IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Syed Fiaz ul Hassan Shah

Ist Appeal No.85 of 2019

Rehmatullah through his legal heirs and another
Vs.
Imran Alam Khan and 2 others

Appellant	:	Through Mr. Abdul Qayoom Abbasi, Advocate
Respondent No.1	:	Through Mr. Ikram Ahmed Siddiqui, Advocate
Date of Hearing	:	30.10.2025
Date of Short order	:	30.10.2025

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J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah,* J :--** The Appellant has challenged the Judgment and Decree dated 31.10.2019 ***(impugned Judgment) passed by the learned IInd Additional District Judge, Karachi Central ***(trial Court)***, whereby, the summary Suit No.07 of 2012 ***(said suit)*** filed by the respondent No.1 for Recovery of amount of Rs.12,247,053/- was Decree with markup at prevailing bank rate against the present Appellants as well as against the Respondents No.2 and 3. Being aggrieved with the said impugned Judgment and Decree, the appellants have filed present appeal before us.

2. Brief facts as given in the pleadings are that the Respondent No.2 approached Respondent No.1 for a loan-cum-investment plan, which was mutually agreed and the Respondent No.1 has paid the amount of Rs.12,295,646/-. The Respondent No.2 represented that the funds would be invested in the purchase of petroleum/fuel products, promising substantial profits. The Respondent No.1 (plaintiff) disbursed Rs.10,695,646/- via pay orders and Rs.1,600,000/- in cash,

with an assurance from Respondent No.2 that the total amount would be returned with profit within 15 days. The details of these pay orders are recorded on pages 2 and 3 of the impugned judgment. Subsequently, Respondent No.1 demanded repayment along with the agreed profit, but Respondent No.2 failed to honor the commitment. After persistent efforts, Respondent No.2 issued 16 cheques to Respondent No.1. Later, it transpired to the Respondent No.1 that the appellants and Respondent No.3 are partners in the firm M/s Globe Petroleum Services and they have colluded with Respondent No.2 in obtaining the funds and issuing these cheque as all of 16 cheque which were given by M/s Globe Petroleum Services and upon presentation of these 16 cheque, all have dishonored. The details of the dishonored cheque are noted on pages 3 and 4 of the impugned judgment. It is further pleaded that the Respondent No.1 has informed about the dishonored of cheque to the appellants and Respondents No.2 and 3 who had again promised for repayment, which remained unfulfilled. Consequently, Respondent No.1 lodged an FIR against the appellants and Respondents No.3 and 4 at Police Station North Nazimabad, and have filed the suit for recovery of amount promised to be paid under 16 cheque.

3. After receiving summons, the appellants and respondents No.2&3 filed applications for leave to defend which was decided by trial Court vide its order dated 25.09.2012, whereby, appellants and respondent No.3 were granted leave to defend unconditionally, whereas respondent No.2 was granted leave to defend subject to furnishing solvent security in the sum of Rs.12,295,646/- with Nazir of the court within 30 days, but he failed to comply with such order, therefore, respondent No.2 was declared exparte vide order dated 16.07.2016 and the appellants being defendants Nos. 2 and 3 in the suit have filed their written statement. From the pleadings of the parties, following issues framed by the trial Court:

i. *Whether the defendant No.1 had been authorized by the partnership firm, M/s. Globe Petroleum Service or its partners viz. defendants No.2 to 4 to receive any amount from the plaintiff?*

ii. *Whether the defendant Nos.2 to 4 or the partnership firm was the beneficiary of the pay orders and cash amount paid by the plaintiff to the defendant No. 1.*

iii. *Whether the defendant No.1 was authorized by the partnership firm or its partners to issue cheques as per paragraph No. 5 of the plaint to the plaintiff?*

iv. *Whether the defendants issued 16 cheques of Rs.1,22,47,053/-in lieu of loan amount obtained by all the defendants jointly in collusion with each other?*

v. *Whether all the defendants are liable to pay Rs.1,22,47,053/-along with mark up at the rate of 20% p.a jointly and severally to the plaintiff?*

vi. *Whether the plaintiff had any contractual relationship with 6. the defendant No. 2 to 4?*

vii. *Whether the suit of the plaintiff is hit by the principle of mis-joinder and non-joinder of necessary parties?*

viii. *Whether the suit of the plaintiff is maintainable under the law?*

ix. *Whether the plaintiff has any cause of action to file the suit against the defendant Nos.2 to 4?*

x. *Whether the plaintiff is entitled to the relief claimed by him against the defendant?*

xi. *What should be decree be?*

4. Both the parties have led their evidence by examining themselves and have also produced several documents. The learned Trial Court, after hearing the parties, has passed the Judgment which is impugned before us.

5. Learned counsel appearing on behalf of the appellant while reiterating the aforesaid facts has vehemently argued that the impugned judgment and decree have been passed by the learned trial Court without applying its judicious mind; that the impugned judgment passed by the trial Court without appreciating the fact that the appellants have not received the alleged amount of Rs.12,295,646/- through pay orders and cash of Rs.16,00,000/- and in fact, the said amount has been handed over directly to the respondent No.2 and said respondent No.2 has

passed on to PSO and such fraud or deceit, if any, has committed by Respondent No.2, is his individual act and not co-extensive. He is the Manager of a partnership concern registered under the name and style of M/s. Globe Petroleum Services and the appellants and respondent No.3 are its partners and the learned trial Court has passed the judgment in violation of Section 69(2) of the Partnership Act, as the firm was not joined as a party in the suit. It is further contended that the power of attorney executed in favor of the respondent No.2 Muhammad Khalil by the Appellants No.1,2 & Respondent No.3 was with regard to the function and relationship with the Pakistan State Oil for the petroleum products etc and if any fund is credited in favour of the respondent No.2 or PSO is a private transaction between the respondent No.1 and 2 and it has nothing to do with the partnership concern, nor appellants and respondent No.3 are personally accountable to repay the disputed amount whatsoever advanced by Respondent No.1 or paid to the respondent No.2, he urged that impugned judgment suffers from infirmity and based against the record, hence is liable to be set aside.

6. Conversely, learned counsel appearing on behalf of the respondent No.1 has supported the impugned judgment.

7. We have heard the arguments advanced by the learned counsel for the appellants as well as learned counsel for the respondent No.1 and minutely perused the record of the case with their assistance.

8. The contention raised by the learned counsel for the Appellant—that the suit is barred under Section 69 of the Partnership Act, 1932—does not hold merit. The scope of Section 69 primarily bar the filing of suits by an unregistered partnership firm to enforce contractual rights. It is a well-established principle of law that a partnership firm is not a separate legal entity but merely a compendious expression for its partners. In legal contemplation, the firm and

its partners are inseparable, and the partners are jointly and severally liable for all obligations incurred in the name of the firm. This legal position stands in stark contrast to that of a company, which is recognized as a distinct legal entity, separate from its shareholders, who enjoy limited liability restricted to the extent of their shareholding. Accordingly, the mere non-joinder of the firm as a party to the suit does not, in itself, attract the bar under Section 69, in the presence of all its partners.

9. We find no merit in the argument advanced by learned counsel for the Appellants that neither the Appellants nor Respondent No.3 had any privity of contract with Respondent No.1. It is an undisputed fact that although Respondent No.2, Muhammad Khalil, was not a formal partner in M/s. Globe Petroleum Services, he operated the above-said firm's bank accounts exclusively and with the express consent of Appellants No.1 and No.2, as well as Respondent No.3. Consciously, the Appellants No.1 and No.2, along with Respondent No.3, being partners of M/s. Globe Petroleum Services, had executed a power of attorney in favor of Respondent No.2, authorizing him to manage all affairs related to their petrol pump, including dealings with Pakistan State Oil **(PSO)** concerning supply arrangements and payment transactions. This delegation of authority has not been denied by the learned counsel for the Appellants before us.

10. It has been established that Respondent No.1 prepared pay orders amounting to Rs.10,695,646/- and handed over it to the Respondent No.2 alongwith cash amount of Rs.1,600,000/-. These pay orders were issued in favor of Pakistan State Oil (PSO) on behalf of M/s. Globe Petroleum Services for the purchase of petroleum and fuel products. In response, the Respondent No.2, Muhammad Khalil, issued sixteen (16) cheque in favor of Respondent No.1, bearing his

authorized signature and affixing the official seal of M/s. Globe Petroleum Services.

11. It is observed that in their application for leave to defend before the learned Trial Court, the Appellants adopted a defensive posture, asserting that no privy of contract existed between themselves and Respondent No.1. They contended that Respondent No.2 acted fraudulently and misappropriated funds, and that neither the Appellants nor Respondent No.3 had authorized Respondent No.2 to secure any loan or investment. The Appellants emphasized that Respondent No.2 lacked the requisite authority and had issued sixteen (16) cheques to Respondent No.1 without their consent. However, when questioned, the learned counsel for the Appellants, he failed to provide a satisfactory explanation regarding any legal action taken against Respondent No.2. This lack of response and failure to pursue legal remedies leads us to draw an adverse inference against the Appellants. The circumstances suggest that the Appellants, in collusion with Respondent No.2, acted with a shared intent to defraud Respondent No.1. If, as claimed, Respondent No.2 acted without authorization, then serious legal consequences should have ensued. Yet, no such action was initiated. Despite the issuance of sixteen cheques in favor of Respondent No.1, the Appellants have taken no remedial steps or legal proceedings against Respondent No.2 since 2012. This prolonged inaction indicates mala fide intent on the part of the Appellants and Respondent No.3, further reinforcing the inference of collusion with Respondent No.2.

12. It is further observed that a presumption constitutes a legal inference drawn from established facts. While not a definitive conclusion, it represents a logical deduction based on proven circumstances. In the law of evidence, presumptions mark the stage at which the burden of proof shifts, remain effective until disproved or dispelled. This burden of proof in legal proceedings or cases

comprises two distinct concepts: the legal burden and the evidential burden. The legal burden refers to the obligation placed on a party by law and pleadings to prove its case, and it remains fixed throughout the trial as a matter of law determined by the pleadings. In contrast, the evidential burden pertains to the duty of producing sufficient evidence to establish a prima facie case or rebut an allegation, and this burden is fluid—shifting between parties as evidence is introduced that raises presumptions in their favor. This distinction was clearly articulated by the Supreme Court in ***Raja Khurram Ali Khan and 2 others v. Tayyaba Bibi and another*** **(PLD 2020 SC 146)**, affirming that while the legal burden is static, the evidential burden evolves with the progression of the trial. In the present appeal, the Appellants have pleaded privy. However, it is evident that the Appellants and Respondent No.3 directly benefited from the income and profits derived from petroleum and fuel products supplied by Pakistan State Oil (PSO), for which payments were made by Respondent No.1 on their behalf. Crucially, the Appellants failed to plead any facts in their application for leave to defend regarding the receipt of petroleum and fuel items at the petrol pump. They also did not address the pay orders prepared and submitted by Respondent No.1, nor the profits earned and appropriated therefrom. The Appellants have not provided any valid justification or plausible explanation for the utilization of funds and profits originating from Respondent No.1. Therefore, the existence of another fact that Appellants and Respondents No.2&3 are the actual beneficiary of funds advanced by the Respondent No.1 is proved as Appellants have not presented contrary evidence to disprove such fact and financial benefits.

13. Another significant aspect of the case is the absence of any internal or external audit of M/s. Globe Petroleum Services. Neither at the time of filing the application for leave to defend nor during the pendency of the present appeal,

the Appellants have not conducted audit or presented before the Court to account for the profits and income generated from the petroleum and fuel products procured through the financial contributions of Respondent No.1. Despite these undisputed facts, the Appellants have intentionally refused to honor the sixteen (16) cheques issued in favor of Respondent No.1. This conduct not only affirms their financial liability but also substantiates the conclusion that they were active participants in a concerted scheme to defraud Respondent No.1.

14. It is not disputed by the learned counsel for the Appellants that Respondent No.2 was duly authorized to operate the bank account of M/s. Globe Petroleum Services. Therefore, there is no controversy regarding the issuance of the sixteen (16) cheque in favor of Respondent No.1. These cheque were issued by Respondent No.2 in his capacity as an authorized representative of the firm, which is jointly owned by Appellants No.1 and No.2 and Respondent No.3, who had delegated operational and financial authority to Respondent No.2. It is a well-established principle under Section 118 of the Negotiable Instruments Act, 1881, that there exists an initial presumption in favor of consideration for a negotiable instrument. This presumption applies to its making, drawing, acceptance, or endorsement. However, the burden of disproving this presumption rests upon the party who denies the existence of consideration, and it is incumbent upon them to both allege and substantiate such denial with credible evidence. Similarly, under ***Article 129 of the Qanun-e-Shahadat Order, 1984***, the Court may presume the existence of any fact which it thinks likely to have happened, having regard to the common course of natural events, human conduct, and public and private business. In this case, the execution of a power of attorney and the consistent conduct of Respondent No.2 in operating the bank accounts and managing the petrol pump affairs with the consent of the

Appellants and Respondent No.3 clearly support the presumption of agency and authority and the action of Respondent No.2 hold accountable to Appellants, Respondents No.2 and 3. Accordingly, any act or transaction carried out by Respondent No.2 shall be deemed to have been conducted on behalf of the Appellants and Respondent No.3, thereby rendering them personally accountable and such divergence from absolute truth is inadmissible being mendacious plea to avoid repayment.

15. In light of these admitted facts, the findings of the learned Trial Court on Issues Nos.1 and 3 are well-reasoned and supported by the record. The impugned Judgment and Decree do not warrant any interference, as the Appellants have themselves acknowledged that the 16 cheque were issued by Respondent No.2 under the authority conferred upon him by Appellants No.1, No.2, and Respondent No.3. It is a settled principle of agency law that where a person is duly authorized by way of power of attorney to act on behalf of another, the acts performed by such agent within the scope of authority are binding upon the principal. The principal cannot subsequently evade liability by denying privity or distancing themselves from the agent's actions.

16. In view of hereinabove facts and circumstances of the case, we do not find any illegality or material irregularity in the impugned judgment. Consequently, this appeal was dismissed by our short order dated 30.10.2025 and these are the reasons thereof.

JUDGE

JUDGE

Karachi
Dated 5th November 2025.