

**THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

**Present:
Justice Jawad Akbar Sarwana**

1st Appeal No. 04 of 2025

For hearing of main case.

Appellant : Muhammad Ismail s/o Jan Muhammad through Mr. Tarique Ali Narai, Advocate.

Respondent : Suresh Kumar s/o Hathi. **Nemo.**

Dated of hearing : 22.12.2025.
Date of Order : 22.12.2025.

O R D E R

JAWAD AKBAR SARWANA, J: Appellant Muhammad Ismail s/o Jan Muhammad is aggrieved by the ex parte Judgment dated 13.12.2024 and Decree dated 10.12.2024 wherein the learned 7th Additional District Judge, Hyderabad in Summary Suit No.73 of 2024, allowed his claim in respect of dishonor of two (2) cheques out of three (3) cheques namely cheque No.D-12733577 dated 05.03.2024 for Rs.11,00,000/- ("Ex.2") and cheque No.D-12733586 dated 20.02.2024 for Rs.12,00,000/- ("Ex.2/A") the total sum of dishonoured cheques being Rs.23,00,000 and disallowed claim for the dishonoured cheque No.D-12733584 dated 30.03.2024 for Rs.22,00,000/- for the reason that it was not mentioned in the pleadings. Memos of dishonor of all three (3) cheques were also produced in evidence.

2. Counsel for the appellant/plaintiff conceded that it is admitted that while two cheques were expressly mentioned viz. their cheque numbers, inadvertently the third (3) cheque was not mentioned. However, as per the prayer clause, the total claim amount sought by the appellant/plaintiff in the plaint on account of bounced cheques was Rs.45,00,000/-. He contended that

if all three (3) bounced cheques were totaled, the total amount of the bounced cheques was the same as that mentioned in the prayer clause, i.e. Rs.45,00,000/-.

3. Notice was issued to the respondent in this 1st appeal on 24.01.2025 but none appeared on behalf of the respondent. In October 2025 this Court issued notice to the respondent through all modes except publication. Still none appeared. Thereafter, on 15.12.2025 this bench issued notice on the respondent by way of publication which notice was published in daily newspaper "Pahanji Akhbar" dated 19.12.2025 and as per T.C.S report dated 17.12.2025 service of Court notice on the respondent was affected with the remarks that the consignee has shifted from address. Be that as it may, service has been affected through publication. Thus when the 1st appeal was called in Court today at 08-30 a.m none were present, and thereafter, a second call was made at 11-00 a.m but none appeared on behalf of the respondent, this bench proceeded with hearing of the 1st appeal.

4. Heard counsel and perused the record. It is apparent on the face of the record that the prayer clause made by the appellant/plaintiff was concerning total amount of Rs.45,00,000/-. It is also apparent that the summary suit was/is based on dishonoured cheques. Therefore logically speaking, if all three (3) bounced cheques were accepted as dishonoured they ought to have totaled Rs.45,00,000/-. All the three (3) cheques and supporting memos of dishonour of cheques were all exhibited during evidence. Additionally, the learned 7th Additional District Judge also did not object to their production and assigned an exhibit number without any remarks to such evidence. In the circumstances, although the cheque was not exactly mentioned in the plaint however, the appellant/plaintiff had brought the same on record and none objected to its production. Logically adding the three (3) cheques matched the total claim by the appellant/plaintiff in the summary suit. Indeed, adding the

two cheques which the learned Additional District Judge accepted would not total the amount claimed in the summary suit. It was only because of the missing bounced cheque that the claim granted by the Additional District Judge fell short of the amount claimed in the plaint. The summary suit was based on bounced cheques. It was not an ordinary civil suit. No reason was given not to accept the third cheque when clearly adding the missing cheque and its memo supported/proved the appellant's total claimed amount. The learned 7th Additional District Judge ought to have considered the evidence holistically. The 3rd cheque could not be ignored simply because it was not expressly mentioned in the plaint after such cheque became a part of the evidence. The evidence brought on record called for inclusion of the third cheque in order to bring the total amount claimed in sync with the prayer clause. This was clear misreading and non-reading of evidence. For this reason I had allowed the instant 1st appeal and set aside the impugned Judgment dated 13.12.2024 and Decree dated 10.12.2024 and the above are the reasons of my short order dated 22.12.2025.

Given the above, office is directed to prepare the appellate judgment and decree in the above terms.

JUDGE

Tufail