

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

First Appeal No. S-01 of 2026

Appellant : Ali Muhammad through Mr. Muhammad Rafique Mangrio, Advocate

Respondent : Muhammad Shahid through Mr. Attaullah Shaikh, Advocate

Mr. Muhammad Sharif Solangi, Asst. Advocate General Sindh also present

Date of Hearing : 25.09.2026

Date of Judgment : 30.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: A cheque, bearing No. AG0233725 dated 27.02.2018, drawn on the National Bank of Pakistan, Khipro Branch (p. 65 of the case file; Ex-53/B at p. 115 of the Trial R&Ps; hereinafter referred to as the “disputed cheque”) in the name of the Appellant was presented by the Respondent and, upon presentment, it was dishonoured on 28.02.2018 on account of “insufficient funds” vide a return memo issued by the Manager/Operations Manager, National Bank of Pakistan, Khipro Branch (p. 69 of the case file; Ex-53/C at p. 117 of Trial R&Ps). No one has denied this much. The parties, however, dispute how and why the cheque reached the Respondent as well as the amount written on it.

2. Against this cheque, the Respondent instituted Summary Suit No. 09 of 2018 against the Appellant which came up before the learned Additional District Judge, Khipro. The suit was for the recovery of Rs. 1,360,000/- and it was on the pleadings that the Respondent, being engaged in the business of pesticides, used to deal with the Appellant and his family members on credit from time to time since 2014; that in lieu of the pesticide credit, the Respondent requested the Appellant and his family members to provide crops but they failed to do so. He stated that the brother of the Appellant, Imam Bux Mangrio, was also in business with the Respondent but he died in 2015. He stated that he had asked for the entire credit amount from time to time but was kept on false

hopes. In December 2017, it is alleged, that the Respondent called the Appellant for a final settlement and a sum of Rs. 1,360,000/- was finally settled to be paid in January 2018 by the Appellant. On 28.01.2018, the Respondent contacted the Appellant who came at Kingri Hotel, By-pass Road, Khipro, where he was handed the aforementioned cheque.

3. The Appellant as defendant filed an application under r. 2 of O. XXXVII of the CPC read with s. 151 of the CPC for leave to defend before the learned Additional District Judge on 29.05.2018 which was granted by Order dated 28.08.2019 subject to security of the amount claimed. Subsequently, on application by the Appellant, the security was converted into surety by Order dated 11.02.2020 and the same was deposited. The Appellant therefore filed his written statement wherein he denied the case of the Respondent and took the following defence:

- i) The disputed cheque was lost in the year 2013 along with a number plate of his car and the Appellant had lodged an NC (non-cognisable) Report of the same before the concerned Police Station. The cheque has been misused by the Respondent after five to six years.
- ii) There is a discrepancy in the words and figures of the amount mentioned in the cheque (Rs. 13,60,000/- in figures and "Thirteen Lac Sixteen Thousand only" in words). The Appellant being a school teacher and a literate person cannot make such a mistake and the cheque is not a negotiable instrument for this reason.
- iii) The Respondent has taken different pleas in respect of handing over the alleged cheque. He has in his application under s. 22A and B of the CrPC stated to have received the cheque at Kandiyari while in the FIR he has stated to have received it at Kingri Hotel, Khipro.
- iv) The Appellant has never remained in business with the Respondent and the alleged cheque does not bear his handwriting or signature nor he has stood guarantor for anyone.

4. From the pleadings of the parties, the learned Additional District Judge framed seven issues on which the parties recorded their evidence, and on 20.12.2025 the learned Additional District Judge decreed the suit as prayed by a Judgment and Decree which have been impugned by the Appellant in this appeal under s. 96 of the CPC. The appeal came up before me on 25.09.2026 when I heard the learned Counsel for the parties and by means of my short-order of even date reserved the matter.

5. Mr. Muhammad Rafique Mangrio gave a detailed account of the facts of the case and contended that the impugned Judgment and Decree are erroneous on facts and law. He contended that the learned Additional District Judge erred in reading the disputed cheque wherein there is a discrepancy between the figure and the words of the amount. He stated that this discrepancy has led to a doubt in the cheque which no longer comes within the definition of a negotiable instrument and the suit of the Respondent could not have been decreed on that basis. He argued that the cheque was in fact never issued by the Appellant and that it was misused by the Respondent upon being lost in the year 2013. He contended that the Respondent had produced a *khata* (account) of one Imam Bux from 2016 and 2017 though he had died on 28.02.2016. He contended that there was no transaction between the parties. He did not rely upon any authority and finally prayed that this appeal may be allowed and the summary suit may be dismissed.

6. Mr. Attaullah Shaikh, however, opposed this appeal. He supported the findings of the learned Additional District Judge and contended that the case of the Respondent had been proved through evidence. He contended that the learned Court below has considered the facts and the evidence of the parties in their right perspective and that the same should be maintained. He took the Court through the relevant facts and evidence which shall be discussed below. He finally prayed for the dismissal of this appeal. Mr. Muhammad Sharif Solangi, the learned Assistant Advocate General Sindh, stated that no government interest was involved in the matter but on the legal aspect his submission was in favour of the findings of the learned Court below.

7. In my view, the following points arise for the determination of this appeal. The first two turn on the factual aspect and the third on the interpretation of the law:

- i) Whether it was proved that the Appellant had issued the disputed cheque to the Respondent against the pleaded credit settlement?
- ii) If so, what presumptions arose under s. 118 of the Negotiable Instruments Act, 1881 (hereinafter the “1881 Act”) and whether the same were rebutted by the Appellant upon his plea that the cheque was lost and was without consideration?
- iii) What is the legal effect of the discrepancy between the amount in words and figures in the disputed cheque?

8. I take up the first and second points together being interconnected. The disputed cheque along with the return memo was produced in evidence (Exh-53 to 53/C; pp. 113 to 117). The cheque, as per the return memo, was not returned due to any handwriting or signature variations but rather due to insufficient funds. The Respondent, Muhammad Shahid, came in as PW-1 (Exh-51, pp. 101 and 103 of the R&Ps) and deposed about the issuance, presentment and dishonour of the cheque. During cross-examination, however, he was not confronted in rebuttal of the handwriting or signatures on the cheque. He was confronted as to other different aspects, such as production of registers and bills of his shop as well as other earlier criminal proceedings, however, no direct suggestion was made to him to the effect that the signatures or handwriting on the cheque were managed or forged. Similarly, he was not confronted directly in rebuttal of the liability though he was asked questions on surrounding matters. His examination-in-chief is short and reproduced below:

“I was on pesticide business terms with Ali Muhammad Mangrio since 2014 which continued till year 2017. After year 2017 some amount remained outstanding towards defendant. On 28.01.2018 defendant issued me a cheque of Rs. 13,60,000/- of National Bank Khipro branch dated 27.02.2018. On 28.02.2018 I presented cheque for encashment but cheque was dis-honoured and bank issued memo. The defendant kept me on false hopes but no result

came out hence on 08.03.2018 I registered FIR against defendant. The cheque number was AG0233725 of account 3668-4. I produce original 03 books of khata and 05 receipt books.”

9. It will be seen that these *khata* registers produced in evidence by the Respondent were confronted on the score that they were not produced in earlier criminal proceedings. However, these suggestions were denied by the Respondent and it remains of utmost importance to the Court that these *khata* registers were not disputed on their credibility or the accounts stated in them during cross-examination. I am quite clear in my mind that the proceedings and evidence in some other criminal proceeding cannot be readily transmuted into the present civil proceeding for the reason that the standards of proof as well as the duties and rights of the parties in each of the proceedings are different in nature. I am not unmindful that, under Art. 47 of the Qanun-e-Shahadat Order, 1984, the evidence in some other proceeding may be relevant, however, that is all that it may be. The evidence of some other proceeding cannot be a substitute of the evidence in the current proceeding which must stand on its own footing. Therefore, the non-production or otherwise of the *khata* registers in the earlier proceedings was a matter relevant to those proceedings, but in my view once they were produced in the summary suit, they ought to have been proved or disproved according to the civil law standard in the summary suit itself. To put it another way, the evidence in an earlier proceeding may be relevant in a subsequent proceeding, but the facts and claims in the subsequent proceeding are still to be proved or disproved on their own merits.

10. The Respondent examined one witness, Muhammad Anwar (PW-2; Exh-52, pp. 105 and 107) who in his examination-in-chief supported the version of the Respondent to the effect of the liability of Rs. 13,60,000/- against which, according to him, the disputed cheque was issued. He stated that the cheque was provided by the Appellant to the Respondent in his presence on 28.01.2018 at Kingri Hotel. He was cross-examined at some length though, in my view, nothing material could be extracted from his evidence. He did not remember the colour of the ink with which the cheque was drawn, which is understandable since the cheque was drawn in 2018 while the witness was deposing in 2025. In all, the witness supported the

case of the Respondent and the material aspect of the handing/taking of cheque and the liability on the Appellant went un rebutted.

11. In any event, it will be seen that s. 118 of the 1881 Act comes in favour of the Respondent and against the Appellant. S. 118 provides for seven presumptions which operate “until the contrary is proved” and I have had occasion to discuss them at length in an earlier judgment in *Mst. Rehana Anjum v Usman* First Appeal No. S-31 of 2024 (Judgment dated 07.09.2026; unreported) in the following terms (paras 12 and 21):

“12. ...

It is clear from the words used (“until the contrary is proved”) in section 118 that the presumptions to be made under the said provision are all rebuttable but the burden of proving the contrary is on the shoulders of the party denying the proposition in favour of the presumption, i.e. the defendant...

21. In view of my discussion above, I would allow the appeal and answer the points for determination in the following terms:

i) **Point No. 1:** ...

As regards section 118 of the Negotiable Instruments Act, 1881, I hold that:

- (a) There are seven presumptions under the said section attached to negotiable instruments and, on their own language (except section 118(g) which has its own qualification), the burden to disprove those presumptions is upon the defendant once the plaintiff raises a legally sufficient plea in their plaint.
- (b) There is no concept of initial burden on the plaintiff under s. 118(a) of the 1881 Act to prove that the negotiable instrument was for consideration. The presumption operates in favour of the plaintiff from the inception, unless it is later on rebutted sufficiently.
- (c) These presumptions cannot be displaced where the pleadings disclose sufficient material and where the defendant has failed to rebut the same by way of the procedure prescribed in Order XXXVII of the CPC.”

In the said judgment, I had respectfully observed that a judgment of the Lahore High Court in *Ghulam Murtaza v Muhammad Rafi* 2020 MLD 772 was *per incuriam* because it went against the judgments of

the Hon'ble Supreme Court on the same point. I may clarify that, by "legally sufficient plea" the Court had intended to mean a negotiable instrument whose execution is otherwise not denied or is proved through evidence, and for the purposes of the leave to defend stage the Court intended to convey a *prima facie* validly drawn negotiable instrument.

12. For the present purposes, only one presumption is relevant. It is under s. 118(a) of the 1881 Act which is the presumption that the negotiable instrument was drawn for consideration. The duty to rebut this presumption was entirely on the Appellant, but, in my view, it was not so rebutted. In his written statement (pp. 77 to 85), the Appellant has completely denied the pleaded credit settlement as between the parties. In my view, simply denying this settlement was not sufficient for the reason that the Appellant ought to have provided a proper explanation for why and how a facially duly issued cheque reached the Respondent's hand when no such deal took place. This explanation he sought to give by stating that he had lost the cheque some five or six years before its date and he had lodged a non-cognisable complaint (NC) against this loss. However, to my mind, this explanation is totally unacceptable. This is so for two reasons. The first reason is that no such NC was ever produced in evidence to show that the Appellant had in fact taken any such step, and the Court cannot accept a bald assertion against the legal presumption under s. 118(a) of the 1881 Act. Apart from this, there is no application that was made by the Appellant to the concerned bank manager to stop the payment on the cheque nor any other documentary evidence has been brought on the record. The relevant portion of his cross-examination is reproduced below for reference (pp. 119 and 121 of the Trial R&Ps):

"...I have not filed any application to manager regarding loss of cheque. It is fact that I have not produced application moved to PS regarding loss of cheque before this Court. I have not mentioned the date of submission of application to PS regarding loss of cheque. It is fact that my sign on cheque is not mentioned in my application. It is correct to suggest that in my application it is not mentioned that blank cheque was missing..."

13. Apart from this, it will be seen that the defence of the Appellant relating to the pleaded liability is also contradictory and

inconsistent and the same goes against his case. His written statement and application for leave to defend are compared below:

<u>Application for leave to defend (para 4)</u>	<u>Written Statement (para 3)</u>
“That, plaintiff has produced record/khata of defendant which shows that entire amount is paid to plaintiff and nothing is remaining towards me.”	“That the contents of Para No. 4 of the plaint are also denied being false and fabricated. It is submitted that neither such amount of Rs: 13,60,000/= is tallying with any entry in Khata register produced by the plaintiff nor there is any entry in Khata Register produced by the plaintiff nor there is any entry, pertaining to December 2017, nor there is any entry in Khata Register, which shows that the settlement of account was made nor there is signature of the defendant on any page nor the Khata register produced by the plaintiff is reliable document as the entries of the same are dubious ones as well as total sum of amounts are incorrect. The plaintiff may be put to strict proof of it.”

Subsequently, in his examination-in-chief and cross-examination, he has at the very outset made the following statement/admission:

Examination in chief

“I have no business transaction with plaintiff...I have no any business transaction with plaintiff or surety for anyone...”

Cross-examination

“...It is fact that in para No. 4 of leave to defend it is written that I have paid whole amount and nothing is outstanding against me. Again says I have not paid any amount to plaintiff.”

14. It is by now well-established that a party cannot blow hot and cold in the same breath, meaning that the Appellant cannot be allowed to accept the liability (by saying that he has paid the whole amount and nothing is outstanding) and deny the same (by saying subsequently that there is no liability at all) at the same time. In view of these inconsistent stances, I have been made to doubt the defence of the Appellant.

15. The second reason is connected with the first and it may be stated as follows. It is highly improbable for a reasonable person to have a signed cheque lying carelessly and, when it is lost, to make no sincere efforts for its recovery or cancellation or otherwise. In my respectful opinion, the availability of a duly signed and otherwise validly drawn cheque is good evidence of an underlying transaction and consideration and which is why s. 118(a) of the 1881 Act appears to have been enacted in the first place. It may not be the strongest evidence, for there may be other considerations and factors involved to be proved later on; but it seems to me that, with the legal and financial burden of the nature a cheque or some other negotiable instrument entails, it is not weak evidence either. That being so, I do not think it is probable that any reasonable person would carry with them blank signed cheques at the convenience of anyone able to get hold of them. To my mind, such a defence is of a most lacking and unbelievable nature, unless it is proved through tangible and satisfactory evidence, and the Court would be right to be astonished where an assertion to this effect without any proof is made, as it was in *Shahzad Rafique v Najaf Iqbal* 2021 CLC 569 (para 10):

“10. The stance of the respondent was taken in Rapt No. 10 dated 13.09.2006 was that his two cheques were lost at Railway Phatak Gojra Road, however, it is astonishing that how one cheque reached in the hands of appellant and he used the same. It is not possible and does not stand to reason that how the cheque, without the consent of its maker, was in possession of the plaintiff. No cogent evidence has been produced by the defendant that he has not issued the cheque nor signed it...”

(The position reminds me of an interesting fictitious (though, I must admit, for most part unrelated) legal case written by the humourist, A. P. Herbert in his book *More Misleading Cases in the Common Law* (Methuen, 1930) (the summary of the case is available at https://en.wikipedia.org/wiki/Board_of_Inland_Revenue_v_Haddock). The case is called *Board of Inland Revenue v Haddock* and is also known as *The Negotiable Cow*. The protagonist, Mr. Haddock, decided to test the limits of the banking law where there was no provision as to the form and manner of issuing cheques. He was also in dispute against the Collector of Taxes. Hence, finding the perfect opportunity, he decided to issue the cheque in the form of a cow. He delivered the cow (or, should I say, cheque) to the Collector of Taxes

with the requisite words written on it in red ink for the amount for which he had been fined. The Collector of Taxes did try to indorse the cheque. The cheque took a “menacing posture” and could not be indorsed. The cheque was declined to be accepted by the Collector and Mr. Haddock was later on prosecuted because the cheque obstructed the Trafalgor Square. The facts may not be similar, but both situations appear to be equally absurd, and for the same reasons the present case may conveniently (and perhaps unfortunately) be called “The Wandering Cheque.”)

16. I now turn to the third question. The Appellant has mainly grounded his appeal in the argument that the cheque has a discrepancy in the amount written in words and figures. This contention is correct. In words, the amount written is “Rupees Thirteen Lac Sixteen Thousand only,” while in figures it is written as “Rs. 1360000/=.” However, this discrepancy does not yield the result pleaded by the Appellant, which is that the cheque became void and somehow went beyond the definition of negotiable instruments and hence rendered the suit non-maintainable. Indeed, there is a perfectly clear provision on such kinds of discrepancies, namely s. 18 of the 1881 Act, which reads as follows:

“18. Where amount is stated differently in figures and words. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid:

Provided that if the words, are ambiguous or uncertain, the amount may be ascertained by referring to the figures.”

17. (It may be noted that the proviso to s. 18 was inserted by s. 9 of the Negotiable Instruments (Amendment) Ordinance, 1962. It was not present in the original enactment.) It will be seen that the default rule, therefore, is that where there is a difference between the amount in figures and words, the amount stated in words is to be accepted as the amount for which the instrument is drawn. Whereas the proviso will come into effect under the limited circumstance where the words are “ambiguous or uncertain” meaning that they are not readily understandable or give out different meanings or readings. In the attendant circumstances, where both the words and figures are clear, but there remains a difference between the two (sixteen in words and sixty in figures), it follows that the suit could

not have been decreed against the disputed cheque for the entirety of the amount of Rs. 13,60,000/- as prayed for. However, it must not have been dismissed entirely either for the reason that the amount in words must have prevailed with the learned Court below and hence the suit should have been decreed against the worded sum of Rs. 13,16,000/- (rupees thirteen lac sixteen thousand only).

18. I did consider whether the Court could have considered any external evidence to see if the amount in figures could be accepted as the intended amount, but on the language of s. 18 (“the amount stated in words *shall be the amount...*” (emphasis added)), in my view, the default application of s. 18 is mandatory. Consequently, the Court cannot consider any external evidence beyond and against the worded amount. Had the situation been one where the words were in and of themselves ambiguous or uncertain, the Court would have resorted to the figures being permitted under the proviso to s. 18. In my considered view, s. 18 provides for a statutory manner of construction of negotiable instruments and the same cannot be deviated from except as per the proviso. Similarly, had this been a case of overwriting, the situation would have been entirely different, as then the cheque would have probably become invalid unless proved as per s. 87 of the 1881 Act, but that is not the situation.

19. In *Jammu and Kashmir Bank Ltd v Qazi Taj Din* AIR 1954 J&K 56, a Full Bench of the Jammu and Kashmir High Court had similarly understood s. 18 of the 1881 Act. The difference there lied between a sum of Rs. 1,000/- expressed in words in a promissory note and Rs. 1,500/- specified in figures. The question came up before a single bench and was referred to the Full Bench and was answered in the following manner (paras 5 and 6; emphasis added):

“5. From the peremptory nature of Section 18 of the Negotiable Instruments Act, it is clear that when a difference arises between the sum expressed in words in the body of the instrument and mentioned in figures, the amount mentioned in words will be taken to be the sum for which the instrument was made payable. In the pronote the amount undertaken to be paid is mentioned in words so that there may be no danger of its being altered subsequently. *The mandatory nature of S. 18 gives no choice to the Courts to give preference to the sum mentioned in figures over the amount mentioned in words. The sum denoted by words in the pronote is to be taken to be the amount payable and no evidence can be adduced to show that*

in fact the sum mentioned in figures was paid and not the amount stated in words.

6. In Halsbury's Laws of England, Vol. 2 page 468, it is laid down as follows:

'It is customary for bills and notes to have the amount written in figures at the top of the instrument & words in the body of the instrument. Where there is a discrepancy between the two the sum denoted by the words is the amount payable and evidence cannot be adduced to show that in fact there was a mistake in omitting words in the body of the instrument.

...”

20. The summary suit as between the parties was obviously a civil matter and in which cases the burden of proof of the Respondent stood discharged upon the preponderance of evidence. This concept (of preponderance of evidence) is also understood as meaning that a matter may be considered as proved if it is “more probable than not” (*Miller v Minister of Pensions* [1947] 2 All ER 372). This matter was considered by my honourable brother, Muhammad Abdur Rehman J, in *Muhammad Qabool v Muhammad Ashraf* First Appeal No. 35 of 2021 (Judgment dated 13.10.2023; unreported; para 9; emphasis in original):

“9. ...The standard of proof in civil cases has been described in the decision reported as Miller v Minister of Pensions: [footnote 1: 1947 All ER 372]:

‘...If the evidence is such that the tribunal can say ‘we think it more probable than not’ the burden is discharged, but if the probabilities are equal it is not.’

A similar, albeit more mathematical explanation, was given in the decision reported as Re: B [footnote 2: 2008 UKHL 35] wherein it was held that:

‘...If a legal rule requires a fact to be proved (a ‘fact in issue’), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.’”

21. In my view, therefore, the learned Court below was correct to reach the conclusion that the Respondent had proved his case, however, it must have, by legal compulsion, given preference to the amount reflected in words in the disputed cheque and thereby decreed the case to the extent of Rs. 13,16,000/- (rupees thirteen lac sixteen thousand only) being the amount denoted in words. Further, in my view, and consistently with s. 4 of the Enforcement of the Shari’ah Act, 1991, the Constitutional mandate to eliminate *riba* by a set deadline on 01.01.2028, the categorical Islamic prohibition on *riba*/interest and the view expressed in *Irshad H. Khan v Mrs. Parveen Ajaz* PLD 1987 Karachi 466 and *Aijaz Haroon v Inam Durrani* PLD 1989 Karachi 304, the Court has to understand the grant of mark-up and interest under Order XXXVII of the CPC in that context and not otherwise. Consequently, the learned Court below should have exercised due caution and care in making such an order which it otherwise made in one sentence and in the attendant circumstances I am not inclined to accept that any order for mark-up or interest should have be made.

22. For these reasons, I would answer each of the points for determination in the following manner:

Point No. 1	Affirmative. The disputed cheque was proved to have been issued to the Respondent by the Appellant against the pleaded credit settlement as between the parties.
Point No. 2	The presumptions under s. 118 and particularly under s. 118(a) arose in favour of the Respondent. The Appellant, through his evidence and defences failed to dislodge the said presumptions. Consequently, the case of the Respondent was rightly held to have been proved on facts.
Point No. 3	The legal effect of any discrepancy between the amount expressed in words and figures on a negotiable instrument is provided in s. 18 of the 1881 Act. If there is a discrepancy between the words and figures, though on their language both are clear and unambiguous, the amount in words shall be taken to be the amount payable. If there is a discrepancy between the words and figures, and the words are ambiguous or uncertain,

	then the amount in figures may be considered as per the proviso to s. 18.
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23. For these reasons, I would partly allow this appeal and modify the impugned Judgment and Decree in the following limited terms while any remaining reliefs are declined:

- i) Summary Suit No. 09 of 2018 is decreed to the extent of the payable sum of Rs. 13,16,000/- (rupees thirteen lac sixteen thousand only). No order for interest or mark-up is made.
- ii) However, an order of Rs. 50,000/- is made as costs of the suit.

24. Office is directed to prepare a decree in these terms. R&Ps may be returned.

JUDGE

Approved for reporting
FAISAL