

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Ist Appeal No. S – 11 of 2024

(Ali Murad Chachar v. Deewan Mal)

Date of hearing : 14.10.2024

Date of decision : 14.10.2024

Mr. Alam Sher Khan Bozdar, Advocate for appellant.

Mr. Zulfiqar Ali Arain, Advocate for respondent.

ORDER

Zulfiqar Ahmad Khan, J. – Through this appeal, the appellant has challenged an order and a decree dated 19.01.2024, passed by learned Additional District Judge-III, Ghotki, in a Summary Suit No.18 of 2023, whereby the Summary Suit filed by the respondent has been decreed as prayed.

2. In this case, the respondent (plaintiff) filed a Summary Suit under Order XXXVII Rule 2, CPC, to recover Rs.15,60,000/- from the appellant (defendant). The respondent claimed that in the first week of March 2023, the appellant, a businessman from Ghalamandi Ghotki, requested him for a loan amounting to Rs.15,60,000/- for a business transaction. Trusting their longstanding relationship, the respondent lent the amount in cash, and in return, received a cheque (of the same amount) dated 25.03.2023 of the appellant's account at HBL, Ghotki Branch. Upon attempting to deposit the cheque in the bank, the respondent discovered on 05.04.2023 that it was dishonoured due to insufficient funds through memo dated 04.04.2023. When he approached the appellant later that day, the appellant made excuses and ultimately refused to repay the loan on 01.05.2023. Consequently, the respondent filed an FIR (Crime No.171 of 2023) at Police Station 'A' Section, Ghotki, and initiated the aforesaid Summary Suit for recovery of the loan amount with the following prayers:

- a) *To pass judgment and decree, in favour of plaintiff, for recovery of Rs.15,60,000/- (fifteen lac and sixty thousand rupees / amount of cheque) plus amount of interest / Mark-up thereon on usual Bank rate 12% per year, from day of 5-4-2023, till the amount is recovered, against the defendant and same be executed forthwith under the law.*
- b) *To direct the defendant to pay Rs.15,000/- as additional / further amount, same has been expended by the plaintiff for the purpose of court fee.*
- c) *To award the costs of the suit to the plaintiff.*
- d) *Any other relief may be granted which this honourable court deems fit and proper under the circumstances of the case.*

3. The appellant (defendant) filed his written statement taking a different stance that actually the respondent (plaintiff) runs a pesticide shop in partnership with one Asif Ali. The appellant admitted that he obtained a loan of Rs.6,00,000/- from the respondent, as they are friends, in the month of August 2019, and as a security, he issued the subject blank cheque to him. Against the said loan, he paid Rs.3,05,000/- to the respondent through a cheque of his son Abdul Fattah's account at HBL, Ghotki Branch, which was cleared on 14.12.2019 in the account of respondent's partner Asif Ali. Again, he paid Rs.1,20,000/- to the respondent through one Sultan in presence of witnesses (Muhammad Bakir and Ghulam Rasool). The remaining amount of Rs.1,75,000/- was also paid by him to the respondent in presence of the same witnesses; hence, he has paid the whole outstanding amount to him. Appellant claims that after clearance of the aforesaid loan amount, when he approached the respondent along with above witnesses for returning his security cheque, the respondent made a demand of 4% *wiyaj* / interest. Upon this act of the respondent, he approached to *nekmards*, but the respondent initially started blackmailing him and finally managed the security cheque of the

appellant, as above, in the sum of Rs.15,60,000/- (allegedly Rs.6,00,000/- original loan amount, which has though claimed to be paid, and Rs.9,60,000/- as interest of 40 months @ Rs.24,000/- per month).

4. While the trial Court framed the issues on 13.12.2023, and adjourned the matter to 20.12.2023, but the appellant instead of contesting the matter on merits through evidence, filed an application on 20.12.2023 for '**special oath**' praying that the respondent (plaintiff) be called for taking oath on the certain terms and conditions. It would be appropriate to reproduce the same here:

“The plaintiff should take special oath on “BHAGWAT GEETA AT ANY TEMPLE, OR GIRANTH SAHIB AT GURDWARA” that he has paid cash amount of Rs.15,60,000/- to defendant in the 1st week of March 2023 and the defendant had issued a cheque No.00010086 dated 25-03-2023 of HBL Branch Ghotki amounting Rs.15,60,000/- to the defendant for repayment of loan in presence of witnesses Rohit Kumar son of Deewan Mal and Mohit Kumar son of Shankar Lal and further he take Oath that the subject amount is not of wiyaj amount.”

5. The trial Court, allowing the aforesaid application by consent, appointed Mr. Nadir Ali G. Chachar, Advocate as Commissioner, who submitted his report dated 08.01.2024 in the following manner:

“That on 05-01-2024 both the parties informed and this special oath was taken by Dewan Mal in Raharki Temple on 07-01-2024 at about 11:55 AM, the plaintiff Deewal Mal took special Oath on “BHAGWAT GEETA AT TEMPLE RAHARKI and defendant Ali Murad kept GEETA on the head of plaintiff Deewan Mal” and the plaintiff took Oath by saying that he has paid cash amount of Rs.15,60,000/- to defendant Ali Murad in the 1st week of March 2023 and the defendant Ali Murad had issued a cheque No.00010086 dated 25-03-2023 of HBL Branch

Ghotki amounting Rs.15,60,000/- to the plaintiff Deewan Mal for repayment of loan in presence of witnesses Rohit Kumar son of Deewan Mal and Mohit Kumar son of Shankar Lal and further he took oath that the subject amount is not of wiyaj amount, as the Oath was performed in supervision of undersigned as per contents mentioned in the application Under Article 163 of Qanoon-e-Shahadat Article (sic.) 1984 Dated 20-12-2023.”

6. On the basis of this report, the trial Court decreed the Suit as prayed vide order dated 19.01.2024 and issued such decree of the even date. The trial Court in its order, against the contention of learned Counsel for the defendant (appellant) that at the moment of oath taking by the plaintiff (respondent) his witnesses left the spot, has observed that the defendant has put nowhere a condition that the oath by the plaintiff must be taken in presence of his witnesses, and instead, both the parties mutually appointed the commissioner / Senior Advocate Mr. Nadir Ali G. Chachar to witness the special oath proceedings and then to submit such report; hence, such objection of defendant is baseless and does not sustain. The trial Court has also concluded the case in the capacity of the executing Court by allowing the execution application for the subject decree by its order dated 07.08.2024.

7. Learned Counsel for the respondent while arguing the matter has also raised a point that this appeal is barred by 17 days and the prescription of the doctor submitted by the appellant is a managed one. Without elaborating on that point, it is more appropriate to move on to the merits of the case.

8. Admittedly, there is a clear acknowledgment from the appellant regarding the loan obtained from the respondent; however, the only issue in dispute is the exact amount of the loan. The appellant claims the amount was Rs.6,00,000/- and that he has paid it, while the respondent asserts it was Rs.15,60,000/- and that it remains unpaid.

9. The appellant's decision to voluntarily file an application for a **'special oath'** indicates a significant step in addressing the dispute. This application allowed the respondent to take an oath in a temple, a practice that carries considerable weight in many cultures and legal contexts. By agreeing to this process, the appellant has implicitly acknowledged the legitimacy of the loan and the need to resolve the matter. This voluntary action may bind him to the terms of the oath and limit his ability to later contest the loan's amount. In legal terms, this could invoke principles of estoppel, which prevent a party from changing their position after making a commitment that another party has relied upon. The respondent's willingness to take the oath indicates a strong confidence in his position regarding the loan amount.

10. Learned Counsel for the respondent has rightly placed reliance upon the cases of Muhammad Mansha and 7 others v. Abdul Sattar and 4 others (1995 SCMR 795) and Sajid Mehmood v. Mst. Shazia and others (2023 SCMR 153). In the case of Muhammad Mansha ibid, a matter was under consideration where the plaintiff, after making an offer that if a person (mentioned therein) takes an oath on the Holy Qur'an that the entire sale consideration of Rs.20,000/- has been deposited by the defendants then his suit may be dismissed, otherwise the suit may be decreed, which was accepted by the defendant on the same date, and a date was fixed for administering the oath. Nonetheless, before the oath could be administered, the plaintiff submitted an application for resiling from the offer; but the oath was taken and the suit was dismissed by the trial Court, appeal by the District Judge as well R.S.A. by the High Court. The Supreme Court, in that case, gave the following observations:

“The learned counsel for the petitioners submitted that the offer had been withdrawn before the actual taking of the oath by Ahmad Din, therefore, the trial Court was not justified to act upon the offer made by the plaintiff. He cited

the judgment of this Court in case Muhammad Akbar v. Muhammad Aslam (PLD 1970 Supreme Court 241). We have gone through the cited judgment but are of the view that the same is distinguishable. However, in a later judgment of this Court in case Attiquilah v. Kafayatullah (1981 SCMR 162) in which the judgment of Muhammad Akbar's case, cited above, was also referred and considered and it was held that party undertaking to be bound by the evidence given on special oath by the opposite-party cannot resile from it as it amounts to a binding contract and unless it is found to be void or frustrated, the Court is not justified to permit the petitioner to resile from his offer when it has already been accepted by the opposite side. In the case in hand too, the offer was voluntarily made by the plaintiff which was accepted there and then by the defendant and, as such, the trial Court rightly disallowed the plaintiff to resile from it and after administering the oath according to the desire of the plaintiff, dismissed the suit of the plaintiff and the appellate Court as well as the High Court rightly concurred with it.

11. Similarly, in the recent case of Sajid Mehmood (supra), the Supreme Court held as under:

“6. The letter of the law makes it unequivocally clear that under the provisions of the Oaths Act, a party in litigation can offer the opposite party to accept or reject the claim on special oath, but they cannot compel each other to take the special oath, however if the offer is accepted by the other party then a binding agreement comes into existence and the party making the offer has no right and authority in law to resile from it. When the Court communicates the offer to the other party and gets hold of his assent or refusal, as the case may be, it in fact plays a role as an intermediary between the parties and when the offer is accepted by the other party, the acceptance is transmitted to the party inviting the other to take special oath, thereafter the agreement is completed between the parties unless the offer is withdrawn before its acceptance by the other side. The stipulations of the Oaths Act cannot be

construed to give an unfair or inequitable advantage to one party over the other, so in the event of an offer or proposal to be bound by the oath of the opposite party, then obviously, due to the mutuality of the promise between them, the party making an offer has no right to resile from it after the offer is accepted and the special oath is taken. In the absence of any such satisfactory or sufficient cause the Court is obligated to implement the agreement and to record the statement of the party concerned to make a decision in the case accordingly. The petitioner cannot wriggle out or withdraw his offer which was given by him voluntarily before the Family Court and the same acted upon according to his will.”

12. In the present case, the appellant (defendant) seeks to withdraw his offer to take a ‘special oath’ made to the respondent (plaintiff) at the initial stage of the trial when the issues were framed. According to the dicta established by the Supreme Court, once the appellant made this offer, which was promptly accepted by the respondent, and the oath was taken in his presence, he cannot retract it, particularly when he has already admitted a loan transaction between him and the respondent. Therefore, the appeal lacks merit and is hereby **dismissed**.

J U D G E

Abdul Basit