

# IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No.69 of 2024

**Present:**

**Mr. Justice Zafar Ahmed Rajput**

**Mr. Justice Arshad Hussain Khan**

Appellant	:	Abdul Qayyum Khan s/o Abdul Shakoor, through Mr. Aijaz Ali Hisbani, Advocate
Respondent	:	Mst. Farnaz Sultana w/o Muhammad Rehan Mirza ( <i>Nemo</i> ) -----
Date of hearing	:	21.01.2025
Date of decision	:	21.01.2025 -----

**ORDER**

**ZAFAR AHMED RAJPUT, J.:** This First Appeal is directed against the judgment and decree, dated 21.03.2024, whereby the learned VI<sup>th</sup> Addl. District Judge, Karachi-Central (**Trial Court**) has decreed Summary Suit No.44 of 2022 (the **Suit**), filed under Order XXXVII of the Civil Procedure Code, 1908 (**CPC**), by the Respondent-plaintiff against the Appellant-defendant for recovery of Rs.18,00,000/-.

2. Briefly stated facts of the case are that the Respondent herein filed the Suit, alleging therein that she entered into an agreement of sale with the Appellant for purchasing an immovable property i.e. House No. R-426/2, situated in Block-A, Gulshan-e-Noor, Surjani Town, Karachi, for total sale consideration of Rs.20,00,000/-, which she paid to the Appellant through cheques and cash. The deal between the parties turned cancelled and for return of her payment, the Appellant sworn an affidavit/*Halafnama*, dated 21.06.2021, and issued three cheques amounting to Rs.18,00,000/-, each of Rs. 6,00,000/-, dated 07.12.2021, drawn at Bank Al-Habib Limited, Dastagir Colony Branch, Karachi, which were dishonored on presentation. Hence, the Respondent filed the Suit, *inter alia*, seeking following relief:

- a. *To pass the judgment may kindly be passed and suit may be decreed for Rs.18,00,000/- (Eighteen Lac) along with Mark-up/mesne profit @ 20% per annum from first date of default till payment of actual/principal amount against the defendant in favour of plaintiff and so also costs and other expenses incurred upon, from the date of default.*
- a. *That order may kindly be passed for sale of movable and immovable properties of the defendant.*
- b. *That the cost of suit may kindly be saddled from the defendant.*

3. Having been served with the summons, the Appellant made his appearance before the Trial Court and filed an Application for Leave to Defend through his counsel, which was allowed by the Trial Court conditionally i.e. subject to furnishing solvent suety in the sum of Rs.5,00,000/- within 15 days, vide order dated 31.10.2023, but he failed to comply with the same. He then filed an application under section 151, CPC seeking exemption from furnishing suety, which was dismissed by the Trial Court debarring him from filing written statement and fixing the matter for ex-parte evidence of the Respondent, vide order dated 26.01.2024. Subsequently, the Respondent filed her Affidavit-in-Exparte Proof and produced relevant documents. Her witnesses, Muhammad Rehan Mirza and Saqib Ali, also filed their Affidavits-in-Exparte Proof. The Appellant remained absent, hence cross-examination was treated as Nil. Thereafter, the Trial Court decreed the Suit vide impugned judgment and decree.

4. Learned counsel for the Appellant has contended that due to weak financial position, the Appellant failed to furnish surety in compliance of conditional order passed by the Trial Court; that the impugned judgment and decree being passed in absence of the Appellant are not sustainable in law; that had the application of the Appellant filed under section 151, CPC been allowed, the Appellant would have been in position to appear in the suit as witness and produce his document in support of his defence; that the Trial Court has failed to examine the credibility and legality of the documents produced by the Respondent in her evidence; hence, the impugned judgment and decree is liable to be set aside.

5. Heard, record perused.

6. It is an admitted position that the Respondent filed the Suit on the basis of negotiable instruments i.e. three cheques each amounting to Rs.6,00,000/-. The Trial Court provided an opportunity to Appellant to rebut the contentions of Respondent by allowing his Application for Leave to Defend conditionally, but he failed to furnish requisite surety. The Appellant did not challenge the order of Trial Court, dated 31.10.2023, before higher forum claiming grant of leave to defend as a matter of right unconditionally. The claim of the Respondent is supported by agreement between the parties, cheques in question along with dishonor memos, FIR, etc., which has gone unimpeded.

7. For the foregoing facts and reasons, we have not found any illegality or irregularity in the impugned judgment and decree requiring any interference of this Court under its appellate jurisdiction; hence, this First Appeal is dismissed in limine, along with pending applications.

Above are the reasons of our short order dated 21.01.2025.

JUDGE JUDGE

*Tahseen/PA*