22,18,000/- payable within 30 days from the date of decision and in case of default the Respondent would also be entitled for 10% annual markup. It is against this order that the present First Appeal has been filed.

3. Syed Mohsin Abbas Shah, Advocate has appeared on behalf of the Appellant and stated that the order passed by the learned Judge was not in accordance with law as according to him no doubt six cheques were given by the present appellants to the Respondent but these cheques were given as security and secondly only two cheques were bounced and that there was neither any adverse observation made by the learned Judge nor any action taken in those four cheques against the appellant by the respondent. Therefore according to him the order of the learned Judge, in respect of the entire amount, is legally and factually incorrect hence the same may be set aside.

4. Learned counsel invited our attention to the cross-examination, available at page 85 of the file of the son of the Respondent by categorically mentioning that only two cheques were bounced whereas the other four cheques were not even presented. According to the learned counsel this aspect has totally been ignored by the learned Judge while passing the impugned order. The learned counsel further stated that it was on the insistence of the Respondent that the six cheques, being the guarantee, were given which were required to be returned after receipt of the full payment but the Respondent with mala-fide intention deposited the same in the bank and when these cheques were dishonored, illegally lodged the FIRs against the present appellants. He stated that it was the appellants who requested the bank to stop payment of the cheques as the appellants were arranging the funds so that the deal could be finalized but the Respondent without waiting presented the cheques to the bank, which were given as security/guarantee, without informing the appellants and upon their dishonor not only filed a civil suit but also lodged FIR's against the appellants. He further stated that the entire amount has been paid by the appellants to the Respondent in cash and no amount now is outstanding against the appellant payable to the Respondent. He stated that in view of these facts the impugned order may be set aside and the judgment and decree may be set aside.

5. None present for the Respondent, however their objections are available on the record.

6. Matter has been heard, record has been perused.

7. Perusal of the order clearly reveals that there is no denial either on the part of the appellants or the Respondents with

regard to entering into a business transaction in respect of the sale of 21 buffaloes for a sale consideration of Rs.27,81,000/-. It is also matter of record that a sum of Rs.6,59,000/- was paid in cash and for the remaining balance amount of Rs.21,22,000/- six postdated cheques were given by the present appellants to the Respondents. It is also a matter of record that two cheques were presented and both these cheques were dishonored on the ground that '*no sufficient funds*' were available with the bank. It is also a matter of record that during the cross-examination the appellants have accepted that when the cheques were given by the appellants to the Respondents there was no amount lying in the bank at that moment. Moreover, it is also a matter of record that no attempt was made by the appellants to deposit amounts in the bank after handing over the cheques to the Respondents, to make sure that in case the cheques are presented the same were not dishonored. It was averred by the learned counsel for the appellants that the balance amount of Rs.21,22,000/- was given by the Appellants to the Respondents by way of cash and the cheques were only given as guarantee/security.

8. A question was asked from the learned counsel for the appellants that what is the date when the cash amount was given by the appellants to the Respondents and who is the witness in respect thereof. No plausible reply in this regard was available with the counsel for the appellants. Moreover, the record is totally silent in respect of this assertion that as to when the appellant has handed over the balance cash amount, if any, to the Respondents and who is the witness of the said payment and whether the appellants have any document, receipt etc., in respect of the balance amount. No evidence, material, receipt has

been produced either before the trial Court or before us to substantiate the claim of giving balance cash amount to the respondents by the appellant.

9. The record further reveals that even the cheques handed over do no mention that they were given as security/guarantee, which is an admitted position. Though the appellants have obtained bail in the criminal matters in respect of the FIR's lodged against them but this matter has to be dealt with in view of the facts obtaining in the instant matter. The plea taken by the learned counsel for the appellants that no adverse inference could be drawn in respect of the remaining four cheques as these were not presented to the bank, suffice it to say that when it is an admitted position that in the bank there was no amount available for realization there was no need to deposit those four cheques in view of the situation that the first two cheques were bounced on account of '*insufficient funds*'. In our view, had these cheques being presented, in view of the admitted fact that no sufficient amounts were available in the bank, these four cheques would have met with the same treatment thereof. Hence in our view, the Respondents were fully justified in not depositing these four cheques, after the clear admission of the appellant that there were '*no sufficient fund'* available in the bank account.

10. It is also noted that though an intimation has been given by the appellants to the bank for stop payment but that was given in the year 2014 whereas all the six cheques pertained to the year 2013, which also belies the assertion of the appellants with regard to the fact that since balance payment has been made and that the cheques were given as security/guarantee, hence

instructions were issued to the bank for stop payment. This stance of the appellants in our view goes against them and shows malafide on their part and belies their own assertion that they have made the balance payment in respect of the deal in cash subsequently.

11. Hence, in view of the above referred admitted facts and the circumstances as noted in the instant matter, we see no justification to interfere with the order passed by the learned IInd Addl. Sessions Judge Karachi, East in Civil Suit No.03/2015. The order passed by the learned Judge is hereby upheld.

12. The instant appeal is thus found to be wholly misconceived and bereft of any merit and therefore the same is dismissed. Let the decree dated 17.09.2019 be satisfied without any delay.

JUDGE

JUDGE

Karachi:
Dated:06.03.2023.