

# IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No.101 of 2018  
[Arsalan Pervaiz *versus* Shehzad Ayub and another]

**along with**  
First Appeal No.13 of 2019  
[Hassan Pervez *versus* Shehzad Ayub and another]

**Present:**

**Mr. Muhammad Faisal Kamal Alam, J.**  
**Ms. Sana Akram Minhas, J.**

Date of hearings : 18.11.2025, 24.11.2025 and 01.12.2025

Appellants : Arsalan Pervaiz [*in Ist Appeal No.101 of 2018*] and Hassan Pervez [*in Ist Appeal No.13 of 2019*], through M/s. Raja Masood Ahmed Qazi and Ubedullah A. Abro, Advocates.

Respondent No.1 : Shehzad Ayub [*in both Appeals*], through Mr. Ch. A. Rasheed, Advocate.

Respondent No.2  
[*XIIth Additional District Judge, Karachi South (in Ist Appeal No.101 of 2018) and Additional District Judge-III, Karachi East (in Ist Appeal No.13 of 2019)*] : Nemo

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** Due to commonality, both these Appeals (which have been filed by two brothers) are decided by this Judgment.

2. The Respondent No.1-Shehzad Ayub has filed two Summary Suits No.83 of 2012 and No.40 of 2013 respectively – the first Suit against the present Appellant Hassan Pervez and the second Suit against Appellant

Arsalan Pervaiz – for recovery of Rs.4,825,000/- (*Rupees four million eight hundred twenty five thousand only*) and Rs.1,000,000/- (*Rupees one million only*), respectively, along with interest at 10 % per annum, in respect of certain cheques (which were subject matter of the aforesaid two Suits), issued by the Appellants and upon presentation, were not encashed. Both Suits were contested by the present Appellants, but unsuccessfully.

3 Following Issues were framed\_

**(in Summary Suit No.83 of 2012)**

- “1. Whether the suit filed by the plaintiff is maintainable under the law?
2. Whether the defendant issued five cheques to the plaintiff bearing No.5248363, 5244212, 5253822, 5253827 and 5253828, amounting to Rs.11,00,000/-, Rs.10,50,000/-, Rs.10,50,000/-, Rs.10,00,000/- and Rs.6,50,000/- respectively?
3. Whether all the aforesaid cheques were dishonoured when deposited in the bank?
4. Whether the brother of the defendant has given Rs.5,00,000/- cash so also a cheque bearing No.8178931 dated 06.04.2010 amounting to Rs.15,00,000/- from the account of Aunty to the plaintiff?
5. Whether the brother of defendant has paid the amount of Rs.10,75,000/-, Rs.10,00,000/- Rs.6,69,000/- Rs.10,00,000/- and Rs.5,00,000/- to the plaintiff on different time from the account of his family on different time from the account of his family members?
6. Whether brother of defendant from the account of his wife Sadaf Minhas has also paid an amount of Rs.3,00,000/- dated 11.09.2009, Rs.396,000/- on 12.09.2009, Rs.10,00,000/- on 12.09.2009, total of Rs.16,69,000/- to the plaintiff?
7. Whether the plaintiff is entitled for the relief as claimed?

8. What should the decree be?”

**(in Summary Suit No.40 of 2013)**

“1. Whether the suit is maintainable?

2. Whether the defendant is liable to pay amount of dishonoured cheque?

3. What should the decree be?”

4. Evidence was led by the Parties hereto followed by the impugned Judgment.

5. Mr. Raja Masood Ahmed Qazi, Advocate, representing the Appellants [*in both Appeals*], argued that both the impugned Judgments have not appreciated the evidence, in particular, the fact about repayments made by the Appellants to Respondent / Plaintiff, particularly in Suit No.83 of 2012, in which multiple Cheques have been involved; has referred to the testimonies, in particular, of Hassan Pervez (*Appellant in Appeal No.13 of 2019*), in which he has asserted that Cheques in question were given to Respondent only as security and not for encashment, besides, there were issued under duress. The other line of argument is that Plaint in Suit No.83 of 2012 was presented on 24.12.2012, and the claim was time barred regarding some of the Cheques in dispute. Has referred to Paragraph-8 of his Leave to Defend Application, so also evidence in which the repayments have been specifically mentioned.

6. The above line of arguments has been controverted by Mr. Ch. Abdul Rasheed, Advocate. The main defence is that the Cheques referred to in the Appeal No.13 of 2019 were those Cheques which were given before the dispute between the Parties started. Contends that the business

relationship amongst the Parties *inter se* has not been disputed and both Judgments are unexceptional. Cited the following Case Law\_

**2020 SCMR 1621**

*(Najaf Iqbal versus Shahzad Rafique)*

7. Arguments heard and record perused.

8. Points for determination in these Appeals are\_

(i) *Whether the Suits are within limitation?*

(ii) *Whether all the Cheques in dispute were given to the Respondent / Plaintiff as security or towards outstanding liability?*

(iii) *Whether evidence is properly appreciated?*

(iv) *What should the Decision be?*

9. Since two Appeals are against the common Respondent, therefore, the Appellants will be hereinafter referred to by their names, that is, Arsalan Pervaiz (**AP**), who is Appellant in First Appeal No.101 of 2018 and Hassan Pervez (**HP**), who is Appellant in First Appeal No.13 of 2019.

10. **First Appeal No.101 of 2018:** It would be relevant to give a background about the litigation. Summary Suit No.83 of 2012 was filed against HP, in which conditional leave was granted, but, since the amount was not deposited, therefore, the Judgment and Decree was passed by the learned Trial Court, which was unsuccessfully challenged in Civil Appeal No.27 of 2013 before this Court, and the matter went upto the Apex Court, wherein the Civil Petition Leave to Appeal was converted into an Appeal and disposed of by consent, requiring HP to deposit Rs.3,156,000/- (*Rupees three million one hundred fifty-six thousand only*) with the learned Trial Court and furnish surety for the compliance amount of Rs.1,669,000/-

(Rupees one million six hundred sixty-nine thousand only) within the prescribed period, and in non-compliance, the consequences to follow.

11. First, the evidence of Summary Suit No.83 of 2012 is considered, which is filed in respect of the sole Cheque No.5213037 dated 14.07.2010 (**Exhibit-3/A**) for an amount of Rs.1,000,000/- (*Rupees one million only*) and on presentation, it was not encashed for the reason mentioned in the Bank Return Memo (**Exhibit-3/B**), viz. **“DRAWER’S SIGNATURE DIFFERS FROM SPECIMEN SUPPLIED” and “PAYMENT STOPPED BY THE DRAWER”**.

12. The appraisal of the evidence proves the business relationship between AP and Respondent; as the latter invested in the business of AP and the relationship lasted till the year 2009; so is the issuance of the Sole Cheque [**Subject Cheque**], because, the Respondent has successfully denied the suggestion that he had not filled in the details in the subject Cheque, which is also not disputed in the cross-examination of AP.

Respondent in his examination-in-chief reiterated the stance in respect of the subject Cheque of Rupees One Million that the proceeds whereof could not be received due to the reasons mentioned in the foregoing paragraphs. The Respondent could not be contradicted in his cross-examination, at least to the extent of his claim against AP.

13. In view of the above, when neither the business relationship is disputed between the drawer and the beneficiary of the Cheque (that is, AP and Respondent), nor the issuance of Cheque by AP, with no allegation of manipulation on the part of Respondent, then onus is on AP to prove that the subject Cheque was not given to settle the outstanding liability but as security, as throughout averred by him.

In his cross-examination, AP did not deny the outstanding liability towards the Respondent; admitted that in the Joint Application of 15.06.2010 [Exhibit-D/20], he (AP) stated about the outstanding dues of Respondent.

14. The aforesaid Joint Application, has been filed by AP and the Respondent before the Committee, in which AP has acknowledged that a Cheque of Rupees 1.5 Million was issued, which was deposited in the Account of Haseeb-ur-Rehman's Son. Even in the Suit No.1611 of 2013, preferred by AP (against present Respondent No.1 (Shahzad Ayub) and Haseeb-ur-Rehman), in Paragraph-6 whereof, he has stated that Rupees 1.5 Million was paid to Defendant No.2-above named Haseeb-ur-Rehman, which amount, besides others, both Defendants (present Respondent and Haseeb-ur-Rehman) are liable to pay back to AP. Conclusion is, that Rupees 1.5 Million was never received by Respondent and cannot be adjusted towards the subject Cheque of Rupees One Million, which was not given as security, as claimed by AP, but in discharge of his liability towards Respondent.

15. The stance of Respondent (Plaintiff) is further fortified from the fact that, the subsequent Suit No.1611 of 2013, preferred by AP against the present Respondent and Haseeb-ur-Rehman (pleadings whereof are available on record), *inter alia*, AP has prayed for the return of the subject Cheque of Rupees One Million and the other Cheques, which are subject matter of connected Appeal No.13 of 2019, but has not sought cancellation of these Cheques.

16. The impugned Judgment has correctly evaluated the evidence of AP and Respondent by reaching the conclusion, regarding payment and discharge of liability of AP towards the Respondent.

17. **First Appeal No.13 of 2019**: Adverting to First Appeal No.13 of 2019, wherein the following five Cheques are in dispute\_

i) Cheque No. 5253822 dated 24.12.2009	Rs.1,000,000/=
ii) Cheque No. 5253827 dated 24.12.2009	Rs.1,000,000/=
iii) Cheque No. 5253828 dated 26.12.2009	Rs.650,000/=
iv) Cheque No. 5248363 dated 07.01.2010	Rs.1,100,000/=
v) Cheque No. 5244212 dated 08.01.2010	Rs.1,075,000/=

18. The Bank's Advice Slip of the above Cheques in dispute, produced in the evidence, confirms that the aforesaid subject Cheques were not encashed either due to insufficiency of funds or difference in drawer's signature (HP).

19. The Plaintiff / Respondent has not disputed the fact that he received an amount of Rs.2,744,000/- (*Rupees two million seven hundred forty-four thousand only*) from HP's Wife, Paternal Aunt and Mother, namely, Mst. Sadaf Minhas, Mst. Chaman and Mst. Bina Siddiqui, respectively, with whom he had no business dealing, but those payments were made before the dispute started. Admitted that Cheque No.3299970 dated 18.01.2010 for an amount of Rs.1,000,000/- (*Rupees one million only*) was received from the above Appellants' Mother's Bank Account at the latter's residence, and that is why he returned Cheque No.5253821 dated 24.12.2009 of Rupees One Million to HP, which fact has not been disputed in the evidence. These acknowledgments, rather admissions, have been highlighted by the learned Counsel for the Appellants to enforce his main defence that no outstanding liability was payable by the Appellant to Respondent-Plaintiff and the above subject Cheque was given as a mere security.

The Respondent has reiterated his stance in cross-examination without being contradicted, that after termination of business relationship in

the year 2009 (or beginning of the year 2010), the accounts were not settled.

Whereas, HP in his cross-examination has admitted that no allegation of forgery has been levelled against the above disputed Cheques and that he issued the same with his own signatures, which pertain to his personal Bank Accounts; although he has stated earlier in his cross-examination that these Cheques were not part of the present dispute and were given to AP (brother of HP).

20. Interestingly, at one place in his cross-examination, he has admitted that he might be “*deposing two versions*”, in the context of Suit proceedings initiated against his Uncle, late Barkatullah, by the same Respondent, which was decreed (as admitted by above HP).

21. Even, HP in his cross-examination has admitted the afore-referred Joint Application dated 15.06.2010 (**Exhibit D-20**) and stated that it was moved against Haseeb-ur-Rehman. **Admitted** that the amount, which was remitted from his Bank Account was prior to from the date of the issuance of subject/ disputed Cheques. This belies his Deposition mentioned in Affidavit-in-Evidence (examination-in-chief), as stated in Paragraph-5, that the different amounts were paid back to the Respondent. HP has admitted that proceeds of Cheque No.5244214 [Exhibit D/10] were paid to Respondent before the issuance of above subject Cheques. This, in fact, fortifies the version / Deposition of Respondent, as mentioned in his examination-in-chief / Paragraph-7 of the Affidavit-in-Evidence, that proceeds of the above Cheque, besides one other Cheque, were received by the Respondent, but have / had no nexus with the present disputed Cheques. The above last mentioned Cheque (Exhibit-D/10) is of 20.06.2009, whereas the disputed Cheques are of subsequent date. Conclusion is, that the above

evidence of HP contradicts his stance that the subject Cheques were kept as security.

22. Evaluation of the evidence concludes that presumption mentioned in Section 118 of the Negotiable Instruments Act, 1881, is applicable to all the Cheques in dispute [inclusive of the Sole Cheque, *supra*]. The Judgment of the Hon'ble Supreme Court (*ibid*), cited by the Respondent's Counsel, is applicable, when the Cheque(s) signed is from the Bank Account of a drawer. It is *held*, that this presumption is to be rebutted by the drawer (appellant of the reported Judgment). In this Decision, even stop-payment instructions were treated as dishonouring of Cheques.

Adverting to the plea of limitation. The limitation will start when the present subject Cheques [in dispute] were presented and dishonoured. The two Cheques are of 24.12.2009 and were dishonoured on 29.12.2009, whereas the Complaint was filed on 24.12.2012 and is not time barred in view of Article 64-A of the Limitation Act, 1908, prescribing a period of three years. *Secondly*, due to acts and deceptive tactics, in this particular Appeal, the cause of action is a continuing one and thus, the Suit No. 83 of 2012, in respect of the above two Cheques cannot be dismissed on the point of limitation.

23. The conclusion of the above evidence is that the stance of HP that the subject Cheques were kept as security, has neither been proven, nor the statutory presumption, as highlighted above, was successfully rebutted by the Appellant / HP.

24. Points for determination are answered as under\_

- (i) Both Suits are within time.

- (ii) All the Cheques involved in both the Appeals were given to the Respondent / Plaintiff as repayment of outstanding liability and not as security.
- (iii) The evidence is properly appreciated.
- (iv) Both the impugned Judgments in First Appeals No.101 of 2018 and 13 of 2019 are within the parameters of law, do not require interference, and thus, are **dismissed**.

**JUDGE**

**JUDGE**

Karachi.  
Dated:08.06.2026.  
*M.Javiad PA*