

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Civil Appeal No. S-02 of 2023

Appellant : Jam Sher Afghan S/o Jam Khair Muhammad, Samejo  
Through Mr. Mushtaque Ahmed Shahani, Advocate

Respondent : Sher Muhammad s/o Haji Faiz Muhammad, Hingorjo  
(Nemo appeared)

Date of Hearing : 11.12.2025  
Date of decision : 02.01.2026

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.—** Appellant Sher Afghan invokes the appellate jurisdiction of this court, calling in question the judgment and decree dated 23<sup>rd</sup> December, 2022, passed by the learned Additional District Judge, Daharki, in Summary Suit No.26 of 2022, whereby the appellant's suit for recovery of a sum of Rs.50,00,000/- (Rupees Fifty Hundred Thousand) was dismissed, with a prayer to set aside the same and the suit of the appellant be decreed in his favor after examination of the legality, propriety, and correctness of the findings recorded by the learned trial court.

2. Briefly, the facts giving rise to the present appeal are that the appellant and the respondent had maintained close and cordial relations for a period of about fifteen years. In the year 2020, the respondent approached the appellant at his residence and requested financial assistance for his business requirements, specifically representing that he was engaged in a plotting business at Hyderabad and required funds for that purpose. Relying upon the long-standing friendship between the parties, the appellant being a zamindar by profession, agreed to advance a sum of Rs.50,00,000/- to the respondent as a friendly loan, with the clear understanding that the said amount would be returned within a period of one year. Pursuant thereto, the appellant paid the aforesaid amount to the respondent in the presence of two witnesses, namely Muhammad Shahban Samejo and Gul Hassan Awan. Upon receipt of the

amount, the respondent unequivocally assured the appellant that the loan would be repaid within the agreed time. Upon expiry of the stipulated period, when the appellant demanded repayment, the respondent, in discharge of his liability, issued a cheque bearing No.26878157, dated 01<sup>st</sup> May, 2021, drawn on Allied Bank Limited, Khipro Branch, in favor of the appellant for the sum of Rs.50,00,000/-. The issuance of the cheque also took place in the presence of the same witnesses. The appellant thereafter presented the said cheque for clearance and deposit through Meezan Bank, Daharki Branch. However, on 05<sup>th</sup> October, 2021, the cheque was returned unpaid along with a bank return memo, which disclosed that the cheque had been dishonored due to insufficient funds in the account of the respondent and that payment had also been stopped by the account holder. Upon receiving intimation of the dishonor, the appellant approached the respondent and repeatedly requested him to honor his commitment and make payment of the outstanding amount. Despite initial assurances and false promises, the respondent ultimately failed and refused to make payment, leaving the appellant with no alternative remedy except to institute a summary suit for recovery of the said amount under Order XXXVII Rule 2 of the Civil Procedure Code.

3. Mr. Mushtaque Ahmed Shahani, learned counsel for the appellant, assailed the impugned judgment by contending that the learned trial court committed a manifest error of law in dismissing the suit on grounds wholly alien to the scope and scheme of proceedings under Order XXXVII of the Civil Procedure Code. It was argued that the trial court travelled beyond the permissible limits of inquiry in a summary suit based upon a dishonored cheque by requiring the appellant to prove his source of income and tax-paying status, considerations which, according to learned counsel, are neither determinative nor relevant to the adjudication of a civil claim for recovery founded upon a negotiable instrument. Learned counsel further submitted that the trial court's reliance upon the Money Lending Act, 1960, was legally misconceived,

inasmuch as the transaction in question was a solitary, friendly loan advanced between two individuals having long-standing personal relations, and did not amount to the business of money-lending so as to attract the regulatory requirements of the said statute. It was urged that the absence of registration under the Money Lending Act could not, in law, invalidate a one-time loan transaction supported by cogent oral and documentary evidence. It was further contended that the statutory presumption of consideration arising under Section 118 of the Negotiable Instruments Act, 1881, stood firmly in favor of the appellant and remained wholly unrebutted, as the respondent neither appeared before the trial court nor filed any written statement or adduced any evidence to controvert the appellant's claim. Learned counsel submitted that in the absence of any rebuttal, the appellant's evidence, both oral and documentary, ought to have been accepted as sufficient to establish the existence of a legally enforceable debt. Learned counsel additionally argued that the delay in presentation of the cheque, even if assumed, did not extinguish or invalidate the underlying debt obligation, which subsists independently of the negotiable instrument issued in acknowledgment thereof. It was emphasized that such a defence, even otherwise, could only have been raised by the respondent through proper pleadings and evidence, which was conspicuously absent in the present case. On these premises, learned counsel prayed that the appeal be allowed, the impugned judgment and decree be set aside, and the appellant's suit be decreed as prayed for.

4. While dismissing the suit, the learned Additional District Judge recorded certain findings which formed the basis of the impugned judgment. The trial court observed that although the appellant claimed to be a zamindar and a respectable resident of the village, he failed to satisfactorily explain or substantiate his source of income and did not produce any documentary material to establish that he was a taxpayer or otherwise possessed the financial capacity to advance a sum of Rs.50,00,000/-. On this premise, the trial court expressed

doubt regarding the appellant's ability to extend such a loan. The trial court further held that if the appellant was engaged in lending money, he was required to be registered under the Money Lending Act, 1960, and that the absence of such registration constituted a material deficiency, casting serious doubt on the genuineness of the alleged transaction. It was observed that the appellant had failed to produce any written agreement or documentary record evidencing the terms and conditions of the loan, which, in the view of the trial court, rendered the transaction doubtful. Additionally, the trial court took note of the fact that the cheque in question, dated 01<sup>st</sup> May, 2021, had been presented for clearance after a lapse of about five months, which was regarded as an irregular and suspicious circumstance. The trial court also observed that the bank return memo disclosed two reasons for dishonor, namely insufficient funds in the account of the respondent and stoppage of payment by the account holder, and concluded that this dual notation further weakened the appellant's version. In support of its reasoning, the trial court placed reliance upon the judgment of the Lahore High Court in *Ghulam Murtaza v. Mohammad Rafi* (2020 CLD 265), wherein it was held that the presumption of consideration under Section 118 of the Negotiable Instruments Act, 1881, though statutory, is rebuttable in nature and that the initial burden of establishing consideration lies upon the party producing the cheque. On the cumulative assessment of the aforesaid factors, the trial court concluded that the appellant had failed to discharge the burden of proving that he had actually advanced the sum of Rs.50,00,000/- to the respondent, and consequently dismissed the suit.

5. Upon careful examination of the impugned judgment and the entire record produced before this Court, it is evident that the learned trial court proceeded on erroneous assumptions of law and allowed itself to be influenced by considerations wholly extraneous to the limited inquiry contemplated in a summary suit for recovery of money founded upon a dishonored cheque. The insistence of the trial court that the appellant should establish his source of

income and tax-paying status is not consonant with settled principles of civil jurisprudence, which require a plaintiff to prove his claim on the touchstone of preponderance of probabilities and not by adherence to standards applicable in criminal proceedings. In the present case, the appellant discharged the requisite burden of proof by producing his sworn affidavit-in-evidence, examining two independent witnesses who fully corroborated his version of the transaction, producing the original dishonored cheque as primary documentary evidence, and placing on record the bank's official return memo evidencing dishonor of the cheque. Additionally, the appellant examined a representative of the concerned bank, who confirmed the dishonor of the cheque and the reasons therefor. Considered cumulatively, this body of oral and documentary evidence was more than sufficient to establish the existence of a legally enforceable debt and to discharge the burden resting upon the appellant in a civil action. The trial court's insistence upon production of income tax returns or proof of tax-paying status effectively imposed a standard of proof akin to that applicable in criminal cases, namely proof beyond reasonable doubt, which is alien to civil proceedings. Such an approach not only misstates the applicable legal standard but also defeats the summary nature of proceedings under Order XXXVII of the Civil Procedure Code.

6. Equally untenable is the trial court's reliance upon the provisions of the Money Lending Act, 1960. The said statute is intended to regulate persons whose principal or habitual business consists of advancing loans for profit and to afford protection to borrowers against professional money lenders. A solitary or occasional loan advanced by one individual to another, particularly in the context of long-standing personal relations, does not fall within the ambit of "money lending" as contemplated by the Act. To hold otherwise would amount to an unwarranted expansion of the statutory definition and would render every private financial accommodation subject to regulatory control. A zamindar who advances a one-time loan to a friend for business exigencies does not, by that

act alone, assume the character of a money lender requiring registration under the Money Lending Act, 1960. The learned trial court, therefore, fell into clear error in treating the absence of such registration as a factor vitiating the appellant's claim. This misapplication of the statute materially affected the outcome of the case and cannot be sustained.

7. With regard to the absence of formal written documentation evidencing the loan transaction, this Court finds no legal infirmity in the appellant's claim on that score. While it is undoubtedly prudent and advisable for parties to reduce financial transactions into writing and to record the attendant terms and conditions in a formal agreement, the law does not mandate that every loan must necessarily be evidenced by a written instrument in order to be valid or enforceable. The law of evidence recognizes and upholds oral contracts and oral loans, provided that the same are proved through reliable and credible evidence. Under the *Qanun-e-Shahadat* Order, 1984, oral evidence is admissible and competent to prove a fact in issue unless the law expressly requires such fact to be proved by a written document. There exists no statutory requirement that a loan of money must be reduced to writing as a condition precedent to its enforceability. Accordingly, the mere absence of a written agreement cannot, by itself, be treated as a circumstance negating the existence of the transaction or casting doubt upon its genuineness.

8. In the present case, the appellant supported his claim through his sworn affidavit-in-evidence and further examined two independent witnesses who were present at the time the amount was advanced to the respondent. Their testimonies remained consistent, cogent, and unshaken, and no material contradiction or improbability emerged from the record. This oral evidence stands further corroborated by unimpeachable documentary evidence, namely the original dishonored cheque issued by the respondent and the official bank return memo evidencing its dishonor.

9. Significantly, the issuance of the cheque by the respondent itself constitutes a strong acknowledgment of liability and furnishes independent corroboration of the oral evidence led by the appellant. A cheque issued in discharge of an antecedent liability is a recognized mode of acknowledgment under the law and materially strengthens the plaintiff's case, particularly where the execution and dishonor of the cheque stand proved. When the aforesaid oral and documentary evidence is considered cumulatively, it clearly establishes the existence of the loan transaction on the standard applicable to civil proceedings, namely preponderance of probabilities. The learned trial court, therefore, erred in drawing adverse inferences solely on the ground that the transaction was not supported by a written agreement, an approach which is inconsistent with settled principles of evidence and civil adjudication.

10. The objection relating to alleged delay in presentation of the cheque also does not advance the respondent's case. The learned trial court observed that the cheque dated 01<sup>st</sup> May, 2021 was presented for clearance on 05<sup>th</sup> October, 2021 and treated the intervening period as a circumstance adverse to the appellant. Such an approach is legally unsustainable. A cheque is payable on demand and remains a valid negotiable instrument so long as it is presented within the period recognized by banking practice and law. Mere lapse of time, without proof of prejudice to the drawer, does not invalidate the cheque nor dilute its legal effect.

11. In the present case, the cheque was issued by the respondent in discharge of an admitted antecedent liability arising from a loan transaction. The issuance of the cheque itself constitutes acknowledgment of liability and attracts the statutory presumption under Section 118 of the Negotiable Instruments Act, 1881. The legal enforceability of such a cheque is not defeated merely on account of delayed presentation, particularly where the cheque has, in fact, been dishonored and the dishonor stands proved through unimpeachable bank evidence. It is settled law that in proceedings under Order XXXVII of the

Civil Procedure Code, the court is primarily concerned with the existence, execution, and dishonor of the negotiable instrument. Once these elements are established, ancillary objections, such as alleged delay in presentation, can only be entertained if specifically pleaded and substantiated by the defendant. In the absence of any such plea or evidence, the court is not justified in drawing adverse inferences against the appellant/plaintiff. In the present case, the respondent neither appeared before the trial court nor sought leave to defend the suit. No plea was raised to suggest that the delay in presentation caused prejudice, altered the respondent's position, or extinguished his liability. In such circumstances, the learned trial court erred in raising and adjudicating a defence on behalf of the absent respondent, which was neither pleaded nor proved. Accordingly, the delay in presentation of the cheque in peculiar facts and circumstances of the case, even if assumed, does not affect the maintainability or merits of a summary suit founded upon a dishonored negotiable instrument. The trial court's reliance upon this factor to non-suit the appellant was, therefore, legally misconceived and contrary to the settled principles governing proceedings under Order XXXVII CPC.

12. The observations of the learned trial court concerning the bank return memo, which reflected both "*insufficient funds*" and "*payment stopped by the account holder*," also call for close scrutiny. The return memo issued by Meezan Bank unequivocally confirms that the cheque was dishonored, which fact alone satisfies the foundational requirement of a summary suit based on a negotiable instrument. The additional notation regarding stoppage of payment does not, in law, detract from the evidentiary value of the dishonor, nor does it cast any doubt upon the appellant's claim. On the contrary, the act of stopping payment by the drawer of a cheque, particularly when read in conjunction with insufficient funds, constitutes a deliberate act attributable solely to the respondent and is indicative of his intention to evade payment. Such conduct is consistent with a consciousness of subsisting liability rather than a negation



thereof. The legal responsibility arising from issuance of a cheque is not extinguished merely because the drawer elects to stop payment; rather, the stoppage reinforces the inference that the drawer sought to frustrate the honoring of an acknowledged obligation. It is a settled principle that dishonor of a cheque, whether on account of insufficiency of funds or stoppage of payment, attracts the statutory presumptions under the Negotiable Instruments Act, 1881. The law does not distinguish between these modes of dishonor for the purpose of determining civil liability in a summary suit. Once dishonor is established through competent bank evidence, the burden shifts to the drawer to rebut the presumption of liability, a burden which the respondent in the present case failed entirely to discharge. The learned trial court thus fell into error in treating the dual notation in the return memo as a circumstance adverse to the appellant. The credibility of the payee or the genuineness of the transaction cannot be impeached on the basis of unilateral instructions issued by the drawer to his bank. To accept such reasoning would enable a debtor to defeat a lawful claim merely by stopping payment, an approach wholly inconsistent with the object and scheme of negotiable-instrument law and the summary procedure under Order XXXVII CPC. Accordingly, the return memo, far from undermining the appellant's case, furnishes additional corroboration of the respondent's liability and default. The trial court's reliance on this factor to disbelieve the appellant's claim was therefore legally misconceived and unsustainable.

13. This Court must now examine the legal effect and scope of the statutory presumption embodied in Section 118 of the Negotiable Instruments Act, 1881. The said provision mandates that, until the contrary is proved, every negotiable instrument shall be presumed to have been made or drawn for consideration and that such consideration subsisted at the time of its execution. Once the execution of a cheque and its dishonor are established through competent evidence, the presumption as to consideration automatically arises

in favor of the holder of the cheque. This presumption, though rebuttable, continues to operate unless displaced by the drawer through cogent pleadings and affirmative evidence. The legal position has been correctly articulated by the Lahore High Court in *Ghulam Murtaza v. Mohammad Rafi* (2020 CLD 265), wherein it was held that while the presumption under Section 118 is not conclusive, the burden to rebut the same squarely rests upon the drawer of the cheque. Such rebuttal must be founded upon credible material capable of creating reasonable doubt regarding the existence of consideration. Mere conjecture, suspicion, or technical objections are insufficient to displace the statutory presumption.

14. In the present case, the respondent failed to take any step whatsoever to rebut the presumption arising under Section 118. Despite due and repeated service, he neither appeared before the trial court nor filed a written statement, nor sought leave to defend, nor adduced any evidence to suggest that the cheque was issued without consideration or for any purpose other than discharge of a lawful liability. As a result, the appellant's evidence, both oral and documentary, remained unrebutted and unchallenged on the record. While it is settled law that an ex-parte proceeding does not, by itself, amount to an admission of the plaintiff's claim, it is equally well-established that where the defendant elects not to contest the proceedings, the court is entitled to accept the plaintiff's evidence if the same is otherwise credible and sufficient in law. In the absence of any rebuttal, the statutory presumption under Section 118 remains intact and operates with full force in favor of the appellant. It is also pertinent to note that the summary procedure prescribed under Order XXXVII Rule 2 of the Civil Procedure Code is specifically designed to ensure swift and effective adjudication of claims founded upon negotiable instruments. The legislature has accorded special status to cheques as high-value commercial instruments, the dishonor of which raises a presumption of indebtedness warranting expedited recovery. The procedure is not intended to permit a

detailed or roving inquiry into collateral matters extraneous to the execution and dishonor of the instrument. The learned trial court, by subjecting the appellant to exhaustive scrutiny regarding his source of income, tax compliance, and alleged obligations under ancillary statutes such as the Money Lending Act, 1960, effectively converted the summary proceedings into a full-fledged trial. Such an approach runs counter to the object, scheme, and legislative intent of Order XXXVII CPC and undermines the efficacy of summary remedies envisaged for enforcement of negotiable instruments. In these circumstances, once the execution and dishonor of the cheque stood proved and the respondent failed to raise or establish any legally tenable defence, the trial court was bound to give effect to the statutory presumption under Section 118 and to decree the suit. Its failure to do so constitutes a clear error of law warranting appellate interference.

15. For the reasons discussed hereinabove, this Court is of the considered view that the learned trial court fell into clear error of law in dismissing the suit on grounds which were neither legally sustainable nor germane to the controversy before it. The impugned judgment is founded upon considerations extraneous to the real and determinative issues in a summary suit based upon a dishonored cheque, namely the execution of the negotiable instrument, its dishonor, and the consequent liability of the drawer. The trial court failed to properly appreciate the oral and documentary evidence brought on record, disregarded the statutory presumptions operating in favor of the appellant, and adopted an unduly technical and restrictive approach inconsistent with settled principles governing civil adjudication and summary proceedings under Order XXXVII CPC. Such an approach resulted in a manifest failure of justice and cannot be allowed to stand.

16. In view of the foregoing analysis, this Court finds that the appeal is meritorious and warrants acceptance. The judgment and decree passed by the learned Additional District Judge, Daharki, are vitiated by misapplication of

law and misreading of evidence and are, therefore, liable to be set aside. The appellant has successfully established his claim on the touchstone of preponderance of probabilities, and no legally tenable defence has been shown to exist on behalf of the respondent. Accordingly, the appeal is allowed. The judgment and decree dated 23<sup>rd</sup> December, 2022, passed by the learned Additional District Judge, Daharki, in Summary Suit No.26 of 2022, are hereby set aside. A decree is hereby passed in favor of the appellant, Jam Sher Afghan, and against the respondent, Sher Muhammad, for recovery of a sum of Rs.50,00,000/- (Rupees Fifty Hundred Thousand). The decretal amount shall carry interest at the rate of six per cent per annum from the date of dishonor of the cheque, i.e, 05<sup>th</sup> October, 2021, till the date of realization, in exercise of powers under Section 34 of the Civil Procedure Code. The appellant shall also be entitled to costs of the suit as awarded by the trial court, as well as costs of the present appeal. The respondent is directed to satisfy the decree forthwith, and in any case within a period of thirty (30) days from the date of this judgment. In the event of default, the decree shall be executable in accordance with law under the provisions of Order XXI of the Civil Procedure Code, and the executing court shall take all lawful steps available for enforcement and realization of the decretal amount.

**J U D G E**