

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Present:

Mr. Justice Jawad Akbar Sarwana

1st Appeal No.S-63 of 2026

Appellant	:	Muhammad Imran son of Muhammad Arshad, through Mr. Ishfaq Ahmed Lanjar, advocate.
Respondent	:	Mst. Mubbrah w/o Irfan Ali Memon. Nemo
Date of hearing	:	25.08.2026.
Date of Decision	:	25.08.2026.

JUDGMENT

JAWAD AKBAR SARWANA, J:- Muhammad Imran son of Muhammad Arshad, appellant/defendant, is aggrieved by the judgment and decree dated 25.05.2026 passed by the 8th Additional District Judge, Hyderabad ("trial Court") in Summary Suit No.60 of 2024 filed by the respondent/plaintiff-Mst. Mubbrah wife of Irfan Ali Memon.

2. Essentially, the main line of challenge against the impugned judgment and decree raised by the counsel for the appellant/defendant and reiterated by the appellant/defendant, who is present in person, with the permission of this bench, is that, as per the terms of an oral agreement between the parties, the bounced and dishonoured cheque produced in evidence was part of a security-guarantee to cover the risk of an investment. It was argued that the investment involved the appellant/defendant handing over a 30-acre mine concession to the respondent/plaintiff, which would generate revenue to repay an alleged loan advanced by the respondent/plaintiff to the appellant/defendant. The security-guarantee cheque was intended to cover the investment risk and never meant to be encashed. The appellant/defendant argued

that this aspect was well recorded in the evidence; however, the impugned judgment ignored it entirely. Further, the photocopy of the commercial agreement between the parties, which was marked as "X", confirmed the transfer of rights in the 30 acres coal mine at Lakhra Jamshoro from the appellant/defendant to the respondent/plaintiff, and, although the original was not produced, the said original was very much available. Therefore, the document was part of the record and ought to have been considered favourably by the trial Court in support of the appellant/defendant's defence. The appellant/defendant in attendance undertook to produce the original commercial agreement if the (High) Court so desired to examine it. Yet, simultaneously, the appellant/defendant also candidly conceded that the rights under the mine concession agreement had not yet been transferred in the official records, as such transfer was not part of the commercial agreement. Counsel for the appellant/defendant argued that the respondent/plaintiff presented the security-guarantee cheque in an attempt to recover twice, both in terms of the amount of the dishonoured cheque and the transfer of the coal mine concession as well as the revenue stream being generated from the said mine.

3. Heard counsel and perused the impugned judgment dated 25.05.2026. The main defence of the appellant/defendant is framed under issue nos.3 & 4 settled by the trial Court, which reads as follows:

"3. Whether defendant issued the shown cheques as a security/guarantee?"

4. Whether the defendant already cleared all dues of plaintiff?"

The trial Court recorded its findings in paragraphs No. 12 & 13 of the impugned Judgment. When I confronted the appellant/defendant, who was present in Court, whether he had produced any evidence from the Mining Authority confirming that a lawful title and physical possession had been permanently registered in favour of the plaintiff or that the respondent/plaintiff had taken legal possession of the same, he

contended that, although all the relevant documents to effect such transfer were already in the custody of respondent/plaintiff, yet, at the same time, such transfer could not be effected without the consent of the appellant/defendant.

4. Clearly, the Court cannot take into consideration future events and must decide the matter within the framework of what was/is before the trial Court and produced during evidence. In the case in hand, the crucial commercial agreement on which the appellant/defendant has relied upon to argue that the bounced cheque was part of a security-guarantee, the original of the said agreement, was never produced in evidence. Indeed, even when the appellant/defendant produced the photocopy, he always had the option to seek time to produce the original on the next hearing date. There is nothing available on record to suggest that the appellant/defendant made any efforts to produce the original during the evidence and/or after the recording of evidence. Furthermore, even no application to produce the original is available. As the appellant/defendant chose to remain silent, he missed the opportunity to raise a credible defence in the summary proceedings before announcement of judgment in the summary suit. At the end of the day, when no documentary evidence was available on record to suggest that the bounced cheque involved in the summary suit was part of a security-guarantee of a commercial agreement, the appellant/defendant failed to convince the trial Court, and the respondent/plaintiff's summary suit was decreed against the appellant/defendant based on the evidence available as discussed in the impugned judgment.

5. With regard to the appellant/defendant's submission that the respondent/plaintiff, by filing this summary suit based on the security-guarantee cheque, is attempting to recover twice, counsel for the appellant/defendant has submitted that the appellant/defendant has already instituted FC Suit No.587 of 2024 against the respondent/plaintiff, which is pending before the 6th Senior Civil Judge,

Hyderabad. The appellant/defendant's civil suit for recovery of money, etc., based on the fraud alleged to have been played by the respondent/plaintiff, which is the subject matter in separate proceedings, will be decided on its own merit. The two actions – summary suit and the civil suit cannot come to the rescue of the other. Each action is to be decided independently, and the appellant/defendant cannot rely on his claim in the civil suit as a defence in the summary suit, which is based on a negotiable instrument, and is to be decided within the framework of Order 37 CPC. Therefore, apart from the reasons set out in paragraphs 3 and 4 above, the defence raised by the appellant/defendants fails on this score, too.

6. Given the above, I do not find any reason to set aside the impugned judgment and decree; nor has any illegality or infirmity been pointed out in the impugned judgment and decree to modify the same in any way. In the circumstances, and for the above reasons, this 1st Appeal stands hereby dismissed with no orders as to costs.

JUDGE

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