

IN THE HIGH COURT OF SINDH AT HYDERABAD

RA 12 of 2019 : Murtaza vs. Sheraz Khan & Others
For the applicant : Mr. Farhad Ali Abro, Advocate.
Date/s of hearing : 17.11.2023.
Date of announcement : 17.11.2023.

ORDER

Agha Faisal, J. Briefly stated, the plaint was returned in Summary Suit No.1 of 2016 by the Vth Additional District Judge Hyderabad vide order dated 21.12.2018. The order observes as follows:

"Record further reveals that Iqarnama, on the basis of which the plaintiff has filed the Suit is basically an agreement executed between both the parties in presence of two witnesses with some conditions of payment, wherein defendant No.2 bound himself to pay amount in installments and that binding amounts to promise on the part of defendant No.2 and under the circumstances it was sufficient to bring such document out of scope of section 4 of Negotiable Instruments Act, 1881 and on this point the case of Faridullah Khan Vs Masood Asghar Mian (2017 CLC 1736 Sindh) has been referred in support of arguments by the learned counsel for the defendants, wherein Honourable High Court held that "Negotiable instrument under S.4 of Negotiable Instruments Act, 1881, required that it should be an unconditional promise for making payment. Agreement had its own meaning and definition and if there was a promise to pay certain amount with reference to 'agreement', it was sufficient to bring such document out of the scope of S.4 of Negotiable Instruments Act, 1881---Such was not a short cause within the ambit of O.XXXVII, C.P.C and holder of such document (plaintiff) was required to file a regular Suit in the Court having jurisdiction---Suit was dismissed in circumstances".

No doubt, the negotiable instrument viz. Cheque is of Rs.2600,000/- and admittedly the instant Suit has been filed on the basis of Iqarnama and not on the basis of above cheque and such fact is admitted by the plaintiff in his deposition at Ex.19 and this ground alone is sufficient to bring such a document out of scope of Section 4 of Negotiable Instruments Act and Suit is not maintainable on the point of jurisdiction, which issue always require prime consideration because it may turn a decision into core non-judice and the Suit on the basis of original promissory note could be filed before Civil Court under its ordinary jurisdiction but not under Special Jurisdiction of Order XXXVII C.P.C. The plaint is returned to the plaintiff for presentation of the same before the Court of competent jurisdiction. Order accordingly."

Instead of presenting the plaint before the court of competent jurisdiction, the present revision was preferred and it has remained pending for more than four years.

Learned counsel was queried as to whether the narrative recorded vide the impugned order was in consonance with the facts and he replied in the affirmative. Counsel's attention was drawn to content the relevant memorandum of plaint and the prayer clause therein and queried as to whether it corroborated the finding recorded vide the impugned order; once he again he responded in the affirmative.

Under such circumstances learned counsel remained unable to demonstrate any infirmity in respect of the impugned order and also failed to show that it could not be rested upon the rationale relied upon.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law¹ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with

¹ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum. In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed along with listed applications.

Judge

A.Rasheed/stenographer