IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application No.S-94 of 2024

Applicant	**:**	**Asadullah s/o Allah Rakhio by caste Shaikh** **Through Mr.Syed Zamir Ali Shah, Advocate**
Respondents	**:**	**1). Musarat Hussain s/o Qaimuddin Dhamrah** **Through Mr. Atta Hussain Chandio, Advocate** **2). Riaz @ Ali Asghar s/o Ali Muhammad** **By caste Shaikh** **Through Mr. Ahsan Ali, Advocate**
Date of hearing	**:**	**14-05-2025**
Date of Judgment	**:**	**21-05-2025**

JUDGMENT

Jan Ali Junejo, J;- This Civil Revision Application brought under Section 115 of the Code of Civil Procedure, 1908, by the Applicant (original Defendant No. 1), challenges the legality and propriety of the judgment and decree dated 30th April 2024 (hereinafter referred to as the *"Impugned Judgment and Decree"*), passed by the learned Additional District Judge-IV, Larkana (hereinafter referred to as the *"Appellate Court"*), in Civil Appeal No.127 of 2023. Through the impugned appellate judgment and decree, the learned Additional District Judge-IV, Larkana, dismissed the appeal preferred by the present Applicant and affirmed the judgment and decree dated 31st May 2023, passed by the learned IV-Senior Civil Judge, Larkana (hereinafter referred to as the *"Trial Court"*). The learned Trial Court, in F.C. Suit No. 40 of 2023 (New) [F.C Suit No. 74 of 2020 (Old) and F.C Suit No. 51 of 2021 (Old)], had partly decreed the suit instituted by Respondent No.1 (original Plaintiff), Musrat Hussain, for recovery of outstanding dues, directing the Applicant herein to pay a sum of Rs. 900,000/-.

2. The genesis of this litigation lies in a suit for recovery of Rs. 2,555,000/-, damages, and permanent injunction filed by Respondent No.1 (hereinafter referred to as the Plaintiff) against the Applicant (original Defendant No. 1) and Respondent No. 2 (original Defendant No. 2). The Plaintiff (Respondent No.1) contended that Defendant No.1 (Applicant), a pharmacist, proposed an investment in his business. Consequently, an agreement dated 24th January 2018 was executed, whereby the Plaintiff invested Rs.800,000/-, and Defendant No. 1 promised a monthly profit of Rs. 40,000/- for 11 months, totaling Rs.440,000/- in profit, besides the return of the principal amount. A surety cheque for Rs.800,000/- was initially provided but later returned when profit payments commenced. Defendant No. 1 allegedly made some profit payments but defaulted later. Subsequently, another agreement was purportedly executed on 2nd October 2018, for amount of Rs.1,000,000/- with a promise to pay monthly profit of Rs.60,000/- for 11 months, totaling Rs.660,000/- in profit. Defendant No. 1 again made some payments but defaulted later for both agreements and eventually absconded. Upon being confronted in February 2019, Defendant No. 1 expressed inability to pay the profit and offered to return the principal amount of Rs.1,800,000/- in installments, which the Plaintiff initially refused. Defendant No. 2 (brother-in-law of Defendant No. 1) intervened, and the Plaintiff agreed to receive only the principal amount, forgoing the profit. Defendant No. 1 then paid Rs.100,000/- in cash and issued several post-dated cheques. However, only four cheques of Rs.50,000/- each were encashed, and one was dishonored. The Plaintiff further averred that Defendant No. 1 had filed F.C. Suit No. 220/2019, admitting the borrowing of Rs.1,800,000/-. On 16th September 2019, a settlement was allegedly reached where Defendant No.2 guaranteed payment of the remaining principal of Rs.1,500,000/- in monthly installments of Rs.100,000/-, in return for which the Plaintiff returned the remaining cheques

and original agreements to Defendant No.2. Defendant No. 1 subsequently withdrew his suit. Defendant No. 2 made five payments of Rs.100,000/- each from October, 2019 to February, 2020 but then defaulted. The Plaintiff claimed that a total of Rs.900,000/- had been received towards the principle amount (Rs.300,000/- from Defendant No.1 and Rs.600,000/- from Defendant No. 2), leaving an outstanding principle amount of Rs. 900,000/- and an outstanding profit of Rs.655,000/-, for which the suit was filed, along with a claim for Rs.1,000,000/- in damages and interest. The Defendants, in their joint written statement, denied the Plaintiff's allegations, contending that no investment offer was made, and the agreements were false, fabricated, and managed. They admitted the issuance of cheques by Defendant No.1 but asserted that all outstanding amounts were settled through arbitration facilitated by Defendant No. 2, and the Plaintiff had received full payment, evidenced by signatures in a diary maintained by Defendant No.2. They claimed the Plaintiff returned the original cheques after receiving the final settlement amount. They specifically stated that the principle amount was Rs.700,000/-, which was paid in seven monthly installments of Rs.100,000/- each. They prayed for the dismissal of the suit with compensatory costs.

3. The Plaintiff, Musrat Hussain, examined himself and produced photocopies of the alleged agreements (Exh.59/A, 59/B), photocopies of cheques (Exh.59/C to 59/J), a dishonor memo (Exh.59/K), an original receipt (Exh.59/L), bank statements, and certified copies related to F.C. Suit No. 220/2019. He also examined two witnesses, Muhammad Nawaz and Naveed Hussain, who were purportedly marginal witnesses to the first agreement but denied knowledge of the second. Defendant No. 1 (Applicant), Asadullah Shaikh, and Defendant No. 2, Riaz Hussain Shaikh (Respondent No.2), also tendered

their evidence, denying the Plaintiff's claims and reiterating their stance from the written statement.

4. The suit was initially tried by the learned Senior Civil Judge-II, Larkana, who passed a judgment and decree on 28th June 2022 (Exh.86 & 87). This decision was challenged by the Defendants in Civil Appeal No. 95 of 2022. The learned Additional District Judge-IV, Larkana, allowed the appeal vide judgment and decree dated 23rd November 2022, setting aside the trial court's decision and remanding the suit back. The remand order directed the trial court to frame an additional issue regarding the authenticity of the agreements (whether they were false and fabricated) and to rehear the parties and deliver a fresh judgment. Following the remand, the learned IV-Senior Civil Judge, Larkana, framed the additional issue: "Whether agreements dated 24-01-2018 and 02.10.2018 are false and fabricated, if so, its effect?". The trial Court, after considering the existing evidence and hearing arguments, proceeded to pass the judgment dated 31st May 2023. In this judgment, the trial court found Issue No.2 (regarding the first agreement of Rs.800,000/-) and Issue No. 4 (regarding the second agreement of Rs.1,000,000/-) in the affirmative, largely relying on Defendant No.1's admission in his previously filed F.C. Suit No.220/2019 regarding a transaction of Rs.1,800,000/-. Issue No.6 (regarding outstanding profit of Rs.655,000/-) was decided in the negative, as the Plaintiff had stated he waived the profit. Issue No.7 (regarding outstanding principle amount) was decided by holding that Rs.900,000/- was still outstanding. Issue No.8-A (regarding the agreements being false and fabricated) was decided in the negative, with the trial court reasoning that though the Defendants denied the agreements, Defendant No. 1 had admitted their existence and execution in his earlier suit and that Defendant No. 2 admitted to destroying the original agreements. Ultimately, the trial court partly decreed the suit, directing Defendant No. 1 to pay Rs. 900,000/- to the

Plaintiff. This judgment was then challenged in Civil Appeal No. 127 of 2023, which was dismissed by the learned Additional District Judge-IV, Larkana, leading to filing of the present Civil Revision Application.

5. Learned counsel for the Applicant, in assailing the concurrent findings of the courts below, has advanced several arguments. It is contended that the impugned judgments and decrees rendered by both the learned Appellate Court and the learned Trial Court are patently illegal, arbitrary, superfluous, slipshod, and non-speaking. The counsel argues that these decisions are the product of misreading, non-reading, and an improper appreciation of the material evidence placed on record, which has resulted in a miscarriage of justice, thereby warranting them to be set aside. A significant point raised is that the learned Trial Court, as well as the learned Appellate Court, purportedly ignored the contents of the plaint and the evidence adduced by the Plaintiff, passing their judgments in a cursory manner. It is further argued that the learned Appellate Court failed to consider its own earlier judgment in Civil Appeal No. 95 of 2022, wherein an additional issue (Issue No. 8-A regarding the fabrication of agreements) was framed, and the matter was remanded. Despite this remand and the framing of the additional issue, the learned Trial Court allegedly did not record any evidence on this specific issue, which, according to the Applicant's counsel, caused a miscarriage of justice and defeated legal principles. The Applicant's counsel also submits that the learned Appellate Court erred in refusing to record additional evidence and dismissed the application for the same without applying judicial mind. Finally, the Applicant's counsel submits that the learned Appellate Court did not apply its judicial mind, and its approach to the facts and law was misconceived, resulting in a perverse and fanciful judgment that is not speaking and cannot be termed a 'judgment' in the eyes of the law. The judgments of both lower Courts are thus characterized as being in

contravention of the law, illegal, void, and *ultra-vires*, and therefore, not sustainable.

6. Per contra, the learned counsel for Respondent No.1 (original Plaintiff) vehemently defended the concurrent judgments of the courts below, asserting that they were well-reasoned and based on a proper appreciation of the evidence on record. It was argued that the Plaintiff had successfully established his case for the recovery of the principal amount through cogent evidence, including the admission of Defendant No. 1 (Applicant herein) in his previously instituted F.C. Suit No. 220/2019 regarding the borrowing of Rs. 1,800,000/-. The counsel emphasized that the execution of the agreements, at least to the extent of the financial transaction, was implicitly acknowledged by the Applicant himself in the said suit. The learned counsel for Respondent No. 1 likely contended that the Applicant's denial of the agreements was an afterthought, especially in light of the evidence showing part payments and subsequent negotiations involving both the Applicant and Respondent No. 2. It was probably argued that the trial Court correctly found that the Applicant had failed to discharge the burden of proving that the agreements were false and fabricated, particularly when Defendant No.2 (Respondent No. 2 herein) admitted to destroying the original agreements, which lent credence to the Plaintiff's claim that the originals were handed over during settlement talks. Lastly, the learned counsel for the respondent No.1 prayed for dismissal of the instant Civil Revision Application.

7. Heard arguments of learned counsel for the parties and perused the material available on record.

8. After a thorough examination of the record and proceedings, careful consideration of the arguments advanced by the learned counsel for the Applicant and Respondent No. 1, and a meticulous review of the impugned judgment of the learned Additional District Judge-IV, Larkana, dated 30th April 2024, which

upheld the judgment and decree of the learned IV-Senior Civil Judge, Larkana, dated 31st May 2023, this Court finds no compelling grounds to interfere with the concurrent findings of fact recorded by the courts below. The primary thrust of the Applicant's arguments centers on the alleged misreading and non-reading of evidence, the improper appreciation of facts, and the failure of the Courts below to adhere to procedural requirements, particularly concerning the framing of issues and the opportunity to lead evidence on the additional issue framed after remand. The Applicant has vehemently contended that the agreements dated 24th January 2018 and 2nd October 2018, upon which the Plaintiff's claim was substantially based, were false, fabricated, and not proven in accordance with the law. It is pertinent to address the Applicant's contention regarding the authenticity of the agreements (Issue No. 8-A: *"Whether agreements dated 24-01-2018 and 02.10.2018 are false and fabricated, if so, its effect?"*). The learned Trial Court, in its judgment dated 31st May 2023, decided this issue in the negative, i.e., against the Applicant. The reasoning provided by the Trial Court, and subsequently affirmed by the learned Appellate Court, appears sound. The Trial Court rightly placed significant reliance on the Applicant's (original Defendant No. 1) own admissions made in F.C. Suit No. 220/2019. In the plaint of that suit (Exh.59/N), the Applicant himself stated that he had received Rs. 1,800,000/- from Musrat Hussain (Plaintiff/Respondent No.1) on an interest/profit basis and that an agreement/affidavit regarding the business was reduced into writing. This admission substantially corroborates the Plaintiff's assertion regarding the underlying financial transaction and the existence of written agreements, even if the precise terms or the photocopies produced were disputed. The Applicant cannot be permitted to approbate and reprobate by taking one stance in a previous judicial proceeding and a contradictory one in the current suit to evade liability. Furthermore, the Trial Court noted, and this Court concurs, that

although the Applicant denied the agreements as false and fabricated, the conduct of the parties, including partial payments and settlement negotiations involving both the Applicant and Respondent No.2 (original Defendant No.2, the Applicant's brother-in-law), lends credence to the Plaintiff's version of events. The explanation provided by the Plaintiff that the original agreements were returned to Defendant No. 2 during settlement talks, coupled with Defendant No. 2's own admission during his evidence that he destroyed the original cheques and agreements after they were returned to him, weakens the Applicant's stance that the agreements were non-existent or entirely fabricated. If the agreements were indeed non-existent, there would be no originals to return or destroy. The Applicant's argument that he was not given an adequate opportunity to lead evidence on Issue No.8-A after remand is not entirely convincing. The remand order of 23rd November 2022 directed the Trial Court to frame the additional issue and *"re-hear the parties counsel, sum-up the evidence/documents already brought on record by the both parties and deliver the judgment afresh"*. This suggests that the primary focus was on re-appreciating the existing record in light of the new issue. If the Applicant felt aggrieved by a lack of opportunity, this should have been agitated more forcefully and perhaps specifically before the Trial Court or at the earliest opportunity before the Appellate Court with a specific application for leading additional evidence, beyond the one that was dismissed. The Plaintiff discharged his initial burden by producing photocopies (explaining the absence of originals) and, more importantly, by pointing to the Applicant's own admissions and the surrounding circumstances. The burden then shifted to the Applicant to substantiate his claim of fabrication, which, in the view of the Courts below, he failed to do convincingly. The Applicant's counsel contended that the Appellate Court committed a procedural irregularity by failing to frame points for determination, as required under the law. However, it is evident that the Trial

Court had already examined all relevant issues in detail, and the Appellate Court did not disturb those findings. Therefore, the Appellate Court can be said to have substantially complied with the requirements of Order XLI Rule 31 of the Civil Procedure Code (C.P.C.). This position is supported by the precedent laid down by the Honourable Supreme Court of Pakistan in ***Muhammad Iftikhar v. Nazakat Ali (2010 SCMR 1868)***, wherein it was held that:

> *"In the instant case, the findings of facts recorded by the learned trial Court on the issues were maintained by the learned first Appellate Court, therefore, unless the findings are reversed by the first Court of appeal which is not so in the present case, decision on each issue may not to be distinctly and essentially recorded, provided in substance compliance of the provisions of the Order XLI, Rule 31, C.P.C. has been made".*

9. The Applicant's contention that the Courts below ignored his statement in chief examination denying the agreements, which allegedly remained unrebutted, must be viewed in the context of the entire evidence. A party's self-serving statement can be contradicted by other evidence on record, including their own prior admissions or conduct. The Courts below were entitled to weigh the Applicant's denial against his earlier admission in F.C. Suit No. 220/2019 and the testimony of other witnesses, including the Plaintiff and Defendant No. 2.The argument concerning the testimony of the Plaintiff's marginal witnesses, who allegedly did not support the second agreement, was also considered. The Trial Court appears to have based its findings regarding the agreements primarily on the admissions of Defendant No.1 and the overall circumstances rather than solely on the testimony of these marginal witnesses concerning both agreements. The core of the Plaintiff's claim, as decreed, was for the recovery of the principal sum, the transaction of which (Rs. 1,800,000/-) was admitted by the Applicant in his own suit. Concerning the quantum of the outstanding amount, the Applicant has argued that the Plaintiff admitted receiving Rs. 1,345,000/-. The Trial Court, after analyzing the pleadings and evidence, concluded that Rs. 900,000/- of the

principal amount was still outstanding. The Plaintiff, in his plaint (paragraph 5), detailed the payments received: Rs. 100,000/- in cash from Defendant No. 1, Rs. 200,000/- through four cheques from Defendant No. 1, and Rs. 600,000/- from Defendant No.2 (Rs. 100,000/- cash at settlement and five subsequent installments of Rs. 100,000/- each).This totals Rs. 900,000/- received against the principal of Rs. 1,800,000/-, leaving a balance of Rs. 900,000/-. The Trial Court's finding on this aspect, affirmed by the Appellate Court, is based on an assessment of these specific averments and evidence of payments made towards the principal after the Plaintiff agreed to forgo the profit. The Applicant's claim of a higher amount being paid (Rs. 1,345,000/-) seems to conflate profit payments (which the Plaintiff stated he waived) with principle repayments.

10. It is a matter of record that the Applicant, being the executant of the Agreement, has admitted its execution in F.C. Suit No. 220 of 2019. Consequently, the examination of witnesses was not mandatory in light of the exception to the general rule provided under Article 81 of the Qanun-e-Shahadat Order, 1984. Therefore, the subsequent denial by a witness does not exonerate the Applicant from the admission already made in the aforementioned suit. The principle of *estoppel* squarely applies to the Applicant in this context. Reliance is placed on the judgment in ***Muhammad Afzal (Deceased) through L.Rs. and others v. Muhammad Bashir and another (2020 SCMR 197)***, wherein the Honourable Supreme Court of Pakistan held that:

> *"Article 81 is an exception to the general rule that where a document is required by law to be attested the same cannot be used in evidence unless two attesting witnesses are called for the purposes of proving its execution. The simple reading of Article 81 shows that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary".*

With regard to the Applicant's admission concerning the settlement in the

earlier F.C. Suit No. 220 of 2019, it is evident that the Applicant is estopped by his conduct from retracting his clear admission and the undisputed facts surrounding the settlement, which culminated in the execution of a written Agreement/Iqrarnama. Furthermore, the Applicant's own testimony reinforces this position, as does the admission of Respondent No.2, who acknowledged that he personally destroyed the original cheques and agreement after they were returned to him. In view of these circumstances, the Applicant cannot now attempt to evade the legal consequences arising from his prior admissions and conduct. Reliance may be placed on the authoritative judgment of the Honourable Supreme Court in ***Combind Investment (Pvt.) Ltd. v. Wali Bhai and others (PLD 2016 Supreme Court 730)***, wherein the Apex Court of Pakistan held that:

> *"Where the principle of estoppel is pressed into service on the basis of some admitted/undisputed facts of the case, a party is bound by his pleadings and conduct. Hence, at any later stage, he cannot turn around to wriggle out from the consequence of such admission and conduct of submitting to the jurisdiction of such authority".*

11. The Courts below have reached a specific and concurrent finding of fact regarding the outstanding portion of the capital amount. In revisional jurisdiction, this Court ordinarily exercises restraint in interfering with such concurrent findings, unless it is demonstrated that the findings are perverse, unsupported by any evidence, or the result of a gross misreading or misappreciation of the evidence on record. None of these exceptions are attracted in the present case. The Applicant's assertion that the judgments are slipshod, non-speaking, or based on surmises and conjectures is a general statement not substantiated by pointing out specific instances of perversity that would warrant interference under Section 115 CPC.

12. Both the Trial Court and the Appellate Court have provided reasons for their conclusions. The Trial Court, after remand, specifically addressed the issues, including the additional issue, and based its findings on the evidence on record. The Appellate Court, in turn, re-assessed the findings of the Trial Court in light of the arguments raised in the appeal and found no reason to interfere. Considering the totality of the circumstances, the evidence on record, and the reasoning provided by the learned Trial Court and the learned Appellate Court, this Court is of the considered view that the conclusions arrived at are plausible and are supported by the material on record. The scope of revisional jurisdiction under Section 115 of the Code of Civil Procedure is limited. The High Court can interfere only if the subordinate court has: (a) exercised a jurisdiction not vested in it by law; or (b) failed to exercise a jurisdiction so vested; or (c) acted in the exercise of its jurisdiction illegally or with material irregularity. The Applicants have not been able to demonstrate any such jurisdictional error or material irregularity. The lower Courts had the jurisdiction to entertain and decide the suit, and they exercised that jurisdiction in accordance with the law. The mere fact that the Applicants disagree with the findings of the lower courts does not constitute a ground for interference in revision. It is a well-established principle that a revisional court, while exercising jurisdiction under Section 115 of the C.P.C., generally does not interfere with concurrent findings of fact recorded by the two courts below. This principle is based on the premise that an appellate Court serves as the final authority for determining disputed questions of fact. However, this rule is not absolute. There are exceptional circumstances where intervention under Section 115 of the C.P.C. may be warranted, such as in cases of gross misreading or non-reading of evidence on record, or when the courts below have exercised their jurisdiction illegally or with material irregularity. In this regard, reliance may be placed on the dictum laid down by the Supreme

Court of Pakistan in ***Haji Wajdad v. Provincial Government Through Secretary Board of Revenue Government of Balochistan, Quetta and others (2020 SCMR 2046)***. It is a matter of record that the Applicant has not only failed to demonstrate gross misreading, non-reading of evidence, illegality, or material irregularity but has also been unable to establish any exceptional circumstances warranting intervention in the concurrent findings of fact recorded by the learned Courts below.

13. In light of the foregoing discussion and the reasons recorded hereinabove, this Court finds no illegality, material irregularity, or jurisdictional error in the Impugned Judgment dated 30th April 2024 and Decree dated 14.05.2024, passed by the learned Additional District Judge-IV, Larkana (Appellate Court), in Civil Appeal No. 127 of 2023, which rightly upheld the Judgment and Decree dated 31st May 2023, passed by the learned IV-Senior Civil Judge, Larkana (Trial Court), in F.C. Suit No. 40 of 2023(New). The concurrent findings of the Courts below are well-founded and based on a proper appreciation of the evidence on record. Consequently, this Civil Revision Application is found to be without any merit and is hereby dismissed. The parties to bear their own costs.

JUDGE