

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

1st Appeal 52 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection No.1 How this 1st Appeal is in time?
2. For orders on CMA 2742/2023
3. For orders on CMA 2743/2023
4. For hearing of main case

30.10.2023

Mr. Hakim Ali Siddiqui advocate for appellant.

1,2,3 & 4. This appeal assails judgment dated 09.08.2023 rendered by 8th Additional District Judge Hyderabad in Summary Suit No.12 of 2018. The operative findings are reproduced herein below:

10. *This issue was framed keeping in view the statement made in the written statement that suit as framed and filed is barred by law and if so, burden lies upon the defendant. The instant suit was filed on 08.02.2018. It is stated in the plaint of suit that since defendant refused to honour his commitment, the cheque given by him against the liability of plaintiff was presented in the concerned bank and the same was dishonored. The cheque issued is dated 28.02.2017 for which an agreement dated 23.01.2017 was also executed while the suit was filed on 2018 which is within the period of limitation, therefore, this issue is replied in Negative.*

11. *The burden to prove this issue lies upon the plaintiff. The statement disclosed in the plaint that plaintiff had given business loan to the defendant through cheques and cash and for repayment of such loan, the defendant tendered three post dated cheques which fact is not denied by him, therefore, this issues is decided in Affirmative.*

12. *These issues are interconnected, thus are discussed and decided together to avoid repetition. The plaintiff examined himself at Ex.06, he while producing the cheque, which was dishonored, deposed that it was issued by the defendant to repay his liability. He though was cross examined at length but remained unshaken. Even otherwise, the defendant in his chief admitted issuance of cheque by him and if so, the admission made does not need to be proved. He admitted that he paid cash of Rs.230000/- and for remaining amount he issued cheque in the sum of Rs.1500,000/- for which he, though claimed that it was issued as security but nothing like that is proved by him. His claim that he paid Rs.15,00,000/- in cash but no such proof is brought on record nor he stated such fact that in whose presence this amount was paid by him. He produced on record an agreement arrived at in between them on 23.01.2017 which shows that cash of Rs.2,30000/- was paid in which issuance of cheque dishonored is also mentioned. Indeed, it is stated thereunder that the plaintiff would not get the cheque of Rs.1500,000/- dishonored but this statement alone is not sufficient to show that he did not issue such cheque against the liability of plaintiff. This document is produced on record at Ex.08/B, therefore, these issues are answered accordingly.*

13. *In view of discussion held in preceding issues, the plaintiff is found entitled to make good of his claim having been proved beyond any probable doubt, hence this issue is replied in affirmative.*

14. *In view of discussion held in preceding issues, the suit of the plaintiff is hereby decreed however only for principle amount of Rs.15,00,000/- (Rupees Fifteen Lac) against defendant with no order as to costs. Let such decree be prepared in accordance with law.*

Per Learned Counsel, the impugned judgment ought to be set aside as the trial Court did not appreciate the issue of negotiability of the cheque and also failed to appreciate that the cheques were not the entire consideration. Thecounsel insisted that no determination is merited herein unless the record of the case is sought from the trial Court.

Heard and perused. It is considered appropriate to initiate the deliberation by adverting to the counsel's insistence on calling for the record. *Prima facie* perusal of Order XLI rule 11 C.P.C demonstrates that it empowers to Court to call for the record *if it thinks fit to do so*. The stipulation is not a restraint upon the Court but it confers powers, to be exercised *only* if deemed expedient. The counsel failed to make out any case to call for any further record from the trial court and remained unable to substantiate as to why a conclusion could not be drawn from the record made available by the appellant himself.

In so far as the merits are concerned, the counsel was confronted with the narration / observations of the trial Court as particularized supra, and asked as to

whether they were commensurate with the facts; the same could not be denied. Per the deliberated conclusion of the trial court, the issuance of the cheque was admitted as was the fact of dishonor thereof. To such extent it is manifest that nothing further needs to be called for or considered.

Notwithstanding the foregoing, the trial court notes that, the defense pleaded by the defendant (present appellant) could not be corroborated by his evidence. The pertinent evidence is delineated in the impugned judgment and there is absolutely no suggestion that there was any additional evidence that remained to be considered. So the only case of the appellant was that the finding rendered could not have been rested on the evidence relied upon. Once again, such an argument did not mandate for calling of any further record.

The issuance of the cheque is admitted; its dishonor is admitted; the belated excuse for the dishonored cheque could not be corroborated by the evidence and no cavil was ever articulated to the particularization thereof in the impugned judgment; it could not be demonstrated that the impugned judgment could not reasonably have been rested on the rationale relied upon; and finally no infirmity could be demonstrated in the impugned judgment having decreed the suit for the principle amount of the dishonored cheque. Therefore, no case is made out to perpetuate this appeal and clog the docket.

While this Court is cognizant of Order XLI Rule 31 CPC, yet at this stage no case has been set forthwith to entertain the present appeal in view of the reasoning stated above. As a consequence hereof this appeal is hereby dismissed *in limine* along with pending applications.

Judge