

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

1st Appeal No.14 of 2023

Present: Justice Jawad Akbar Sarwana

Appellant : Abid Khan s/o Haseeb Khan
through Mr. Abid Hussain Chang, Advocate

Respondent : Naveed Akhtar Lodhi s/o Nadir Sher Khan
in person.

Date of hearing : **29.10.2025 & 30.10.2025**

Date of decision : **30.10.2025**

JUDGMENT

JAWAD AKBAR SARWANA, J.: Appellant/defendant, Abid Khan s/o Haseen Khan, who is the payer of Cheque No.10533945 dated 01.02.2019 in the sum of Rs.1,425,000/- drawn on Bank Al-Habib Station Branch Road, Hyderabad (Ex.02/B)¹ is aggrieved by the impugned judgment and decree dated 01.03.2023, passed by the learned VIII-Additional District Judge, Hyderabad, in Summary Suit No.137/2019.²

2. Learned counsel for the appellant contends that the cheque in question in the sum of Rs.1,425,000/-, was handed over to the respondent- Naveed Akhtar, as a surety. He submits that, as part of the Settlement Agreement dated 04.03.2019, the said cheque was to be retained as a surety by one Mama Raees Qureshi, in accordance with the terms of the said Settlement Agreement. Therefore, the said cheque, having been acknowledged as a surety, could not be made the subject matter of the Summary Suit under Order XXXVII, C.P.C. Learned counsel further contends that as per the terms of settlement and the evidence brought on record, the entire payment of Rs.1,425,000/- was

¹ Available on page 117 of the 1st Appeal.

² Available on pages 25 to 35 of the 1st Appeal.

disbursed to the respondent-Naveed Akhtar and that nothing was subsequently outstanding on the date of filing Summary Suit No.137/2019, i.e. as on 20.01.2020.³

3. Respondent-Naveed Akhtar present in person has argued that he has yet to receive the entire sum of Rs.1,425,000/-. He submits that the cheque, which was dishonoured, remains unpaid and that he has not recovered any amount, even after execution of the Settlement Agreement dated 04.03.2019.

4. Heard learned counsel for the appellant and respondent-Naveed Akhtar in person and perused the record. My observations are as follows:-

- i) According to the documents available on record, including the evidence produced by the parties in support of their respective contentions, it is an admitted position that the dishonoured cheque was dated 01.02.2019.⁴ It is further admitted that appellant Abid Khan had instructed his bank to stop payment of the cheque in question as of 24.01.2019.⁵ Thus, prior to the cheque becoming payable on 01.02.2019, appellant Abid Khan did not intend for the cheque to be encashed, hence he stopped its payment through the bank. Moreover, to ensure that the said cheque was not presented in any litigation against him, on 30.01.2019, he also filed Suit No. 207/2019 for the cancellation of the said cheque. Given such conduct, it is evident that appellant- Abid Khan did not intend for the cheque, which was eventually dishonoured, to be presented by respondent- Naveed Akhtar and to be encashed. Indeed, if the cheque were merely a security, he

³ Copy of plaint in summary suit available on pages 37 to 53 of the 1st Appeal..

⁴ Available on page 117 of the 1st Appeal.

⁵ Available on page 137 of the 1st Appeal.

would not have taken such elaborate steps to stop its collection.

- ii) Learned counsel for the appellant has argued that the cheque was part of an earlier agreement dated 22.10.2018,⁶ and although the said agreement did not expressly state that the cheque was given as a surety for future payment, the parties novated the said agreement by way of the Settlement Agreement dated 04.03.2019.⁷ He contends that, following such novation, Mama Raees Qureshi was tasked with retaining the dishonoured cheque as a surety until the full implementation of the payment terms. Therefore, at the time the Summary Suit was filed, the cheque was a surety and the suit could not be sustained. However, a perusal of the documents on record reveals that when the parties entered into the Settlement Agreement dated 04.03.2019, the cheque dated 01.02.2019 had already been dishonoured on the same date, i.e. 01.02.2019.⁸ Accordingly, the cheque, having already been dishonoured at the time of execution of the Settlement Agreement, could not be considered a valid surety for the payment contemplated under the earlier agreement dated 22.10.2018, which agreement, as already executed, did not express the cheque in question to be a surety. Furthermore, the cheque in question (which eventually bounced) was described in the penultimate line of the agreement dated 22.10.2018 as:

“ . . . agar fareeq -e- awal [appellant-Abid Khan] yaqum February 2019 tuk fareeq -e- dohmm [respondent-Naveed Akhtar] ko baqiya rakum ada na kr saka toh fareeq -e- dohmm tamam karwai krnay ka mijaz hoga. . . ”

⁶ Available on page 119 of the 1st Appeal.

⁷ Available on page 139 of the 1st Appeal.

⁸ Available on pages 117 and 119 of the 1st Appeal.

The agreement of 22.10.2018 essentially set out the background of the financial dispute between the respondent and appellant, the various payment streams of the appellant-Abid Khan, paid to Naveed Akhtar towards the settlement of dues and the outstanding sum of Rs.1,425,000, which was also the amount of the cheque which would be eventually dishonoured on 01.02.2019.

Given the above, I am, therefore, unable to accept the appellant's contention that the dishonoured cheque constituted a valid surety for settlement.

- iii) In the alternative, learned counsel for the appellant has pleaded that under the Settlement Agreement dated 04.03.2019, (even though the concerned cheque had been dishonoured) respondent-Naveed Akhtar attempted to recover his claim twice. To this end, he argued that as per the evidence brought on record, out of the sum of Rs.1,425,000/- , an amount of Rs.25,000/- was waived by respondent Naveed Akhtar and six replacement cheques were issued, each in the sum of Rs.200,000/-, to be disbursed to respondent-Naveed Akhtar. Additionally, the Settlement Agreement of 04.03.2019, (the contents of which are not denied by the contesting parties except that Naveed Akhtar has taken the plea that it was never performed) also acknowledges a cash payment of Rs.200,000/- made by appellant-Abid Khan to respondent Naveed Akhtar. Learned counsel further contended that under the provisions of the Qanun-e-Shahadat Order, 1984, this financial disbursement was evidenced by two witnesses, namely Ikramuddin and Raees Khanzada. He submitted that both witnesses not only stepped into the witness box and deposed in support of the

Settlement Agreement dated 04.03.2019 and the disbursement of funds as stated therein, but were also signatories to the Settlement Agreement itself. He argued that the funds were disbursed over a period of six months, with the cheques submitted to Mama Raees Qureshi being returned to the appellant-Abid Khan, through Ikramuddin, and that Mama Raees Qureshi allegedly disbursed the said amount to the respondent-Naveed Akhtar. While this Bench accepts that appellant-Abid Khan attempted to bring on record evidence regarding the handing over of cash in exchange for cheques through Ikramuddin and Raees Khanzada, the material witness, Mama Raees Qureshi, who allegedly disbursed cash to Naveed Akhtar, was never produced as a witness. It is common ground between the contesting parties, acknowledged during the hearing and as per the certified true copy of an application under Order XVI Rule 1(3) read with Section 151 C.P.C., filed before this Bench and taken on record (consisting of six sheets), that although the appellant intended to produce Mama Raees Qureshi as a witness and respondent-Naveed Akhtar had also given his no-objection to the said application, it was subsequently withdrawn. In the totality of the transaction as presented by the appellant as per the Settlement Agreement dated 04.03.2019, the absence of Mama Raees Qureshi from stepping in the witness box is/was fatal to the appellant's defence. It was Mama Raees Qureshi who would have testified that the cheques were allegedly received and returned to respondent-Naveed Akhtar in lieu of cash and that he himself made the disbursement to respondent-Naveed Akhtar of the balance sum of money mentioned in the Settlement Agreement dated 04.03.2019. In the absence of this material evidence, it remains unproven whether Mama Raees Qureshi made any actual disbursement to respondent

Naveed Akhtar. Appellant-Abid Khan needed to prove this point, as respondent-Naveed Akhtar consistently denied throughout his evidence that he had received any cash payment from Mama Raees Qureshi and Abid Khan. Respondent-Naveed Akhtar, who, in his examination-in-chief, admitted to the terms of the Settlement Agreement dated 04.03.2019, including the proposed terms *mutatis mutandis*, but denied its performance in cross-examination. He contended that he received no money under the Settlement Agreement and, as per his evidence, rescinded the remaining terms. Given the above, the burden of proof to demonstrate that Mama Raees Qureshi had actually disbursed the funds to respondent-Naveed Akhtar rested with appellant-Abid Khan. In the circumstances, the testimony of Mama Raees Qureshi would have supported the appellant's defence and substantiated his claim that nothing was outstanding and payable by appellant-Abid Khan. This, however, did not happen, and the appellant, Abid Khan, failed to raise a successful defence to the respondent/plaintiff, Naveed Khan's claim for recovery of money based on a bounced cheque issued by appellant/defendant, Abid Khan.

- iv) While the issue of dishonour of the cheque as the basis of the Summary Suit stands proven, respondent-Naveed Akhtar has admitted the contents of the Settlement Agreement dated 04.03.2019 and not denied that he did not receive cash payment of Rs.200,000/- from appellant-Abid Khan. Furthermore, as per the said Settlement Agreement a sum of Rs. 25,000 was also waived by the respondent-Naveed Khan. Yet, at the same time, respondent-Naveed Khan denied the performance of the terms of the said Settlement Agreement on the part of the appellant-Abid Khan. Therefore, to that extent, the recovery of the amount of Rs.1,425,000/- in

relation to the bounced cheque stands reduced by Rs.225,000/- (Rs.200,000 + Rs.25,000), and the impugned Judgment and Decree stands modified accordingly.

- v) Finally, learned counsel for the appellant has argued that the issue regarding subsequent payments made by appellant-Abid Khan was not framed as a separate issue by the trial Court. Therefore, he contended that the impugned judgment and decree were irregular. It is apparent that when issues were settled on 01.04.2022, the defendant/appellant-Abid Khan had recourse to challenge the framing of issues and seek the incorporation of additional issues and/or amending the issues settled. However, no such application was moved by the appellant-Abid Khan. Notwithstanding the foregoing, the entire defence viz. the Settlement Agreement dated 04.03.2019, was concerning Settled Issue No.4, i.e., to demonstrate that the dishonoured cheque was in fact a surety. Therefore, as discussed in Para No.4(ii) to (iv) above and also in the impugned Judgment, the appellant's defence was well covered by the Settled Issue No.4. Therefore, the contention raised by learned counsel for the appellant does not carry weight.

5. Given the above reasons, the impugned judgment and decree stand modified to the extent that the amount payable by appellant Abid Khan to respondent-Naveed Akhtar is reduced from Rs.1,425,000/- to Rs.1,200,000/- plus markup at the rate of 15% per annum (simple interest) from the date of filing suit till realization and this 1st Appeal stands disposed of in the above terms.

6. The office is directed to prepare an amended appellate judgment and decree in the above terms.

7. As this appellate judgment was dictated and announced in open Court on 30.10.2025, learned counsel for the appellant-Abid Khan has requested that the operation of this appellate judgment be stayed so as to enable the appellant to file an appeal against the same, if need be. Unfortunately, the file was inadvertently misplaced, resulting in a delay in the finalisation and signing of this appellate judgment. At the time, upon conclusion of arguments, I had also announced to stay the operation of this judgment for 10 days. However, given the delay, in the circumstances, the operation of this appellate judgment shall remain suspended for 10 days from the date of signing off this appellate judgment today, i.e. 04.12.2025.

JUDGE

AHSAN K. ABRO