

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Ist Appeal No. S – 40 of 2024

(Mukesh Kumar v. Hari Chand)

Date of hearing : 16.04.2025

Date of decision : 16.04.2025

Mr. Jai Kumar B. Lund, Advocate for appellant.
Mr. Arz Muhammad Pahnyar, Advocate for respondent.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – The appellant (defendant) has preferred the present appeal, assailing the judgment dated 25.10.2024, passed by learned Additional District Judge, Daharki in Summary Suit No.07 of 2024, whereby the suit was decreed in favour of the respondent (plaintiff).

2. The respondent and the appellant are stated to have had close personal ties. In February 2023, the appellant borrowed an amount of Rs.76,00,000/- from the respondent, with an assurance to repay the said sum in installments. In furtherance of this arrangement, the appellant issued five post-dated cheques in favour of the respondent, details of which are as follows:

Sr. No.	Cheque No. and Dated	Amount	Bank
1.	10351724 dated 15.08.2023	Rs.12,00,000/-	Bank Al-Habib, Daharki Branch
2.	145266246 dated 01.11.2023	Rs.20,00,000/-	Habib Metropolitan Bank, Daharki Branch
3.	10316436 dated 01.11.2023	Rs.20,00,000/-	Bank Al-Habib, Daharki Branch
4.	10351740 dated 15.11.2023	Rs.12,00,000/-	Bank Al-Habib, Daharki Branch
5.	10363298 dated 25.01.2024	Rs.12,00,000/-	Bank Al-Habib, Daharki Branch

The aforementioned cheques, upon being presented by the respondent on their respective due dates, were dishonoured by the concerned banks on grounds including “insufficient funds” and “discrepancy in figures.” Dishonour memos were accordingly issued.

3. Despite repeated attempts by the respondent to recover the outstanding amount, including pursuing criminal proceedings and lodging an FIR, the appellant failed to fulfill the repayment obligations. Consequently, the respondent instituted a summary suit under Order XXXVII Rule 2, CPC for recovery of Rs.76,00,000/-.

4. An application seeking leave to defend under Order XXXVII Rule 3, CPC was filed by the appellant on 07.06.2024. After hearing both sides, the trial Court allowed the application on 30.08.2024, subject to the appellant furnishing surety / security equivalent to the amount of Rs.76,00,000/-. The appellant was granted a period of seven (07) days to comply with the said condition; however, no compliance was made. Consequently, the order granting leave to defend was recalled by order dated 06.09.2024.

5. Thereafter, the respondent submitted his affidavit-in-evidence along with affidavits of supporting witnesses and relevant documentary evidence. Upon completion of proceedings, the trial Court decreed the suit in favour of the respondent for a sum of Rs.76,00,000/- with costs.

6. Aggrieved by the said decree, the appellant has preferred this appeal primarily on the grounds that the time allowed for furnishing surety was inadequate considering the large amount involved; that the cheques in question were not signed by the appellant; that the trial Court erred in relying solely on the respondent's evidence, without affording adequate consideration to the appellant's version.

7. I have heard learned Counsel for the parties and perused the record with their able assistance.

8. The trial Court rightly invoked the presumption attached to negotiable instruments under Section 118 of the Negotiable Instruments Act. The cheques issued by the appellant were presented and dishonoured,

and the respondent placed on record copies of the dishonoured instruments along with return memos issued by the concerned banks. The presumption under Section 118 shifts the burden of proof onto the drawer of the cheque, which in this case is the appellant, to establish that the cheques were not issued in discharge of a lawful liability. However, the appellant not only failed to discharge this burden but also defaulted in complying with the conditional order granting leave to defend.

9. The conditional leave to defend was not an unreasonable exercise of discretion by the trial Court. In the context of Order XXXVII, CPC, such discretion is meant to ensure that frivolous defences do not delay the expeditious resolution of disputes. The appellant's failure to furnish surety within the granted time amounted to a waiver of his right to contest, thereby rendering the respondent's claim unopposed.

10. It is a settled principle that where a defendant fails to comply with the conditions imposed while granting leave to defend, the allegations in the plaint are deemed to be admitted. Accordingly, the trial Court had no alternative but to pass a decree in favour of the respondent.

11. As regards the appellant's contention that the cheques were not signed by him, the record shows that only one bank memo dated 11.03.2024, related to cheque No.10363298, cited "signature is unauthorized" as one of the reasons for dishonour. It is pertinent to mention here that even this memo also reflects two additional reasons for dishonour viz. "insufficient funds" and "difference in amount in words and figures." Therefore, the contention is neither conclusive nor sufficient to rebut the presumption of liability under the law.

12. The respondent supported his claim through consistent documentary evidence. On the other hand, the appellant failed to tender any material evidence to challenge the respondent's case or the authenticity of the

cheques. The trial Court, therefore, committed no error in relying on the available evidence and passing the impugned decree.

13. In view of the above discussion, no merit is found in the present appeal. The appellant was provided with a reasonable opportunity to defend the claim but failed to avail the same due to his own inaction. The appeal is accordingly **dismissed**. The judgment and decree dated 25.10.2024, passed by learned Additional District Judge, Daharki in Summary Suit No.07 of 2024, is hereby maintained.

J U D G E

Abdul Basit