

Judgment Sheet
IN THE HIGH COURT OF SINDH, KARACHI.

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

I-Appeal No.108 of 2017
Muhammad Owais Qarni
Versus
Shaikh Muhammad Talha & others)

- Hg. of case /priority**
1. For hg. of main case
 2. For hg. of CMA No.4137/2016

26.03.2025.

Mr. Muhammad Yasin, advocate along with appellant

J U D G M E N T

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Muhammad Iqbal Kalhoro, J:- Respondent, on whose behalf none is present, filed a Summary Suit No.61/2012 against appellant for recovery of 2,000,000/- (Rupees Twenty Lac) stating in the plaint that he and appellant purchased a Plot No.3, Row No.1, measuring 422 square yards, situated in Block No.III, Nazimabad, Karachi against a sale consideration of Rs.3 crors. Both the parties were liable to pay 50% each towards the sale consideration. It is further alleged that plaintiff/respondent paid Rs.9,500,000/- (Rupees Ninety Five Lac) to the defendant in installments (through cheques and cash) for onward payment to the owner of the plot. But the defendant/appellant paid only Rs.7,500,000/- (Rupees Seventy Five Lac) to the owner and kept Rs. 200,0000/- (Rupees Twenty Lac) with him. When the plaintiff came to know of such fraud, demanded his money from appellant, hence, he issued him two (02) cheques of Rs.10,00,000/- (Rupees Ten Lac) each but the said cheques, when presented in the Bank, were dishonoured. Hence, he registered an FIR Crime No.61/2012 against appellant u/s 489-F PPC at Police Station Artillery Maidan, Karachi and filed the instant suit.

2. On service, appellant appeared before the trial Court and filed an application for leave to defend the suit, which was allowed subject to deposit of Rs.20,00,000/- with the Nazir of the Court within fifteen (15) days. But the appellant did not comply with the Court's order and failed to deposit the amount. Instead, he filed an application for reduction of surety, which was disallowed and due to his failure to deposit the conditional amount, his application for leave to defend the suit was dismissed. Thereafter, appellant kept on moving various applications for allowing him to defend the suit and reduction of the surety but all those applications were dismissed. However,

those orders were never challenged by the appellant. The trial Court then proceeded to examine plaintiff / respondent, who produced all the relevant documents in support of his claim. His evidence and the documents produced by him, since stood unrebutted and there was undeniable evidence in the shape of dishonoured cheques issued by the appellant in favour of the respondent, the suit was decreed vide impugned judgment and decree dated 28.04.2016, hence, this appeal.

3. Learned counsel for the appellant and appellant both have argued that in respect of one cheque, the FIR was registered against the appellant and he was acquitted, and the acquittal appeal filed against that judgment before this Court was also dismissed. Hence, the appellant cannot be held responsible for at least one cheque. This argument is not sustainable in law as criminal liability and civil liability are different from each other. Acquittal in a criminal case does not absolve the accused from fulfilling his obligation determined under the civil law. In the criminal case, the cases are decided on the basis of a benefit of doubt, whereas, in civil case the preponderance of evidence is to be taken into account for deciding rights of the parties. In the present case, although appellant was given a conditional leave to defend the suit but he failed to fulfill the contingency and did not deposit the amount in the Court, as directed.

4. Instead, he filed an application for reduction of surety, which was dismissed. Subsequently other applications filed for the same purpose were also declined by the trial Court but he did not challenge such orders before any forum including this Court. The respondent in his evidence has produced entire evidence to support his claim, which has gone unrebutted therefore we do not find any reason to reverse the findings of the trial Court, which are based on a proper appreciation of oral and documentary evidence. This being the position, we do not find any merit in this appeal and dismiss it accordingly.

This appeal is disposed of in above terms along with pending application(s)

JUDGE

JUDGE

Rafiq/P.A.