

IN THE HIGH COURT OF SINDH AT KARACHI

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

I.A. No. 99 of 2022

[Muhammad Naeemv.....M/s. Bakri Trading Co.]

Date of Hearing : 20.05.2025
Appellant through : Mr. Saqib ali Awan, Advocate.
Respondent through : Mr. M. Zahid Kabeer, Advocate.

JUDGMENT

Muhammad Iqbal Kalhoro, J:- Respondent filed a summary suit under Order XXXVII CPC against appellant for recovery of an amount of Rs.21,80,058/- before the Illrd Additional District Judge, South, Karachi stating in the plaint that parties were in business relations. In business dealings, the appellant issued different cheques in the name of plaintiff/respondent company. Out of these, two cheques of the aforesaid amount, when deposited by the respondent in the bank account, were dishonoured, hence respondent registered an FIR against appellant and others besides filing present suit.

2. Despite service through substitute means by way of publication, the appellant failed to appear hence the suit was ex parte decreed vide judgment and decree dated 10.09.2018. The appellant thereafter filed an application under Section 12(2) CPC and succeeded in setting aside the said ex parte judgment and decree. He then filed written statement challenging the claim of respondent. On pleadings of parties, following issues were framed:-

- 1. Whether defendant did oil business with the plaintiff?*
- 2. Whether defendant issued two cheques bearing Nos. 61148200 dated 25.11.2016, amounting to Rs.12,23,046/-*

and No. 61148199 dated 28.11.2016 amounting to Rs.9,57,012/- to the plaintiff?

3. Whether one employee of company namely Jahanzeb Qazi was friend of defendant and defendant issued the above cheques in business relations to him which he misused and pledged with plaintiff's company?

4. Whether the suit of plaintiff is not maintainable?

5. Whether the plaintiff has no cause of action to file this suit?

6. Whether plaintiff is not entitled to any relief as claimed?

7. What should the decree be?

3. In evidence, plaintiff/respondent examined himself and produced power of attorney, copies of relevant cheques and memo of bank statement. On the other hand, appellant/defendant filed affidavit-in-evidence. Thereafter, learned trial Court after appreciating evidence and hearing the parties has decreed the suit vide impugned judgment and decree dated 29.10.2022, hence this appeal.

4. We have heard learned counsel for the parties. The main defence of appellant is that the respondent/plaintiff has failed to establish any business deal with the appellant/defendant. The appellant had issued cheques to one Jahanzaib Qazi as security in respect of some other business deal which the later by playing fraud gave to respondent who has misused the same, hence he is not liable to pay the amount of cheques to the respondent. We have seen reasonings of learned trial Court. It has observed that the burden of proof that the subject cheques were given to Jahanzaib Qazi by appellant in respect of some other deal as security was upon the appellant and he did not examine the said person to establish the

said fact and discharge his burden. We do not see any error or illegality in the said reasoning. Initially, the burden was upon the respondent to prove issuance of cheques by the appellant qua the outstanding amount against him. That burden was discharged by him by producing dishonoured cheques belong to the account of the appellant in favour of respondent company. Learned counsel for the appellant has failed to cite any explanation as to how the cheques issued in the name of respondent company were given by him to his employee Jahanzaib Qazi. When questioned, his explanation is that he had only signed the cheques, whereas the writing on the cheque was not done by him. This stance was not taken by him in the pleadings before the learned trial Court by the appellant firstly and secondly he did not move any application to refer the cheques to handwriting expert for determining these facts. Even otherwise, we are of the view that such ground would not have been helpful to him because he has admitted his signatures over the cheques issued in the name of respondent company. It is the signature which is relevant and not the description over the cheque.

5. There is nothing on record that after issuing such cheques, the appellant had moved any application before any authority either that cheques have been misused by the respondent company or have been misplaced by him. The plaintiff/respondent by producing the dishonoured cheques issued in his name had been able to discharge its burden, as said earlier and after such discharge, the burden was upon the appellant to establish his defence but the record shows that he has miserably failed to do so.

6. Therefore, we do not find any error or illegality in the findings of the trial Court which are supported by the solid reasons. We therefore do not find any merit in this appeal which is accordingly dismissed.

Karachi
Dated:20.05.2025

JUDGE

JUDGE

Aadil Arab.