

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present: Justice Jawad Akbar Sarwana

1st Appeals No.17 and 18 of 2021

Appellant (s) : M/S Soofi and Sons, through its proprietors:
a) Muhammad Junaid s/o Muhammad Shakeel
b) Muhammad Imran Patel s/o Abdul Habeeb
through Mr.Hassan Hameed, Advocate, files
Vakalatnama as applicant, which are taken on
record

Respondent (s) : Memon Motors (Pvt.) Ltd, through its Regional Sales
Manager, Mr.Mirza Imran Baig s/o Mirza Aslam Baig
Through Mr.Qurban Ali Baat, Advocate

Date of hearing : **18.12.2025**

Date of decision : **18.12.2025**

COMMON ORDER

JAWAD AKBAR SARWANA, J.: Appellants/defendants, M/s Soofi and Sons, who are alleged proprietors of the said business concern, as claimed by the respondent/plaintiff-Memon Motors (Pvt.) Ltd. ("MMPL") in the two summary suits filed against them, the appellants/defendants, are aggrieved by the judgment dated 27.02.2021 and the decree dated 02.03.2021, passed by the learned V -Additional District Judge, Hyderabad, in Summary Suits Nos. 46 of 2019 (in 1st appeal 18/2021) and 107 of 2019 (in 1st appeal 17/2021), respectively. Each summary suit is based on a (single) dishonoured cheque in the sum of Rs.25,000,000/-, issued by the appellant no.2/Muhammad Imran Patel, drawn on Bank Al-Habib, favoring the respondent/plaintiff-MMPL. In the summary suit no.46/2019, the cheque was dated 09.10.2018, its last four digits were "2965", and it was presented for collection on 11.10.2018 and bounced on the same date.¹ Whereas in the summary suit no.107/2019, the cheque was

¹ Copy of cheque is available on page 91 and the Memo is available on page 93 of 1st appeal no.18/2021.

dated 05.08.2019, its last four digits were “2967”, and it was presented for collection on 20.08.2019 and bounced on the same date.²

2. Learned counsel for the appellants/defendants submits that appellant No.1/Muhammad Junaid and appellant No.2/Muhammad Imran Patel are related, inasmuch as Muhammad Junaid is the son-in-law of Muhammad Imran Patel. He contends that the sole proprietor of M/s Soofi and Sons is Muhammad Junaid alone and that appellant No.2/Muhammad Imran Patel has no business dealings whatsoever with the respondent/plaintiff-MMPL and appellant No.1/ Muhammad Junaid. Counsel argued that appellant No.2/Muhammad Imran Patel issued the dishonoured cheques. Therefore, under the Negotiable Instruments Act, 1881, there exists no consideration concerning the two cheques in question between appellant No.2 and the respondent/plaintiff-MMPL, since appellant No.2 is a stranger to M/s. Soofi and Sons. Muhammad Junaid is the sole proprietor of M/s. Soofi and Sons. Learned counsel further submits that the amount and date on the cheques involved in the two summary suits were inserted by Mr. Muhammad Saleem, Chief Executive of respondent/plaintiff-MMPL and that the cheques were obtained from appellant no.2/Muhammad Imran Patel, under duress. He also argues that the agreement dated 09.10.2018, concerning cheque No.2965 in the sum of Rs.25 million, was executed between MMPL and appellant No.2/Muhammad Imran Patel, as guarantor/surety, because Muhammad Imran Patel had no connection with M/s Soofi and Sons. Further, the dealership agreement was between M/s Soofi and Sons and MMPL alone. There is no business agreement between appellant No.2/Muhammad Imran Patel and respondent/plaintiff-MMPL. The impugned judgments on the ground further aggrieve learned counsel, who contend that the appellants/defendants were merely delayed by eight (08) days in filing the leave to defend application, yet the Court proceeded to pronounce

² Copy of cheque is available on page 65 and the Memo is available on the same page of 1st appeal no.17/2021.

judgments and decrees without affording them an opportunity of hearing. For the foregoing reasons, learned counsel contends that the impugned judgments and decrees are bad in law, liable to be set aside, and he is entitled to defend the proceedings on the merits. Additionally, he contends that respondent/MMPL owed money payable to the appellants, hence the appellants had filed a (separate) civil suit against respondent/plaintiff-MMPL.

3. Learned counsel for the respondent/plaintiff-MMPL, vehemently opposes the submissions advanced by learned counsel for the appellants/defendants. He submits that the suit was filed jointly against Muhammad Junaid and Muhammad Imran Patel. It is contended that throughout the course of business with M/s Soofi and Sons, there exists a clear, undeniable understanding between the son-in-law and father-in-law that they are one and the same doing business as Soofi and Sons. This business relationship between Muhammad Junaid and Muhammad Imran Patel inter se, is apparent from the record. Learned counsel points out that several cheques placed before the learned V-Additional District Judge, Hyderabad, evidenced that the majority of the cheques used as advance payments were issued by Muhammad Imran Patel. On this basis, he argues that both Muhammad Junaid and Muhammad Imran Patel were business partners of M/s Soofi and Sons and at all material times, both possessed ostensible authority in their dealings with Memon Motors (Pvt.) Ltd. He submits that there is no document available on record in the two appeals which can be made the basis of the appellant's assertion that appellant No.2/Muhammad Imran Patel was merely a guarantor/surety in Soofi and Sons business dealings with respondent/plaintiff-MMPL. He further submits that at no stage in their defence, did Muhammad Junaid or Muhammad Imran Patel take the plea that there was no nexus between them inter se vis-à-vis M/s Soofi and Sons. Learned counsel contends that the cheques in question were never issued as part of any guarantee, nor is such a stipulation articulated in the agreement dated

09.10.2018, which was executed by Muhammad Imran Patel on behalf of M/s Soofi and Sons and cross-references the dishonoured cheque. Accordingly, he argues that the defence raised by the appellants cannot be sustained and both first appeals are liable to be dismissed.

4. Heard learned Counsel and perused the record. From the pleadings, it is apparent that the respondents/plaintiffs impleaded M/s Soofi and Sons through its alleged proprietors, namely, (A) Muhammad Junaid and (B) Muhammad Imran. Although the precise description of their relationship inter se viz. M/s Soofi and Sons has not been articulated either in the leave to defend application or in these appeals before this Court, yet the preponderance of evidence shows that they were acting in concert, interchangeably as the arm of Soofi and Sons. The oral arguments sought to distinguish the son-in-law and father-in-law in their respective dealings through Soofi and Sons with the appellants/plaintiffs-MMPL, but this (argument/contention) was not found in the pleadings. Even otherwise, a factual plea not advanced at the trial stage cannot be entertained at the subsequent appellate stage. Thus, a ground which has not been agitated before the trial Court cannot be raised for the first time in an appeal. The relationship between Muhammad Junaid and Muhammad Imran as business partners of Soofi and Sons is further corroborated by the fact that they chose to file the leave to defend application jointly. Had they intended to take separate and distinct defences, they could have filed separate applications. However, they did not do so. A further scrutiny of the leave to defend application reveals that the appellants/defendants refer to themselves collectively, using the expressions "we" and "defendants" interchangeably. This indicates that they intended to adopt a consolidated defence and never raised the plea that Muhammad Imran Patel had no connection with M/s Soofi and Sons or that his business relationship with respondent/MMPL was independent and separate. The record further reflects that Muhammad Imran Patel's communications and agreements were consistently made on behalf of

M/s Soofi and Sons. Thus, when the learned V-Additional District Judge, Hyderabad, examined the pleadings, including the leave to defend application filed by the appellants, there was no reason to doubt that Muhammad Imran Patel was not acting as a representative of M/s Soofi and Sons in its dealings with Memon MMPL.

5. Learned counsel for the appellants/defendants has contended that the leave to defend application was filed with a delay of eight (08) days, which ought to have been condoned and that the appellants should have been afforded the right of hearing so that the lis could be decided on merits. The submissions of learned counsel would have merited consideration had the appellants/defendants filed an application for condonation of delay, setting out reasons for such delay before the V-Additional District Judge, Hyderabad, thereby enabling the learned V-Additional District Judge, Hyderabad, to consider condonation. However, no such application was filed along with the leave to defend application. The diary sheet reflects that after service of summons on 28.10.2019, when the appellants entered an appearance, no leave to defend application was filed. Several opportunities were available to challenge and seek setting aside of the ex parte order for a significant period of time until judgment was announced on 27.02.2021, yet no such effort is discernible from the record.

6. Given the foregoing and based on the documents available on record, the learned V-Additional District Judge, Hyderabad, under the provisions of Order XXXVII, C.P.C., always had the discretion to grant either conditional or unconditional leave to defend. Upon consideration of the material before him, the learned Judge proceeded with ex parte proceeding within the contours of Order XXXVII, C.P.C. Indeed, on the basis of the material available, the requirements of Order XXXVII, C.P.C. justified his action, and the same is not found to be arbitrary. The dishonoured cheque was available on record, together with the supporting memo, so was the defence plea of the

appellant/defendants. The judgments were passed in accordance with the law.

7. Learned counsel for the appellants/defendants has contended that the dishonoured cheque was presented to the bank malafidely, as the payments claimed by the respondents/plaintiffs had already been settled, and that, in fact, outstanding payments were due from the respondents/plaintiffs to the appellants/defendants. To this end, he submits that Civil Suit No.1534 of 2019, seeking declaration, cancellation, and rendition of accounts, was filed by the appellants/defendants against the respondent/plaintiff and is presently pending trial at the stage of evidence today (2025). It is well-settled that a summary suit constitutes a special mode of proceedings and that special law prevails over general law. Consequently, the two actions, one based on dishonourment of a cheque under summary proceedings and the other based on a civil suit for declaration, cancellation and rendition of accounts, cannot be commingled, and stand independently to be proceeded in terms of the prescribed procedure. Therefore, the pendency of the civil suit does not operate as a defence in the summary proceedings. Interestingly, it is noted that the plaint filed by the Soofi & Sons in their suit before the VIII-Senior Civil Judge, Hyderabad (available at page 937 of the appeal), describes the plaintiffs therein as M/s Soofi and Sons through its proprietors Muhammad Junaid and Muhammad Imran Patel. Thus, once again, it confirms that in fact the cheques issued by appellant no.2/Muhammad Imran Patel were on behalf of Soofi and Sons. They (the cheques) were issued in connection with addressing the question of liability of Soofi and Sons through Sufi & Sons. Therefore, based on the facts and circumstances of the case, appellants' contention that appellant no.2/Muhammad Imran Patel is a stranger to Soofi & Sons does not inspire confidence.

8. Given the above, I do not find any reason to interfere in the impugned judgments and decrees in summary suit nos.47 and

107/2019. Neither suffers from any defect and/or irregularity; therefore, both 1st Appeals arising from summary suit no.46/2019 and 107/2019 are hereby **dismissed**.

9. Thus, both 1st appeal nos. 17 and 18 of 2021 stand dismissed by this common order.

JUDGE

AHSAN K. ABRO