THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.302 of 2017

Applicant : Through Mr. Ali Ahmed Zaman Patoli advocate.

Date of hearing : 15.04.2024

Date of order : 15.04.2024

ORDER

Khadim Hussain Soomro, J: Through this revision application, the applicant has impugned the judgment and decree dated 12.10.2017, passed by learned District Judge, Badin, in Civil Appeal No.23/2016, whereby the appeal filed by the applicant has been dismissed and the judgment and decree dated 20.02.2016 passed by learned Senior Civil Judge, Matli, have been maintained.

2. Brief facts of the case are that the applicant and the respondent, Ashok Kumar, both residents of Patoli Mohalla Matli town, enjoyed a friendly relationship. In January 2011, the applicant purchased a plot for Rs. 100,00,000/- and approached Ashok Kumar for a loan of Rs. 28,00,000/- to complete the payment to the vendor. Ashok Kumar provided the amount through two cheques: one dated 25-01-2011 for Rs. 8,00,000/- and the other dated 07-3-2011 for Rs. 20,00,000/-. The applicant cashed these cheques. As security, the applicant issued two undated blank cheques to Ashok Kumar. Subsequently, the applicant suffered losses in the plot transaction, leading to bankruptcy. When Ashok Kumar demanded repayment, the applicant promised to repay as soon as possible. However, Ashok Kumar filled in amounts of Rs. 22,50,000/- and Rs. 37,50,000/- on the blank cheques provided by the applicant, presenting them at the bank and obtaining memos. Additionally, Ashok Kumar lodged an F.I.R. (Crime No. 56 of 2012 under section 489-F P.P.C.) against the applicant for Rs. 22,50,000/. Perceiving blackmail from Ashok Kumar, the applicant filed C.P. No. D 1005 of 2012 (Re-Ghulam Mujtaba Vs Senior Superintendent of Police Badin and others) before this court. In an order dated 13-6-2012, the court appreciated the applicant's version and restrained Ashok Kumar from filing further criminal cases. The applicant asserts that only Rs.28,00,000/- is outstanding against him, while Ashok Kumar deceitfully claims Rs.60,00,000/-. Consequently, the applicant filed a Suit seeking declaration, mandatory, and permanent injunction. The said Suit was dismissed vide judgment and decree dated 20.02.2016, and Civil Appeal No.23/2016 was filed against the said judgment and decree, which

was also dismissed vide judgment and decree dated 12.10.2017; hence, this revision application.

3. Learned counsel for the applicant has argued that the learned trial court did not frame issues, that plain cheques were issued as security, that there is no agreement between the applicant and respondent, and that cheques have been misused by fraud and misrepresentation.

4. In the judgement under review, the trial court noted that the applicant appeared before the court and acknowledged receiving the amount from the respondent concerning the plot purchased in Hyderabad. It is important to note that the issuance of cheques has not been denied.

5. The applicant also filed C.P. No. D-1005 of 2012, wherein he has admitted that he issued two cheques dated 10-7-2011 and 15-8-2011 for Rs. 37,50,000/- and 22,50,000/- respectively same, were delivered to the respondent and when the said cheques were presented before the concerned bank, the same was dishonoured with the remarks of insufficient balance. It is worth mentioning here that the applicant has neither denied the issuance of cheques nor signatures and presentation before the concerned Bank, but the same was dishonoured with the remarks of insufficient funds.

6. The application of the presumption under section 118 of the Negotiable Instruments Act is limited to parties involved in the instrument or individuals making claims based on it. It is worth mentioning that according to sections 43 and 44, specific pleas such as lack of consideration can be raised between immediate parties but not against other holders, as has been determined. The reliance can be placed in the case of Venkatarama Reddiar v. Valli Akkal (A.I.R. 1935 Mad 181.) Section 118 assists the plaintiff in transferring the burden of proof to the defendant, who must then provide sufficient evidence to demonstrate that the cheque lacked adequate or valid consideration. If the defendant achieves this, the responsibility once again falls on the plaintiff. Now, it is necessary to define terms consideration which is delineated under section 118 (a) as Under:-

> "**118. Presumptions as to negotiable instruments of consideration**: Until the contrary is proved, the following presumptions shall be made:-
>
> (a) **Of consideration**: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, endorsed negotiated or transferred for consideration;
>
> (b) **as to date**: that every negotiable instrument bearing a date was made or drawn on such date;

(c) **as to time of acceptance:** that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) **as to time of transfer:** that every transfer of a negotiable instrument was made before its maturity;

(e) **as to order of indorsement**: that indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) **as to stamp:** that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) **that holder is a holder in due course**: that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence of fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him"

7. Every negotiable instrument was assumed to be created, drafted, approved, or endorsed in exchange for something of value. Consideration is deemed to be present in every negotiable instrument unless proven otherwise. It is possible to challenge the presumption of consideration if there is evidence that the instrument was acquired through fraudulent or manipulative tactics from its rightful owner. The presumption stated in section 118 is a legal presumption, and the court will assume, among other things, that the endorsement was made in exchange for a specific and valid consideration. Thus, the responsibility for proving the lack of consideration falls upon the endorser based on the case's specific details. It is assumed that a negotiable instrument's acceptance, negotiation, or transfer was done in exchange for a valid consideration. In the instant case, the applicant admitted to issuing cheques before the learned trial court. An Admission as defined under Article 30 of the Qanoon-e-Shahdat Order 1984. The applicant admitted to the issuance of the cheque before the trial court, and subsequently, the denial will operate under the law of estoppel, as per Article 114 of the Qanoon-e-Shahdat Order 1984.

8. It should be noted that the applicant is before this court under its revisional authority under section 115 of the C.P.C and that both the learned courts below have concurrent conclusions of fact that stand in their way. Additionally, this court, in its revisional jurisdiction, is quite limited, and concurrent findings of fact are typically not disturbed in that context unless this court determines that the lower courts' conclusions were reached as a result of an

incorrect or misreading of the evidence of material available on record or in violation of established law. Reliance in this regard may be placed upon the case of Noor Muhammad and others v. Mst. Azmat Bibi (2012 SCMR 1373) wherein the August Supreme Court has observed as under:--

> "There is no cavil to the proposition that the jurisdiction of High Court under section 115, C.P.C. is narrower and that the concurrent findings of facts cannot be disturbed in revisional jurisdiction unless courts below while recording findings of facts had either misread the evidence or have ignored any material piece of evidence or those are perverse and reflect some jurisdictional error. "Muhammad Akhtar v. Mst. Manna 2001SCMR 1700; Ghulam Muhammad v. Ghulam Ali 2004 SCMR1001; Abdul Mateen v. Mustakhia 2006 SCMR 50 and Muhammad Khaqan v. Trustees of the Port of Karachi 2008SCMR 428."

9. In the light of the above discussion, I am quite clear in my mind that both the courts below, in their unanimous impugned judgments, are not found to have been tainted with misreading or failing to read the relevant material, nor are they found to have some jurisdictional flaw that justifies interference. Instead, they fall under one of the exceptions listed in Section 115 of C.P.C., 1908, whose scope is more limited and restricted to correcting errors of law as well as of facts if found to have existed. As a result, the present civil revision application is dismissed in limine along with listed applications for the grounds mentioned above.

J U D G E