

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**High Court Appeals No.432 to 437 of 2022**

Saeed Noor Khan and others

Versus

- (1) Syed Adnan Ali and another
- (2) Shaikh Ammad Arif and another
- (3) Mst. Nida Haris and another
- (4) Munsif Zaidi and another
- (5) Tartiq Yaqoob Zaidi and another
- (6) Salman Zaidi and another

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:

Mr. Justice Muhammad Shafi Siddiqui  
Justice Ms. Sana Akram Minhas.

**Dated 25.04.2024**

Mr. Khuram Gul Ghory, Advocate for Appellants.

Mr. Muhammad Arif, Advocate for Respondent No.1.

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**Muhammad Shafi Siddiqui, J.-** Six summary suits were filed by the plaintiffs in suits No.934, 935, 936, 937, 983 and 1112 of 2016 respectively on the strength of some cheques which were bounced.

2. Two individuals that is Mst. Ismat Sultana wife of Saeed Noor Khan and Amir Saeed Khan son of Saeed Noor Khan were shown to have signed the cheques, whereas, it is argued / pleaded that they signed it on behalf of Khurram Enterprises which is admittedly a proprietary concern and Amir Saeed Khan being its sole proprietor. It is Respondent No.1's case as plaintiff that on account of certain investments made by them with Khurram Enterprises, these cheques were issued by the individuals as a return of the amount, which were then bounced, hence in consequence whereof the summary suits were filed.

3. The leave application was filed by Mst. Ismat Sultana and Saeed Noor Khan on which the impugned order was passed. No

leave application was filed by Amir Saeed Khan son of Saeed Noor Khan and against him the suits were decreed to the extent of amount of the cheques.

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

5. The question before us is the proceedings under summary chapter against an individual that is Saeed Noor Khan son of Juma Khan, who is not the signatory of the bounced cheques. Learned counsel for the appellants on the last date of hearing has pleaded that such summary suits cannot be filed or proceeded in view of the restrictive provisions under the Negotiable Instrument Act, that is Section-29A, which is reproduced as under:-

**29A. Signature essential to liability.**--- *No person is liable as maker, drawer, endorser or acceptor of a promissory note, bill of exchange or cheque who has not signed it as such:*

Section-29A restricts the proceedings of summary nature against a person who in fact is not a signatory of a promissory note, bill of exchange or cheque and no person could be held liable as maker, drawer, endorser or acceptor who has not signed it as such.

6. It is Respondent No.1's case that in fact it was a joint account and the signatures of the two individuals, who were the joint account holders, were deemed to have been issued on behalf of the individual who has not signed it as being a joint account holder. The arguments perhaps are misconceived in the light of the provision of law that is section 29A of Negotiable Instrument Act. Had it been a normal civil suit filed under ordinary civil jurisdiction, such facts could have been pleaded and declaration could have been obtained but while the Respondent No.1 has opted

to proceed under summary chapter, its scope cannot be extended against non-signatory to seek a declaration against Saeed Noor Khan son of Juma Khan as well. The agreement itself, which is available on record, relied upon by Respondent No.1, shows that Khurram Enterprises is a proprietor concern and it is not disputed by them that Amir Saeed Khan was a proprietor.

7. While considering the leave application, learned single Judge has attempted to attach the property of an individual who was neither signatory of the bounced cheques nor the agreement shows any nexus of Saeed Noor Khan son of Juma Khan with the Respondent No.1. It is also not the case of the Respondent No.1 in the suit that Saeed Noor Khan has in fact gifted that property to Amir Saeed Khan or Mst. Ismat Sultana; it was perhaps gifted to some one Khuram Saeed. On this account also the property of a third party cannot be attached under the frame of the summary chapter which has its own limits.

8. We have minutely perused the order impugned before us and it appears that on consideration of a valuable property, which was purportedly attached, as deemed necessary by the learned Judge, the surety amount was considered much less than it should have been in normal course where the property is not available. As such we deem it appropriate that property of a third party was wrongly attached and thus the surety amount is also liable to be re-settled. We have given the option to the respondent that if they could proceed with the case under normal original civil jurisdiction and could also amend his pleadings, we could maintain the order, he refused. We, therefore, in view of such circumstances deem it appropriate that:-

- (i) The summary suit should not have been filed and proceeded against Saeed Noor Khan son of Juma Khan, who was not the signatory of the bounced cheques<sup>1</sup>, in terms of Section-29A of the Negotiable Instruments Act.
- (ii) The subject property is not liable to be attached by the learned single Judge under the circumstances disclosed above.
- (iii) Since the property is not liable to be attached, the amount of surety be extended to the extent of the amount of the bounced cheques of Mst. Ismat Sultana.
- (iv) The summary suits against Amir Saeed Khan son of Saeed Noor Khan to the extent of bounced cheques have already been decreed and the subject issue as an appellate court is not before us.

9. With this observation, these appeals are disposed of along with pending applications.

JUDGE

JUDGE

Ayaz Gul

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<sup>1</sup> Order dated 25.01.2024 passed by this Court in 1<sup>st</sup> Appeal No.59/2020 [Arshad Mirza v. Darsyus T. Sethna & another].