

IN THE HIGH COURT OF SINDH AT KARACHI

IIInd Appeal No. 43 of 2023

[M/s. Pakistan National Shipping Corporationv.....Muhammad
Khalid Siddiqui & others]

Date of Hearing : 07.03.2023
Appellant through : Mr. Abdul Ghaffar, Advocate.
Respondents through : *Nemo.*

J U D G M E N T

Zulfiqar Ahmad Khan, J:- This Second Appeal moved under Section 100 of the Code of Civil Procedure, 1908 assails concurrent findings of the learned trial Court dated 30.10.2021 as well as those of the first Appellate Court dated 21.09.2022 which are against the appellant.

2. Pithily, the facts of the case at hand is that the appellant initiated an enquiry proceedings against the respondent No.1 who was its employee and the allegation against the respondent No.1 was that he was involved in embezzlement of funds of the appellant. During the course of enquiry the appellant issued a charge sheet dated 05.04.2019 and having completed the inquiry proceedings, it turns out that the respondent No.1 found embezzling the amount of Rs.31,87,129/-, thereafter, the appellant filed a suit for recovery of the said amount (Suit No.1769/2019) before the learned trial Court which was dismissed vide Judgment & Decree dated 30.10.2021. The appellant impugned the said judgment & decree before the learned First Appellate Court by filing Civil Appeal No.424/2021 which appeal was dismissed vide judgment dated 21.09.2022, hence this second appeal against the concurrent findings.

3. The crux of arguments of the appellant is that the appellant produced documentary evidence before the learned trial Court

establishing the fraud as well as embezzlement of amount of the appellant but the learned trial Court failed to appreciate those documentary evidence and passed the Impugned Judgment & Decree and that the learned First Appellate Court also failed to appreciate those documentary evidence, therefore, intervention by this Court is required.

4. Since this is the fresh matter and fixed before the Court in a category of "Fresh Case". I have heard learned counsel for the appellant and have also considered the record to which my surveillance was solicited. It is considered pertinent to initiate this deliberation by referring to the settled law in such regard. To start with, it is common knowledge that right to file Second Appeal provided under section 100 of CPC, which can be set into motion only when the decision is contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law.

5. The learned trial Court as well as First Appellate Court are concurrent on the ground that the appellant could not produce the vouchers on the basis of which the appellant terminated the respondent and only mentioned the serial numbers of those vouchers, which was not found sufficient to prove the allegations leveled against the respondent. The appellant also went on to admit that they could not produce the receipts which might have proved the embezzlement committed by the respondent. The relevant excerpt of the cross-examination of the appellant's are worth reproduction in this respect which are delineated hereunder:-

“It is correct to suggest that I did not produce the receipt in any form which shows that embezzlement committed by defendant.

It is correct to suggest that the voucher prepared and counter signed by Khalid Siddiqui counter signed by Zafar Ayub, Khalid Siddiqui is Finance Officer of Ship Store Department in PNSC.

It is correct to suggest that the finance department is separate from the store department. I do not remember the exact number of the persons who signed the bunch of vouchers for payment, it is correct to suggest that the counter signed by all vouchers by Zafar Ayub a Deputy Manager Store, thereafter the documents goes to the Muhammad Yaseen Abbasi a Manager Store incharge for further process. It is correct to suggest that after these process the defendant prepared the cheque for the payment.

It is correct to suggest that I did not mention in my plain as well as my affidavit in evidence that mr. Khalid used to sign for Altamish.

It is correct to suggest that I did not produce the vouchers and bunches on the basis we terminated the defendant from his service.

It is correct to suggest that we did not lodge any FIR against the present defendant

6. It is gleaned from appraisal of the foregoing that the appellant's witness admitted to have not produced relevant vouchers and other documents on the basis of which the charge sheet of embezzlement of appellant's funds was issued to the respondent. The appellant's witness also went on to admit further that the other officers of the appellant used to sign the bills/vouchers first for onward clearance of the amount while the respondent only used to clear the bill having seen the signed vouchers/bills of his superiors. Neither the said officers/ officials of the appellant were ever issued any charge sheet in this respect nor any enquiry was ever initiated against them. The learned trial Court and that the learned First

Appellate Court are concurrent on the issue that no fraud/embezzlement of funds had been committed by the respondent, therefore, the question of recovery of the alleged amount does not arise.

7. It is well settled that the Trial Court (Senior Civil Judge) was the fact finding authority and the learned trial Court framed three issues which were answered against the appellant. The First Appellate Court have also examined the record and proceedings. The purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses. The learned First Appellate Court having examined the entire record and proceedings made available to it went on to dismiss the First Appeal filed by the appellant. It would be conducive to reproduce the relevant excerpt of the Impugned Judgment of the learned Appellate Court which is delineated hereunder:-

“The gist of the evidence produced above which shows that the respondent used to prepare the vouchers which was counter signed by Zafar A yub being Deputy Manager Store and thereafter Muhammad Yasin Abbasi manager Store incharge further process and thereafter respondent prepared the cheques for payment and after that process the payment voucher along with bunch process was sent to Altimash Deputy Manager Finance for payment. This shows that the respondent alone was not responsible for issuing the cheque. There is nothing on record that the appellant took any action against other officers of PNSC.

It is pertinent to mention here that the appellant has not produced the vouchers and bunches on the basis of which they terminated the respondent and only mentioned the Serial Number of Vouchers which is not sufficient to prove the above case. The appellant claimed that the

respondent has committed fraud but FIR was not lodged against the respondent although the FIR was necessary for conducting the fair inquiry.”

8. To me, the concurrent findings are based upon the correct appreciation of law as well as on fact. When the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, This Court while exercising jurisdiction under Section 100 C.P.C. can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.¹

9. In light of the above discussion, the instant IInd Appeal is dismissed alongwith pending applications.

Karachi
Dated:07.03.2023

JUDGE

Aadil Arab

¹ Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).