

IN THE HIGH COURT OF SINDH AT KARACHI**First Appeal No. 15 of 2023**

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

Muhammad Amir..... **Appellant**

through Mr. Rafiq Ahmed Baloch, Advocate

vs

Akhtar Ali Raza & another..... **Respondents**

Respondent No.1

through Mr. Fazl-ur-Rehman Advocate

Date of hearing : 16th January, 2024Date of short order : 16th January, 2024Date of reasons : 17th January, 2024**JUDGMENT**

OMAR SIAL, J.: Akhtar Ali Raza (the respondent in these proceedings) filed a Summary Suit No. 148 of 2022 against Muhammad Amir (the appellant herein) in the Court of the learned 10th Additional District Judge, Karachi East on 04.10.2022. Akhtar claimed that he was trading in scrap and that Amir told him he could provide Akhtar with scrap from an energy powerhouse. An understanding was reached between the two men, and in pursuance of that understanding, Akhtar gave Amir an aggregate of Rs. 2.5 million. Amir defaulted upon his obligation to provide the requisite scrap, and when Akhtar asked him to return his money, Amir gave him two cheques. Both were dishonoured when the cheques were presented at the Bank's counters for clearance. All further negotiations to settle the matter were in vain, and thus Akhtar registered F.I.R. No. 10 of 2021 at the Korangi

police station under section 489-F P.P.C. on 03.01.2021. The Summary Suit No. 148 of 2022 was also filed against Amir on 04.10.2022.

2. Amir sought leave to defend the Suit by filing an application under O 37 R 3 C.P.C.; however, the same was dismissed on 30.01.2023 by the learned trial court, and the Suit was decreed for an amount of Rs. 2.5 million. Amir, being aggrieved by the order, has preferred this appeal.

3. Learned counsel for the appellant Amir has argued that (i) the cheques in question were given as a security, (ii) Amir's counsel was not heard on 30.01.2023 when the impugned order was passed, and (iii) while the signatures on the two cheques were genuine, no name or amount had been filled out on the cheques. We have heard the learned counsel for the parties and perused the record. Our observations and findings are as follows.

4. Learned counsel's argument regarding the cheques being given as security is misconceived. This argument would perhaps have had some weight in the proceedings initiated under section 489-F P.P.C., where it has to be proved that the dishonoured cheque was issued for the satisfaction of a loan or fulfilment of an obligation; however, the argument raised by counsel regarding the purpose for which the cheque was issued, will have no bearing in the Summary Suit filed for a negotiable instrument.

5. With much respect, we are also unconvinced with the counsel's argument that Amir's counsel was not heard when the leave to defend application was dismissed. It would have been more appropriate if the counsels who had argued had their names mentioned in the impugned order. This was not done. However, to do justice, we have gone through the extract of the case diary of the trial court of 30.01.2023, and the extract shows that both counsels were present. Further, the learned trial court has reproduced the arguments of Amir's counsel in the impugned order, indicating his presence. It appears that the learned counsel has made a frivolous and baseless argument.

6. A perusal of the record reveals that the issuance and handing over of signed cheques by Amir to Akhtar is an admitted fact. A vague, half-hearted and self-contradictory argument that Amir did not sign the cheques in question was also raised by the counsel; however, we are not impressed with this argument as the memo of dishonour shows that the cheques bounced not because of a signature mismatch but because of insufficient funds in the account. In these circumstances, it cannot be said that the cheques were 'bogus and forged' as claimed by the learned counsel. No reason or details were forthcoming from learned counsel to show that the cheques were issued to somebody else but the respondent Akhtar, and what reason did Akhtar have to accuse Amir falsely? We are equally perplexed at the learned counsel's argument that Akhtar and not Amir had agreed to buy the scrap. He could not answer our query as to why Akhtar, the scrap seller, also issued cheques to the buyer.

7. Given the above, and for the reason that no plausible defence was spelt out by Amir, either in the leave to defend application or in his submissions before this court, we find no reason to interfere with the order of the learned trial court.

8. Above are the reasons for our short order dated 16.01.2024 in terms of which the appeal was dismissed.

JUDGE

JUDGE