

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Muhammad Shafi Siddiqui  
& Jawad Akbar Sarwana JJ

**Fida Muhammad v. Shahnawaz Khan and Another**

**First Appeal No.55 of 2023**

Appellant: Fida Muhammad through Mr.Sohail-ur-Rahman, Advocate

Respondent: Shahnawaz Khan, Nemo

Date of hearing: 27.10.2023

Date of decision: 27.10.2023

**J U D G M E N T**

**Jawad A. Sarwana, J:** The Appellant/Defendant (“Fida Muhammad” / “Fida”) has filed First Appeal No.55 of 2023 aggrieved by the XIth Additional District & Sessions Judge (MCAC) Karachi East (the “trial court”) impugned judgment and decree dated 17.05.2023 passed in Suit No.37/2022 filed on 14.03.2022.<sup>1</sup>

2. The brief facts of the First Appeal are that in 2020, the Respondent/Plaintiff (“Shahnawaz Khan”) extended a loan of Rs.3,600,000 to Fida, who defaulted on the loan payment. Parties entered into an Agreement dated 30.04.2021 (available on pages 137-139 of the First Appeal file)(“the Agreement”). According to the terms and conditions of the Agreement, Fida issued seven cheques and handed over his KIA Sportage to Shahnawaz Khan as security, subject to settlement of the loan amount. The cheques were dishonoured, and Shahnawaz Khan initiated criminal and civil action. The civil action culminated in Summary Suit No.37/2022. Fida applied for leave to defend and contested the claim (“First Application”). On 07.09.2022, the trial court granted conditional leave to defend subject to Fida furnishing solvent surety of Rs.3,600,000 within two weeks’ time. Fida did not attend hearings until almost five months later, on 21.02.2023, when he filed yet

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<sup>1</sup> There is a disconnect in the docket numbers of the suit filed with the First Appeal. The certified copy of the Judgment and Decree dated 17.05.2023 states the lis as “Summary Suit No.37 of 2021”. Whereas a certified copy of the Order dated 17.05.2023 states it as “Summary Suit No.37 of 2022”. Finally, the certified copy of the Appellant/Defendant’s Application under Section 151 CPC and its computer-generated affidavit printed by the Identity Section Management System (ISMS) of the IT Department of the High Court of Sindh lists this lis as “Summary Suit No.37 of 2023”. Thus, there are three different dates of the year of institution of the same summary suit. We have accepted the contents of the impugned Judgment, which mentions that the suit was filed on 14.01.2022, and as such, refer to the suit as “Summary Suit No.37 of 2022” in this Judgment.

another Application under Section 151 seeking unconditional leave to defend as the earlier order of leave to defend granted with the condition of furnishing solvent surety was vacated ("Second Application"). Shahnawaz Khan's summary suit proceeded unchallenged as if no leave to defend was filed. The trial court recorded Shahnawaz Khan's evidence, and on 17.05.2023, the trial court heard Fida's Second Application and final arguments in the summary suit. Thereafter, the trial court dismissed the Second Application vide order dated 17.05.2023, and on the same date, also passed Judgment and Decree dated 17.05.2023. Fida filed the First Appeal before the High Court of Sindh and, pursuant to an Order dated 22.09.2023 passed by an earlier Bench, on 24.10.2023, deposited the decretal amount in this Court.

3. Fida's Counsel claims that Shahnawaz Khan has played fraud on him and has already received the loan amount in cash. When we asked Counsel to demonstrate such payment by documentary evidence, he could not submit any evidence of such cash payment. His entire defence appears to rest on the interpretation of the Agreement. He contended that he had physical custody of KIA Sportage, which, according to the Agreement, was possible only after he had received the entire sum of Rs.3,600,000. Thus, as Fida now had physical possession of the KIA Sportage, it demonstrated that the loan amount had been paid and nothing was outstanding; otherwise, he would not have custody of the KIA Sportage.

4. We have heard the arguments of Counsel and perused the documents available with the Appeal.

5. Fida's Counsel frankly conceded that he has no proof of cash payment, if any, made by his client to Shahnawaz Khan, as submitted by him to this Court. We are not convinced by the arguments advanced by Fida's Counsel that as his client has physical possession of the KIA Sportage this Bench should presume that Shahnawaz Khan has received his dues in cash. There is no evidence of any payment whatsoever. Further, none is pleaded in the First Appeal. On the other hand, Fida has pleaded differently. He has claimed that he has sold the KIA Sportage (paragraph 6 of the First Appeal). We have also perused the impugned Judgment and find the same to be well-reasoned. The summary claim against Fida turned on dishonoured cheques, and the proof of dishonour was annexed to the Plaint. The trial court Judge has rightly observed that the presumption regarding the cheques in question under Section 118 of the Negotiable Instruments Act, 1881, is to be admitted. Fida has not raised any material grounds in this First Appeal to negate such inference. The trial court even took

the more conservative and cautious approach in a summary suit, by not immediately announcing judgment and decree. Instead, the trial court ordered Shahnawaz Khan to file an affidavit in evidence of ex-parte proof before passing judgment and decree. This enabled the trial court to satisfy itself further as to the veracity of Shahnawaz Khan's claim against Fida. No legal grounds or special circumstances are made to set aside the decree and, if necessary, to stay or set aside the execution. Even otherwise, no case is made out to hold that the conditional Order was illegal or unjustified. Be that as it may, the solvent surety is already deposited with this Court. Fida now has to live with its consequences. The learned trial court has not fallen into any error while passing the impugned judgment. The impugned judgment is a speaking order. It is clear that the Court has applied its mind.

6. In view of the above, the impugned judgment and subsequent decree in the summary suit do not suffer from any illegality or material irregularity which calls for any interference. Accordingly, this First Appeal is dismissed in limine, along with all listed applications. The solvent surety deposited with the Court may be released to Shahnawaz Khan subject to him moving a separate application for the satisfaction of the said Judgment and Decree.

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