

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Omar Sial

First Appeal No.57 of 2021

Junaid Safdar & others  
Versus  
Sardar Abdul Rehman

Date of Hearing: 02.04.2024

Appellants: Through Mr. Muhammad Akbar Advocate

Respondent: Through Mr. Mujahid Bhatti Advocate

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- Appellants have filed this appeal against the judgment and decree dated 30.04.2021 passed in Summary Suit No.50 of 2019. The II-Additional District Judge Karachi East in the aforesaid suit decreed the suit in the sum of Rs.7.69 Million.

2. Brief facts of the case are that based on two negotiable instruments i.e. cheque of 02.10.2018 of Rs.42,71,000/- and the other of 11.12.2018 of Rs.34,25,000/- a summary suit was filed. There was some verbal/oral partnership agreement with 50% share in Green Pacific Traders, Noor Traders and Sami Trading in terms of pleading. Facts incorporated in the summary suit were almost incorporated in the memo of appeal. In paragraph 8 of memo of appeal, appellant contends that they have moved an application for leave to defend the suit and that was ultimately dismissed for non-prosecution on 13.01.2020 followed by dismissal of application under section 151 CPC (restoration application) which was filed on 25.01.2020. The restoration application was dismissed on 19.01.2021.

3. It is urged that the appellants again moved application under section 151 CPC for recalling order dated 09.01.2021 and so also appellants No.2 and 3 moved application under order IX Rule 7 CPC and application under order XXXVII Rule 3 CPC along with application under section 5 of Limitation Act for condonation for delay in filing the application belatedly. Such applications were dismissed by the trial Court vide order dated 02.03.2021. Aggrieved of it the appellants preferred Civil Revision Application No.68 of 2021 before this Court which too were dismissed on 16.04.2021. It is claimed that against it they have preferred CPLA before Supreme Court.

4. The affidavit in exparte proof was filed before the trial Court in the summary suit wherein documents were produced as Ex.P/1 to P/33, the suit was then decreed, as above, hence this appeal against the judgment/decreed.

5. We have heard the learned counsel and perused material available on record.

6. Learned counsel for appellants attempted to bring into consideration the defence that was taken in the leave application. Unfortunately not only the leave application but its restoration application and a revision application were all dismissed. Hence, their defence could not be taken into account at this stage. Similarly reading the evidence of a criminal case No.1253 of 2019 does not arise as such evidence was not produced in the instant case as required under the law.

7. The appellants have taken a defence in their submissions that respondent was their employee and he took the signed original cheques lying in his drawer and has utilized them for the purposes of alleged recovery proceedings. The arguments are not convincing and conceivable as no such complaint or FIR was lodged by the appellants as to theft of

such cheques nor even a criminal complaint appears to have been filed in this regard.

8. Learned counsel for the appellants has taken ground that it has not been proved or substantiated that the respondent has any investment which was being returned by way of bounced cheques. This argument has no force as the contents of the affidavit in exparte proof have gone un-rebutted and unchallenged.

9. It is also pertinent to note that the appellants have not pursued their stance diligently. The suit was filed in July, 2019 whereas leave to defend application was filed on 23.09.2019 but they did not pursue it and consequently on 13.01.2020 it was dismissed for non-prosecution. Even appellants did not pursue their restoration application which too met the same fate on 09.01.202. Even against this dismissal appellant No.1 has filed application under section 151 CPC whereas appellants No.2 and 3 have filed separate applications (i) under order 9 rule 7, (ii) under order 37 rule 3 and (iii) under section 5 of Limitation Act, which all were dismissed followed by dismissal of revision by this Court. This conduct of the appellants gives an inference that they are using delaying tactics to prolong the matter.

10. In view of above the impugned judgment does not call for any interference and in consequence thereof this appeal is dismissed along with pending applications.

11. Above are reasons of our short order dated 02.04.2024 whereby appeal was dismissed.

Dated:

**J U D G E**

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