

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
1st Appeal No.59 of 2020

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Date	Order with signature of Judge
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**Hg Case (Priority)**

1. For orders on Nazir report dated 6.5.2021
2. For order on office obj
3. For hearing of main case
4. For hearing of CMA No.2418 of 2020

**25.01.2024**

Ms. Naila Kausar, Advocate for the appellant  
Syed Fazal ur Rehman, Advocate for the respondents

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Heard learned counsels and perused the available record.

Based on negotiable instrument, allegedly executed by respondent No.2, arrayed as defendant No.1 in the suit, a suit was filed not only against him but also against the appellant/another individual, who has not executed any negotiable instrument, admittedly. The notices and summons were issued under summary chapter. The appellant's counsel instead of filing leave to defend application within prescribed time, filed written statement. Consequently, the suit was decreed against both the defendants. One of those defendants is the appellant and other is arrayed as respondent No.2 in this appeal.

An application was then preferred by the appellant in terms of Order 37 Rule 4 CPC to set aside the decree on the ground that he is not signatory of any negotiable instrument and hence under summary chapter the case cannot be proceeded against him. He has raised other grounds therein as well. The application was heard and dismissed, against which instant appeal is preferred.

There is no cavil to this proposition that under special summary chapter, only special jurisdiction is conferred upon the court, proceeding whereunder could only be seen under negotiable instruments and any deviation thereof would give rise to an exercise of jurisdiction not vested upon the court and the order/judgment is only a nullity. In the instant matter, a decree is passed under summary chapter against an individual who has not executed any negotiable instrument and hence could not have been subjected to summary proceedings. Certainly, if the presence of appellant/defendant No.2 was necessary and important in the wisdom of plaintiff/respondent No.1,

in the sense that he was a guarantor or that amount could be recovered from him, then the case could have been proceeded against them/him under ordinary civil jurisdiction. When confronted, Mr. Fazal ur Rehman that this decree could not have been passed under summary chapter against him and/or could not be executed against the appellant, learned counsel for the respondents though initially insisted that it was a belated attempt on the part of the appellant to raise this point, but later conceded as no limitation would run against an order which is a nullity or without jurisdiction in the eyes of law.

As observed above, trial court had no jurisdiction under special summary chapter to proceed against the individual who was not signatory to negotiable instrument, hence, in any case, the execution of a decree cannot be extended against him. However, since Mr. Fazal ur Rehman has insisted that the suit ought to be proceeded against them together jointly and severally therefore, he may be given a chance to proceed in this matter under ordinary civil jurisdiction afresh as *denovo* exercise. The request of the learned counsel is reasonable, hence, not only the impugned order but, as agreed by both the counsel i.e. Ms. Naila Kausar and Mr. Fazal ur Rehman, the judgment and decree are set aside and the matter shall then be considered as one under original civil jurisdiction. The *de novo* proceedings shall commence once the notices are served upon them and proper issues are framed in terms of pleading. If no written statement is filed by the other respondents, he may be given a chance to file written statement and soon thereafter framing of issues, evidence be recorded. The parties are at liberty to file any such application as deem fit and proper under circumstances of the case. With this understanding, the appeal is allowed.

The surety submitted by the appellant with the Nazir of this court in pursuance of order of this court dated 6.4.2021 be returned to the appellant.

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