

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present: Justice Jawad Akbar Sarwana

1ST Appeal No.49 of 2023

Appellant : Muhammad Saleem s/o Abdullah Arain
in person

Respondents : Syed Noor Kazim s/o Syed Ahmed Ali Shah
(Deceased) through LRs: -
a) Syed Ghayasuddin s/o Syed Noor Kazim.
Nemo.
b) Syed Moinuddin s/o Syed Noor Kazim
Through M/s Jaleel Ahmed Memon,
Ghulam Mustafa Burdi, Syed Jan
Muhammad Bukhari and Rakesh Kumar
Lohana, Advocates,
c) Syed Mohiuddin s/o Syed Noor Kazim. Nemo
d) Syed Salahuddin s/o Syed Noor Kazim. Nemo
e) Sabiha d/o Syed Noor Kazim. Nemo.
f) Shagufta d/o Syed Noor Kazim
(deceased) through LRs: -
a) Ammar s/o Shoaib Siddiqui. Nemo.
b) Basil s/o Shoaib Siddiqui. Nemo.
c) Hira d/o Shoaib Siddiqui (Minor). Nemo

Date of hearing : 04.11.2025, 26.11.2025, 12.12.2025,
18.12.2025, 23.12.2025, 26.12.2025
29.12.2025

Date of decision : 02.01.2026

ORDER

JAWAD AKBAR SARWANA, J.: Appellant/Muhammad Saleem, is present in person before this bench and submits that he is aggrieved by the impugned Judgment dated 10.8.2023 and Decree dated 16.8.2023, on the grounds that although the learned 2nd Additional District, Judge Hyderabad in Summary Suit No.21/2014, had framed an issue to the extent that “Whether the plaintiff is entitled for relief as prayed for?”, yet at the time of passing impugned judgment and decree no award for delayed payment in

terms of markup was awarded to the plaintiff. He has invited this Court to the prayer clause in the Summary Suit, namely clause (d), which states as follows:

“d) to award interest/markup at the rate of 15% per annum or according to prevailing banks markup rate in accordance with Section 34 of the Civil Procedure Code from the date of default till satisfaction of decreed amount.”

2. I have perused the impugned Judgment and Decree and find that the same was given in favour of the plaintiff/appellant, however, without awarding any markup. Order XXXVII Rule 2(2)(a), states as follows: -

“(a) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section 79 or section 80, as the case may be, of the Negotiable Instruments Act, 1881 up to the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit; and”

3. In view of the above, once the judgment was passed by the learned 2nd Additional District Judge, Hyderabad and an issue had been framed on the subject of awarding such markup in terms of whether the relief was to be granted as prayed, particularly when there was a specific prayer for mark-up, then, the Add. District Judge ought to have considered the same either accepting or denying the relief as part of issue No.4. However, the impugned Judgment concerning issue No.4, which includes the prayed relief of markup, is silent on this score. When the Addl. District Judge granted the main relief prayed for by the appellant/plaintiff, which was the principal amount of the cheque that was dishonoured; then there was/is no reason not to grant the ancillary relief to the appellant/plaintiff, as per the statutory provisions of Order 37, which includes the relief of markup. In the circumstances, the appellant is granted a markup of 10% per annum from the date of filing of the suit until realisation, which percentage is roughly the average rate of interest for the period 2014 to 2024. Accordingly, this appeal is **allowed** in the above terms.

JUDGE