IN THE HIGH COURT OF SINDH AT KARACHI

I[st] Appeal No. 09 of 2024

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

[M/s. OilBoy (Pvt.) Ltd. V. M/s. Pak Qatar Investment (Pvt.) Ltd.]

Date of hearing	:	25.02.2025
Date of decision	:	20.03.2025
Appellant	:	Through Shaikh Javed Mir, Advocate.
Respondent	:	Through Mr. Muhammad Khalid Hayat, Advocate

JUDGMENT

Muhammad Osman Ali Hadi, J: The instant appeal arises from Order dated 12.12.2023 passed in in Summary Suit No.144 of 2023 (**"the Impugned Order"**) filed by the Respondent, awarding them Rs.57,000,000/- (Rupees Fifty-Seven Million Only), against cheques issued by the Appellant through their Chief Executive Officer, namely Mr. Farhan Abbas Shaikh. The succinct facts preceding the instant Appeal are as follow:

2. The Appellant is a private limited company, whilst the Respondent is an investment institution registered in Pakistan. The Respondent entered into an Investment Agreement dated 03.3.2021 (**"the Agreement"**) with the Appellant, through which the Respondent was providing finance to the Appellant, for conducting business activities relating to coal trading. The Agreement was entered into by the Appellant's Chief Executive Officer Mr. Farhan Abbas Shaikh (**"CEO"**), on their behalf.

3. For purposes of security, the Appellant [signed through their Chief Executive Officer Mr. Farhan Abbas Shaikh (**"CEO"**)], issued post-dated cheques to the Respondent. The two cheques relevant for instant purposes were issued by Bank Al-Falah dated 31.03.2023 amounting to Rs.25,000,000/- (Twenty Five Million Only) and dated 30.04.2023 amounting to Rs.35,000,000/- (Thirty Five Million Only). The Respondent claimed the Appellant had failed to make certain payments to them, so proceeded to encash

the cheques, which were both dishonoured on 18.7.2023, due to insufficient funds.

4. The Respondent approached the Appellant (through their CEO) in an attempt to resolve the situation, which as per the Respondent, remained unfruitful. The Respondent issued a Legal Notice dated 21.07.2023 asking the Appellant to pay the outstanding amount along with accrued profit, which was also ignored by the Appellant.

5. The Respondent then filed a Summary Suit No. 144 of 2023 (**"the Summary Suit"**) under Order 37 Rules 1 & 2 Code of Civil Procedure 1908, for recovery of Rs.60,000,000/- (Rupees Sixty Million Only) on the basis of the dishonoured cheques (*ibid*) before the learned District Judge - South at Karachi.

6. The said Summary Suit was filed by the Respondent against the Appellant Company, naming Mr. Farhan Abbas Shaikh (admittedly the CEO of the Appellant and the signatory on the Agreement between the Parties) as Defendant in the Suit. A perusal of the Title Page (necessary for purposes explained later) in the Suit reads *"M/s Pak Qatar Investment Pvt. Ltd. versus Farhan Abbas Shaikh, s/o Muhammad Abbas, having office at M/s Oilboy (Private) Ltd. Office at 5-A/1, Gulberg – III, M.M. Alam Road Lahore"*.

7. The CEO filed his Leave to Defend application, which was dismissed vide the Impugned Order, whereby the learned Single Judge *inter alia* held (at pg. 33 of the File):

> *"Since the defendant has admitted the claim of Rs 57 Million, this court tried to bring the parties to some agreement but the plaintiff did not agree to any sort of agreement as the defendant offered to pay Rs 57 Million in installments"*.

Thereafter, the instant Appeal was filed.

8. Learned Counsel for the Appellant has mainly contended the Impugned Order has erred by denying the Appellant their right to defend themselves in the Suit, and by dismissing their Leave to Defend application. Learned Counsel cited the principles of natural justice and safeguarded rights to a fair hearing.

9. Learned Counsel next contended the Suit was filed against Mr. Farhan Abbas Shaikh, who was the CEO, and not against the Appellant Company. He stated the Appellant had issued the dishonoured cheques, and was a separate

legal entity from the CEO. He contended the Appellant was not made party to the proceedings. To support his contentions, learned Counsel has placed reliance on *2020 CLD 894* & *2023 CLD 570*.

10. Learned Counsel for the Respondent has simply stated that the Impugned Order was correctly passed on the basis of admission by the Appellant (through its CEO), in light of which there remains no reason to interfere with the Impugned Order.

11. He further averred the Appellant has changed their plea regarding the Suit being filed against the CEO and not the Appellant, which (as per learned Counsel for the Respondent) was never pleaded at any time below.

12. We have heard the learned Counsels and perused the pleadings.

13. The first contention of the Appellants which we shall address is whether the Appellant ought to have been made a party to the Suit in its own name, or whether the CEO (Mr. Shaikh) being named was sufficient?

14. It is trite law that a company is a separate juristic entity from its employees, meaning directors / employees of a company under normal circumstances cannot be held responsible for the contractual obligations incurred by a company (with certain exceptions of personal guarantee, fraud etc. which are irrelevant for the instant purposes). But each case must be viewed on its own merits and circumstances. The Summary Suit was filed in name against the CEO, Mr. Farhan Abbas Shaikh, but a perusal of the Title Page in the Summary Suit would show the Appellant, i.e. M/s Oilboy (Private) Ltd. also being named as the address for the CEO. The normal format would be to name the company first, being served through its CEO, but in the instant case the Respondent appears to have done the reverse.

15. Looking further at the substance of the Plaint, would clearly show the CEO and the Appellant, in essence, appearing to be one and the same. The CEO has also never once denied the liability being claimed by the Respondent, and in fact has answered the Respondent's allegations as if he was the Appellant Company.

16. The CEO has been instrumental in all proceedings throughout, including signing of the Agreement between the Parties (at pg. 45 of the File),

signing cheques, as well as putting up a defence on the Appellant's behalf. A perusal of the Leave to Defend Application filed by the CEO on behalf of the Appellant (at pg. 225 of the File) would unequivocally show the CEO to be acting on behalf of the Appellant.

17. A viewing of Para Nos. 3, 4, 6, 7 & 10 as well as the Prayer clause of the Leave to Defend Application (at pg. 225 of the File) shows the CEO has taken ownership of the matter & accepted liability on behalf of the Appellant (Defendant in the Suit).

18. These actions of the CEO appear to have also been repeatedly endorsed by the Appellant. Throughout the Memo of Appeal, the Appellant has referred to the Leave to Defend Application (filed by the CEO) as the Appellants' own, and the prayer clause also implores the said Leave to Defend Application to be considered[1]. This illustrates the Appellant has accepted the Leave to Defend filed by its CEO, and cannot at this stage, after a Final Order has been passed, backtrack by attempting to create a juristic separation between the Appellant and the CEO. Also, it is relevant to note this plea was only taken by the Appellant in the Appeal (and not at the Trial Court), with one mere mention at 'Ground G'. There has been no explanation or otherwise mention of this attempt at juristic separation by the Appellant.

19. This belated argument now being submitted by the Appellant in itself is also self-defeating. If the Appellant's view was to be considered, there would be great contradiction within. On the one hand the Appellant is claiming relief based on the separation from its CEO; and on the other hand they're claiming enforcement of the same Leave to Defend Application filed by their CEO.

20. Since the Appellant unequivocally accepted the CEO was aware and participated in the Summary Suit proceedings, so even otherwise, the Appellant has failed to provide any justification for not appearing before the Trial Court and joining the trial proceedings, especially considering they admittedly had complete knowledge of the same.

21. It appears the Appellant is now attempting to thwart the judicial proceedings, by raising an issue of 'legal-entity vs company-employee' at this belated stage. The Appellant's lack of *bona fide* can also be observed through their own admissions. The Appellant themself admit notice of the proceedings

[1] Specific reference to Para 14 Memo of Petition and the Prayer Clause

trial proceedings in Para 14 of the Memo of Appeal, and have stated they filed their Leave to Defend Application before the Trial Court. This would mean they accept the Leave to Defend Application filed by the CEO to be their own (as there is no other Leave to Defend Application available on record). Once the Impugned Order was passed against them, the Appellant approached this Appellate Forum and attempted to alter their stance by adding a new defence, trying to separate themself from their CEO. This appears to be a ploy purely for the purposes of delaying / defeating the Impugned Order and evading admitted liability.

22. Insofar as the name of the CEO is mentioned as the Defendant, we find that to have no bearing, since the same was accepted by both the CEO and the Appellant. It could perhaps be put down to the Title Page being unorthodoxly drafted, but the essence of the Plaint has held both the Appellant and the CEO (who appears to be the only person acting on behalf of the Appellant throughout the parties' relationship) liable.

23. It is of further pertinence to mention the CEO, namely Mr. Farhan Abbas Shaikh did not file any appeal against the Impugned Order, and in this regard had accepted the Impugned Order. The instant Appeal was filed by M/s Oilboy (Pvt.) Ltd, and only as an afterthought the CEO belatedly filed an amended title dated 18.04.2024 in which he attempted to substitute himself in place of the Appellant. Conversely, this confirms the Appellant's endorsement of the CEO, and vice-versa. Therefore, at this stage it would be entirely unjust to revisit the process already concluded by the Trial Court.

24. Furthermore, the Appellant has neither provided any company document (e.g. Form-29 etc.) or otherwise stated the CEO was unauthorized to appear on their behalf. Since the CEO was the main authorized person dealing with the Respondent since inception of their relationship, there would appear no reason as to why the Respondent would not believe the CEO to be duly authorized on behalf of the Appellant. The Appellant cannot blow both hot and cold, i.e. accept the CEO as the Appellant's representative when it suits them, and then deny his authority when it doesn't.

25. A perusal of section 28 of the Negotiable Instruments Act 1881 also provides that an agent acting on behalf of another by signing a cheque could also be held liable. It appears from record provided in the pleadings that Mr. Farhan Abbas Shaikh (i.e. the CEO) acted on behalf of the Company, which

has never been denied by the Appellant. Even in the Leave to Defend Application, the CEO has repeatedly put forth his defence as if acting for the Company. As stated earlier, perhaps due to indistinct drafting, the name of the CEO (in the Summary Suit) was put before the name of the Appellant Company in the Title, but since neither the CEO nor the Appellant took this objection earlier, post-judgement the same cannot now be seriously considered. In fact, the language of the both the Plaint and the Leave to Defend Application in the Summary Suit would clearly show the Respondent has averred against the Appellant and CEO collectively, and the Appellant and CEO have answered collectively, without any denial of intertwined liability[2].

26. Therefore, we find this contention put forth by the Appellant also to be without merit, as it has been explicitly acknowledged by the Appellant that their CEO, namely, Mr Farhan Abbas Shaikh, acted on their behalf. We don't find the caselaw cited by the learned Counsel for the Appellant has come to his assistance in the instant matter. The first case[3] referred by Counsel for the Appellant related to challenging notices for recovery as land arrears, issued by Pakistan Telecommunication Authority, which is entirely separate from the matter at hand. The second case referred[4] was decided by a learned Single Judge of this Court, which related to a family dispute relating to internal squabbles, also is distinct to the matter at hand.

27. We refer to the case of *Sh. Muhd Irfan v Sitara Commission Shop & Ors*[5] where the Apex Court held:

> *"It is reflected from the perusal thereof that the petitioners had not denied the issuance of two cheques amounting to Rs.14,00,000. The petitioners are admittedly the Directors/shareholders of Messrs Chamba Model Industries Private Limited and the conditional leave granting order by the learned Banking Judge was even upheld by the High Court while dismissing the revision petition filed by the petitioners, as such the same had attained finality. The non-mentioning of the name of the petitioners' Company is not fatal, as already stated, the petitioners had admitted their responsibility."*

28. The next contention which we will consider are the alleged errors in the Impugned Order pointed by the Appellant. The Impugned Order was passed on clear admission made by the Appellant & CEO, of owing the Respondent

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[2] Reference made to Para Nos. 3, 4, 5 & 10 Leave to Defend Application at pg. 225 of the File.
[3] 2020 CLD 894 (Division Bench)
[4] 2023 CLD 570
[5] 2005 SCMR 800

Rs. 57,000,000/-[6]. Moreover, even in the Memo of Appeal itself (*at Paras 19 & 20 and Ground 'E'*), there is an admission of liability for Rs. 57,000,000/- owed by the Appellant & CEO to the Respondent. It is on this exact basis which the learned Trial Court passed the Impugned Order.

29. In the case of *Habib Bank Ltd. v T & N Pakistan (Pvt.) Ltd.*[7] a learned Judge of the Lahore High Court dismissed a leave to appeal application on the basis of admission of liability on the basis of a letter written by its chief executive officer. Relevant portion reads:

> *"14. Another fact which will have a gravitational pull on the determination to be made on the application for leave to defend is a letter dated 02.12.2010 to which a reference has been made in paragraph 23 of the plaint. According to the learned counsel for the plaintiff-bank there is no denial of this letter by the defendants. At the end of this letter, after reciting the various problems faced by the defendants-Company with regard to the repayment schedule of the finance facilities and after admitting that the finance facilities had been availed by the defendants-Company from the plaintiff-bank, a chart has been reproduced which shows the outstanding amounts which are due to the plaintiff-bank from the defendant-Company. A further request by this letter has been made to reschedule the credit line by considering the cash flow impacts and other circumstances mentioned in that letter. This letter has been written by the Chief Executive Officer of the defendant-Company and no denial is forthcoming from the defendants. According to the learned counsel for the plaintiff-bank, the claim in the plaint is merely to the extent of the liabilities which have been admitted vide this letter by the defendant- Company. In my opinion, this letter should be sufficient to saddle the defendants with the liabilities which are now admitted vide this letter with more. Needless to mention, the request made by this letter on 02.12.2010 was not acceded to by the plaintiff-bank. However, the admission brought forth in this letter is sufficient to hold that the defendants are liable for the repayment of the amount mentioned in the said letter by the defendant-Company itself.*
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> *15. In view of the above, the defendants have failed to raise any substantial question of fact or law in the application for leave to defend which is hereby dismissed."*

30. We refer to the case of *Muhammad Rafiq v Muhammad Ali*[8] where the Supreme Court of Pakistan also held where an admission in a pleading (such as written statement) there is no requirement for further proof. We also refer to various statutory provisions supporting such *dicta*, such as Order XIV Rule 1(6), XV Rule 1, XII Rule 12 Code of Civil Procedure 1908; article 31 Qanun-e-Shahadat Order 1984.

We conclude by summarising the crux of the above-mentioned as follows:

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[6] Reference to Para 5 & 8 of the Leave to Defend Application at pg. 227 & 229
[7] 2016 CLD 1782
[8] 2004 SCMR 704

31. The Appellant at this stage of appeal cannot disclaim their CEO Mr. Farhan Abbas Shaikh from acting on their behalf, considering the Appellant have repeatedly accepted / endorsed the CEO as their representative. The Appellant are estopped by their own conduct from now claiming a juristic separation between themselves and their CEO at such belated stage.

32. The Appellant wilfully opted to not raise the above plea, and not appear before the Trial proceedings. Moreover, it beggars belief the Appellant wants to remove liability from the CEO Mr. Farhan Abbas Shaikh, and to voluntarily shift the liability on to themselves, out of *bona fide* intentions. If indeed the Appellant and CEO were separate and not in collusion, it would be improbable for a company to appear and seek such a prayer.

33. A piercing of the veil of incorporation would no doubt show the CEO and the Appellant to be one and the same, i.e. the CEO being the only person with whom the Respondent had interacted. The signing of the Agreement, cheques and all correspondence by the Appellant with the Respondent has been conducted through its CEO. In the case of *Shaukat Ali*[9] it was observed by the Apex Court:

> *"The trend of decisions since the above enunciation of the law in Solomon's case appears, however, to show that in a number of important respects both the Courts and the Legislatures have rent the veil which was recognized in the above-mentioned decision to be almost inviolable. The growing tendency appears to be rather to look at the substance and not to allow the vision to be clouded by the shadow of the corporate personality. Thus where the corporate personality is being used merely as a cloak for fraud or improper conduct or where it can be established that the corporate personality is merely acting as an agent or trustee for someone else, be he an individual or another subsidiary company, or where it is necessary to determine the true character of the corporate personality for other purposes, such as to determine its tax liability or its quasi-criminal liability or as to whether the corporate body is an enemy concern or not, or a mere trustee for certain purposes, the Courts have not hesitated to look behind the veil of incorporation (vide Gower's Modern Company Law, 2nd Edn., pp. 183-209).*
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> *Whatever might be the position of third parties, vis-a-vis the company and the liabilities of its shareholders, it does appear that there is no bar to the Courts lifting the veil of incorporation to determine the true relationship of the shareholders with regard to their dealings with the company or to ascertain the true nature of the company itself in matters which are governed by other statutes or where other considerations necessitate the taking of such a step."*

[9] *President v Justice Shaukat Ali* PLD 1971 SC 585 (also cited by the learned Single Judge in 2023 CLD 570 referred by learned Counsel for the Appellant)

34. The Appellant has failed to show any illegality with the Impugned Order, which was rendered entirely on admissions made by both the Appellant and their CEO, through pleadings made under oath. This new plea of separating the CEO and the Appellate Company was also only taken at the Appellate stage, and was never raised earlier during the trial proceedings. The CEO by purporting to substitute himself into the Appellate proceedings has shown his proximity with the Appellate / Company. The Appellant / CEO cannot hide behind a mesh attempting to be created, in a bid to defeat the Impugned Order.

35. In light of the foregoing, we do not find any rationale to interfere with the Impugned Order.

Accordingly, this instant Appeal is dismissed.

JUDGE

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