ORDERSHEET
THE HIGH COURT OF SINDH CIRCUIT BENCH HYDERABAD
Ist Appeal No.35 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE

1.For orders on CMA No.1092/2023.
2.For orders on CMA No.986/2023.
3.For orders on CMA No.2599/2022.
4.For orders on CMA No.1247/2022.
5.For hearing of CMA No.1465/2023.
6.For hearing of CMA No.1503/2021.
7.For hearing of Main Case.

Appellant	:	Through Mr. Zubair Ahmed Khuhawar advocate
Respondent	:	Through Mr. Nusrat Mehmood Gill advocate
Date of hearing	:	19 July 2023
Date of Decision	:	13 October 2023

J U D G E M E N T

MOHAMMAD ABDUR RAHMAN, J. - This Appeal has been maintained by the Appellant under Section 96 of the Code of Civil Procedure 1908 against the Judgment and Decree dated 6 May 2021 passed by Ist Additional District Judge Tando Adam in Summary Suit No.25 of 2019, decreeing the Suit filed by the Respondent.

2. Summary Suit No. 25 of 2019 was maintained by the Respondent under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908 in respect of two Cheques bearing No.52928732 dated 26 May 2019 for sum of Rs.150,000 (Rupees One Hundred and Fifty Thousand) and No. 52928733 dated 15 August 2019 for sum of Rs.137,000 (Rupees One Hundred and Thirty Seven Thousand) purportedly issued by the Appellant to the Respondent. It was contended by the Respondent that the cheques were issued by the Appellant in favour of the Respondent pursuant to a “Faisla” as between each of them to settle their obligations and which was witnessed by independent witnesses and that as the cheques were dishonoured he has maintained Summary Suit No. 25 of 2019.

3. Upon being served with the notice of the institution of Summary Suit No. 25 of 2019, the Appellant filed an application under Order XXXVII Rule 3 of the Code of Civil Procedure 1908 seeking leave to defend the Summary Suit and which was conditionally granted against the deposit of surety for a sum of Rs. 50,000. Once the surety was deposited the Appellant filed his Written Statement submitting that the Cheques, that had been purportedly issued by him, had been fraudulently executed by the Respondent inasmuch as the son of the Respondent had business dealings with the Appellant and that, on the basis of the level of trust as between them, the Cheque Book of the Appellant remained in the custody of the Respondent son. He further stated that there was a disagreement with regard to the business dealing of the Appellant and the son of the Respondent, which resulted in acrimony and on account of which acrimony, the son of the Respondent retained the two Cheques which have now been fraudulently presented by the Respondent for encashment. He further contended that the signatures on the cheques were forged and therefore the same should not be honoured.

4. The learned Ist Additional District Judge Tando Adam by a Judgement dated 6 May 2021 decreed Summary Suit No. 25 of 2019 in favour of the Respondent for a sum of Rs.287,000 (Rupees Two Hundred and Eighty Seven Thousand) holding that:

(i) the Respondent had proved the “Faisla” as documented through two independent witnesses; and

(ii) the Appellant had failed to prove that either the “Faisla” as documented or the two cheques issued were forged.

5. Being aggrieved and dissatisfied by the Judgement passed by Ist Additional District Judge Tando Adam in Summary Suit No.25 of 2019 the appellant maintains this Appeal, stating that the Ist Additional District

Judge Tando Adam failed to appreciate the evidence that had been adduced on the record. The Counsel for the Appellant did not rely on any case law in support of his contentions.

6. Mr. Zubair Ahmed Khuhawar, entered appearance for the Appellant and contended that the Respondent in his Suit had alleged that the two cheques, that had been purportedly issued by the Appellant, had been issued pursuant to a “Faisla” made by the representatives of the business community and which was recorded in writing and witnessed. He states that the Appellant never entered into any “Faisla” nor signed the two Cheques each of which were forged and also states that there was contradictory evidence given by the witnesses to the purported written “Faisla” which casts doubt on the veracity of the “Faisla.” He identifies this inconsistency whereby one of the witnesses i.e. Khalid states that the “Faisla” was executed in the shop of Stamp Vendor Kamran Ghouri, whereas the other witness namely Muhammad Yousuf states that the “Faisla” was executed at the shop of Faisal Ghouri. He submits that as the versions of the two witnesses are contradictory, it is apparent that the Cheques have never been issued pursuant to the “Faisla” and instead that the evidence would reflect that a fraud has been perpetuated by the Respondent as against the Appellant.

7. Mr. Nusrat Mehmood Gill entered appearance for the Respondent and has stated that the Respondent has personally adduced evidence as did two witnesses to the “Faisla” so as to satisfy the requirement of Article 79 read with Clause (a) of Sub-Article (2) of Article 17 of the Qanun-e-Shahadat Order 1984 to prove the “Faisla”. He further states that there was no infirmity in the Order of the Ist Additional District Judge Tando Adam and prayed that the appeal be dismissed. The Counsel for the Respondent did not rely on any case law in support of his contentions.

8. I have heard both the Counsel for the Appellant and Respondent and have perused the record. Article 117 of the Qanun-e-Shahadat Order, 1984 states that:

> *" … 117. Burden of proof:*
>
> *(1) Whoever desires any Court to give judgment as to any legal right or liability dependent On the existence of facts which he asserts, must prove that those facts exist.*
>
> *(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

On the basis of this provision, it is clear that the onus to prove the contentions leading to the issuance of the two cheques lay on the Respondent. The Respondent in support of his contentions has produced the written "Faisla" in original and has also examined the two witnesses to the document and hence ***prima facie*** the requirements of Article 79 read with clause (a) of Sub-Article 2 of Article 17 of the Qanun-e-Shahadat Order, 1984 in terms of production and proving the document stand satisfied. That being achieved the onus now shifted on the Appellant to prove that the document was in fact forged and in this regard the Appellant cross examined the witnesses to the "Faisla" and each of whom gave nearly identical evidence save to the fact that the name of the stamp vendor in whose shop the "Faisla" was executed were different i.e. the Witness Mohammad Yousuf indicates that the Cheques were issued in the shop of the stamp vendor " Faisal Ghori" while the Witness for the Plaintiff Khalid stated that the Cheques were issued by the Appellant in favour of the Respondent in the shop of the stamp vendor "Kamran Ghori.' I have perused the depositions of both the witnesses of the Respondent and note that while there is no inconsistency in the depositions of the two witnesses regarding:

(i) the factual circumstances leading up to the execution of the "Faisla";

(ii) the manner in which the "Faisla" was executed; and

(iii) the manner in which the cheques were issued

the only inconsistency is in respect of the name of the owner of the shop who issued the stamp paper where the “Faisla” was executed.

9. To my mind the sole question before this Court therefore is as to whether on the balance of probabilities such a discrepancy is sufficient to hold that the Respondent has failed to prove the execution of the “Faisla” and the issuance of the two cheques by the Appellant in his favour. The standard of proof in civil cases has been described in the decision reported as ***Miller v Minister of Pensions***: 1

> “ ... *"If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not."*

A similar, albeit more mathematical explanation, was given in the decision reported as ***Re: B*** [2] wherein it was held that:

> " … *If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."*

10. On the evidence in accordance with his obligation under Article 117 of the Qanun-e-Shahadat order, 1984 I do believe that the Respondent has:

(i) proved the execution of the “Faisla” in accordance with Article 79 read with clause (a) of Sub-Article 2 of Article 17 of the Qanun-e-Shahadat Order, 1984;

(ii) proved the issuance of the Cheques; and

(iii) proved that the cheques issues were in fact dishonoured;

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1 [1947] 2 All ER 372

2 2008 UKHL 350

To my mind the name of the owner of the shop who issued the stamp paper is clearly not an issue which is material to prove either the execution of the Agreement recorded by the “Faisla” nor is it material to prove the issuance of the cheques or there being dishonoured. The inconsistency as pointed out by the Appellant not being relevant to the issues in the *lis* are to my mind and would not be sufficient to show that the Agreement recording the “Faisla” had been forged and consequently the Appeal must fail.

11. For the foregoing reasons I find no illegality or irregularity in the Judgment and Decree dated 6 May 2021 passed by Ist Additional District Judge Tando Adam in Summary Suit No. 25 of 2019 and which are upheld. This Appeal is therefore dismissed along with all applications with no order as to costs.

JUDGE

Hyderabad;
Dated; 13 October 2023