

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1936 of 2017

Date	Order with Signature of Judge
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Orient Communication (Pvt) Limited.....Plaintiff

Versus

Sher AfzalDefendant

Date of hearing : 13.02.2025

Date of announcement of judgment : 14.02.2025

Mirza Sarfaraz Ahmed, advocate for the plaintiff.

JUDGMENT

MUHAMMAD JAFFER RAZA, J; - This is a summary suit filed under Order XXXVII CPC, the brief facts of the same are elucidated in paragraphs below: -

1. It is contended by the learned counsel for the plaintiff that the plaintiff is an advertising agency, which has an enviable reputation in the field of marketing and advertisement. It is contended that the plaintiff has been operational since the year 1953. It is further contended by the learned counsel for plaintiff that the plaintiff being an advertising agency provided services to the defendant in the year 2008. As per the market practice in the given industry the plaintiff intimated the Pakistan Broadcasters Association through its letter dated 23.12.2013, informing them of their appointment as an “advertising agent” for the defendant project, namely, Abdullah Sports Tower. The defendant in reply to various letters written by the plaintiff to the Pakistan

Broadcasters Association responded vide letter dated 10.12.2014 stating therein that the payment has been made to the defendant but at no point denied the contractual relationship.

3. It is further contended that the defendant made attempt to discharge their contractual obligation and issued cheques accumulative amount of Rs.11 million, details of the cheques are given in the table below:-

S.No.	CHEQUE #	CHEQUE DATE	BANK NAME	AMOUNT
1	2878013	20.05.2013	Muslim Commercial Bank	7,500,000
2	1707958	31.12.2013	Burj Bank	500,000
3	4796482	25.03.2014	Muslim Commercial Bank	1,500,000
4	4796483	31.03.2014	Muslim Commercial Bank	1,500,000
Total amount Rs.11,000,000/-				

4. It is also contended by the learned counsel for the plaintiff that the said cheques were not en-cashed and were returned due to "insufficient funds". Attention is also invited to the letter dated 09.04.2013 issued by the defendant to the plaintiff, the contents of which are self-explanatory. Needless to mention that the defendant in the said letter admitted the contractual obligation and vowed to release the payment on the dates stated in the said letter. Further the plaintiff on the basis of the cheques mentioned in para-3 above filed an application under Section 22-A & B of Cr. P.C. and subsequent to the same criminal case bearing No.2162/2015 was filed before the XXIII Judicial Magistrate, District South Karachi. In the said criminal proceeding, it is stated by the learned counsel for the plaintiff, that the said defendant was declared as a "proclaimed offender". Record of the criminal proceedings from pages 73-119, annexed with the plaint, though not relevant for the present purposes, is

only referred to by the learned counsel of the plaintiff as evidence of the defendants absconding from the proceedings.

5. Instant summary suit under Order XXXVII CPC was filed on 23.08.2017, upon filing of the same notices issued to the defendant by the Additional Registrar. Subsequently, a leave to defend application was filed by the Defendant bearing CMA No. 9520/2018 and 06.08.2018 Mr. Zubair Ali Khaskheli, Advocate, affected appearance and undertook to file his vakalatnama on behalf of the defendant. The record reflects that no one affected appearance on behalf of the Defendant ever since the above undertaking was given. This court gave repeated provided opportunities to the Defendant to appear and finally on 22.02.2022 the leave to defend application of the Defendant was dismissed for non-prosecution.

6. I have perused the documents relied upon by the learned counsel for the plaintiff and have also examined the returned cheques. It is evident that the parties had a contractual relationship and the same cannot be denied as the defendant vide letter dated 10.12.2014 (addressed to the Pakistan Broadcasters Association) admitted the relationship and took the plea that all payments due to the plaintiff were made by the Defendant. Since the leave to defend application was dismissed on 22.02.2022 therefore it is only the contents of the plaint and documents annexed with the same which can shed light on the matter. Before adjudicating the merits of the claim advanced by the Plaintiff it will be advantageous to reproduce sub-rule (2) of Rule 2 of Order 37 CPC.

“(2) In any case in which the plaint and summons are in such forms respectively the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree –”
(emphasis added)

The Honourable Supreme Court of Pakistan in the case of *Haji Ali Khan & Company, Abbottabad and 8 others vs. M/s. Allied Bank of Pakistan Limited, Abbottabad*¹ dilated upon the issue extensively and laid down the parameters for adjudicating Summary Suits in which the leave of the Defendant was either not filed or dismissed. It was held that the court adjudicating a summary suit under Order XXXVII cannot shut its eyes to the record available and is required to apply its mind even in cases where leave to defend has been dismissed. A detailed perusal of *Haji Ali Khan* (supra) makes it abundantly clear that the burden of proof in a summary suit is (at least comparatively) lighter than it is on a plaintiff in a regular suit. However, the court while adjudicating a summary suit has to see facts narrated by the plaintiff and adjudge whether the plaintiff is entitled to the relief sought. The said exercise cannot be done in a mechanical or arbitrary manner and requires judicial deliberation.

7. The negotiable instrument in the present case are the cheques, details of which have already been given in paragraph No. 3. It is by now well settled that a cheque falls under the category of negotiable instrument and therefore, has to be governed by the Negotiable Instrument Act, 1881 ("**Act**"). The presumption regarding cheques is clearly laid down in Section 118 of the Act and the same is reproduced below: -

"118. Presumptions as to negotiable instruments---(a) of consideration; (b) as to date; (c). as to time of acceptance; (d) as to time of transfer; (e) as to order of endorsements (1) as to stamp; (g) that holder is a holder in due course. - --Until the contrary is proved, the following presumptions shall be made,

(a) that every negotiable instrument was made or drawn of consideration, and that every such instrument, when it has been accepted, endorsed negotiated or transferred, was accepted, endorsed negotiated or transferred for consideration:

¹ (PLD 1995 Supreme Court 362)¹

(b) that every negotiable instrument bearing a date was made or drawn on such date;

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

(d) that every transfer of a negotiable instrument was made before its maturity; that endorsements appearing upon a negotiable.

(e) that endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;”

9. What is evident in the present case is that no rebuttal has been given by the defendant and the leave to Defend application was dismissed for non-prosecution, as noted above. There is nothing to rebut the presumption under Section 118 of the Act. I have also perused the plaint and the annexures filed by the Plaintiff and hold that the Plaintiff is entitled for the relief sought to the extent of the amount in the negotiable instruments.

10. The plaintiff in the instant suit has sought a decree in the sum of Rs.16,706,481/- (Rupees Sixteen Million Seven Hundred Six Thousand Four Hundred and Eighty One only), however, this Court is not inclined to pass a decree of the said amount as the said figure is over and above the cumulative amounts of the negotiable instruments in paragraph No. 3 above. Accordingly, I decree the suit in the sum of Rs.11 million against the Defendant in addition to interest at the rate of 15% from the date of this judgment till realization.

Office is directed to prepare the decree in favour of the plaintiff in the above terms.

Judge

Nadeem