

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

1<sup>st</sup> Appeal No.37 of 2025

**Present: Justice Jawad Akbar Sarwana**

Appellant : Noman Hyder s/o M. Yaseen Arain  
Through Mr.Rasool Bux Lara, Advocate

Respondent : Abid Hussain s/o Talib Hussain Arain,  
in person

Date of hearing : **03.12.2025 & 10.12.2025**

Date of decision : **10.12.2025**

## **O R D E R**

**JAWAD AKBAR SARWANA, J.:** Noman Hyder Arain, appellant/defendant has impugned the judgment dated 26.03.2025 and decree dated 28.03.2025 passed by the IVth Addl. District Judge Shaheed Benazirabad in Summary Suit No.12 of 2023. Appellant/defendant Counsel claims that there was no underlying consideration for the dishonored cheque in question, no negotiation as understood under the Negotiable Instruments Act, 1881, was present; therefore, the learned IVth Addl. District Judge ought to have dismissed the summary suit. In support of his argument, he relies on the division bench judgment of the Lahore High Court in Muhammad Waseem v. Maple Leaf Cement Factory Ltd., PLD 2024 Lahore 676.

2. Additionally, appellant/defendant Counsel contended that the appellant/defendant was kidnapped, whereupon the cheque was issued by him forcibly and under duress. Therefore, the summary suit was liable to be dismissed on this score too. Furthermore, he contends that the pleas taken by the respondent/plaintiff are inconsistent and the learned IVth Addl. District Judge has misread the evidence, hence this 1<sup>st</sup> appeal is liable to be allowed for this reason as well. To this end, Counsel argued that as per FIR No.104/2022, registered on 27.06.2022, by

the respondent/plaintiff, he stated that he had business dealings with the appellant/defendant about six months before the filing of the said FIR. However, the respondent/plaintiff in paragraph 2 of his plaint stated that he had business dealings six months before the filing of the summary suit. Therefore, the two statements between the FIR and the Plaint were inconsistent, as the cheque in question was issued on 03.04.2022, and it was dishonoured by the bank on 25.05.2022.

3. The respondent/plaintiff, present in person, contends that the cheque for the amount of Rs.270,000/- was issued in relation to the sale and purchase of construction materials, namely, crush, sand and bricks, supplied by him to the appellant/defendant. He relied on the evidence of his brother, Zahid Hussain, and another witness, Abdullah Khokhar, who deposed that both the construction material and the cheque in question were handed over/supplied and issued, respectively, in the presence of the plaintiff's witness at the respondent/plaintiff's shop.

4. Heard learned counsel for the appellant/defendant and the respondent/plaintiff in person and reviewed the material available on record.

5. As per the cross-examination of the respondent/plaintiff, admittedly, he did not produce any invoice in support of the sale transaction; however, this lacuna is overcome by the evidence of PW-2, Zahid Hussain, and PW-2, Abdullah Khokhar. While Zahid Hussain is the brother of the respondent/plaintiff, the other witness, Abdullah, is of the caste Khokhar. The witnesses confirmed (A) the sale of the construction material, including, inter alia, its type, i.e., hill-sand, crush, and cement, and the quantity, i.e., apparently 50-60 bags in 2 or 3 tractor trolleys. Although the date of sale has not been deposed, witnesses testified that the sale occurred around 11:00 a.m. Once such evidence had been brought on record, the burden was on the

appellant/plaintiff to dislodge the same. However, no evidence to the contrary is available on record.

6. Whether or not there was any consideration for the underlying dishonoured cheque needs to be examined from yet another perspective, i.e. the circumstantial evidence concerning the issuance of the cheque in question and the preponderance of evidence. To this end, no valid explanation was advanced by either counsel or found in the testimony of the appellant/defendant as to why a cheque was written in favour of the respondent/plaintiff. The record reflects that, on one hand, the appellant/defendant Counsel submitted before this bench, during oral arguments, that the cheque was unlawfully obtained from him by force when he was allegedly kidnapped. However, as per the Leave to Defend Application,<sup>1</sup> there was no such mention. Instead, the appellant/defendant himself alleged that the cheque was *“managed with malafide intention and ulterior motives in order to extort money from the plaintiff by pressure, duress and coercion.”* On the other hand, in his cross-examination, however, the appellant/defendant admitted that the bounced cheque in question was his, drawn on his bank account and further conceded that he had never filed any application regarding the cheque being misplaced or unlawfully taken. The burden to substantiate his defence(s), including, inter alia, that the cheque was illegally procured, rested solely upon the appellant/defendant, but no material evidence was brought on record in support of such contention.

7. In Muhammad Waseem v. Maple Leaf Cement Factory Ltd., PLD 2024 Lahore 676, the learned Division Bench of the Lahore High Court observed that no evidence was available to support the negotiable instruments of the parties. In the present case, although, no invoice was produced in relation to the transaction, yet, based on the preponderance of evidence produced by the respondent/plaintiff,

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<sup>1</sup> Available on Page-57 of 1<sup>st</sup> Appeal

through his witnesses, and with no evidence to controvert the sale transaction, the mere absence of an agreement in writing, such as a sales invoice, is insufficient for this Court to find that there was no underlying agreement. The preponderance of evidence was in favour of an underlying agreement in support of the negotiable instrument.

8. In view of the above, no ground is made out for intervention in the impugned judgment and decree and/or for this bench to set aside the impugned judgment and decree passed by the IVth Addl. District Judge.

9. Accordingly, for the above reasons, the 1<sup>st</sup> Appeal stands dismissed along with all applications.

**JUDGE**

AHSAN K. ABRO