

# **IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

***Mr. Justice Arshad Hussain Khan***  
***Mr. Justice Amjad Ali Sahito***

## **First Appeal No.03 of 2024**

Appellants : Shaukat S/o Ghulam Hussain & other  
through Mr. Javaid Ahmed Rajput,  
Advocate

Respondents : Sohail Haroon S/o Muhammad Haroon &  
other through Mr. Muhammad Arif Shaikh  
Advocate appearing for Respondent No.1

Date of Hearing : 22.09.2026

Date of Judgment: 22.09.2026

## **J U D G M E N T**

**Amjad Ali Sahito, J.-** Through the instant First Appeal, the Appellants have called in question the judgment and decree dated 08.12.2023 passed by the learned IXth Additional District Judge/MCAC, Karachi East, in Summary Suit No.124 of 2021, whereby the suit instituted by Respondent No.1 under Order XXXVII of the Code of Civil Procedure, 1908 ("CPC"), for recovery of Rs.21,28,976/- was decreed against the Appellants, along with interest at the rate of 6% per annum from the date of institution of the suit till realization of the decretal amount and costs of Rs.30,000/-.

**2.** Briefly stated, the case set up before the learned trial Court was that Respondent No.1 was engaged in the business of sale and supply of metallic yarn/zari lorex through his sole proprietorship concern, while the Appellants, being father and son, had been purchasing such goods from him in the ordinary course of their business dealings. It was alleged that various consignments were supplied to the Appellants from time to time, against which they issued post-dated cheques towards payment of the amounts becoming due on account of such supplies.

**3.** The record reflects that various consignments of metallic yarn/zari lorex were supplied to the Appellants during November and December 2020. In support of the claim, Respondent No.1 produced the relevant bills and delivery documents, setting out the description and value of the goods supplied. The amount claimed in the suit was Rs.21,28,976/-. Towards discharge of the said liability, seven cheques were allegedly issued by the Appellants, all of which, upon presentation, were dishonoured on account of insufficient funds. The particulars of the cheques, together with the corresponding amounts and cheque return memos, were placed on record before the learned trial Court.

**4.** It was further the case of Respondent No.1 that, despite repeated demands, the Appellants failed to discharge the outstanding liability. Consequently, the summary suit was instituted under Order XXXVII CPC for recovery of Rs.21,28,976/-, along with profit/mark-up at the rate of 30% per annum or the prevailing bank rate, whichever was higher, besides costs and other consequential relief. The Appellants entered appearance and contested the claim.

**5.** The learned trial Court framed the following issues:

- (i) Whether the suit of the Plaintiff/Respondent No.1 is maintainable under the law?
- (ii) Whether the Defendants had issued seven dishonoured cheques to the Plaintiff/Respondent No.1 against purchase of metallic yarn/zari lorex?
- (iii) To what relief, if any, is the Plaintiff/Respondent No.1 entitled and what should the decree be?

Thereafter, Respondent No.1 led his evidence and produced, inter alia, the bills, delivery documents, cheques and cheque return memos. The Appellants also led evidence in support of their defence and relied upon, amongst other documents, an alleged agreement and the criminal proceedings initiated against them in respect of the dishonoured cheques.

**6.** Upon conclusion of the evidence and after hearing the parties, the learned trial Court answered Issues No.1 and 2 in the affirmative and decreed the suit. It concluded that

Respondent No.1 had established the underlying transactions and the liability claimed against the Appellants, and that the seven cheques issued by them had been dishonoured due to insufficient funds. Accordingly, a decree for Rs.21,28,976/- was passed along with interest at the rate of 6% per annum from the date of institution of the suit until realization, in addition to costs of Rs.30,000/-. The decree was drawn on 08.12.2023. Aggrieved by the said judgment and decree, the Appellants have preferred the instant appeal.

**7.** Learned counsel for the Appellants has assailed the impugned judgment and decree primarily on the ground that the learned trial Court failed to properly appreciate the defence set up by them. It has been contended that the seven cheques were not issued towards discharge of any existing or crystallized liability, but were delivered merely as security in connection with the business dealings between the parties. Learned counsel further submits that Respondent No.1 failed to establish the alleged transactions through dependable and legally acceptable evidence and that the documentary material produced by the Appellants in support of their defence was not properly considered.

**8.** It has further been argued that the Appellants had specifically pleaded that, pursuant to an arrangement between the parties, metallic yarn/zari lorex was supplied to them on credit, with the understanding that the sale proceeds would thereafter be remitted to Respondent No.1. According to learned counsel, the cheques in question were furnished only as security and were not intended to be presented or treated as independent instruments for recovery of any presently due amount. It is also contended that the learned trial Court failed to properly examine the alleged agreement as well as the receipts and walk-in orders relied upon by the Appellants.

**9.** Learned counsel has additionally relied upon the criminal proceedings arising out of the dishonour of the said cheques and submitted that the Appellants were acquitted by the learned Judicial Magistrate after recording evidence. According to the

learned counsel, such acquittal lends support to the defence that the cheques did not represent any enforceable liability. It has, therefore, been contended that the learned trial Court, without properly appreciating the defence evidence and documentary material, proceeded to decree the suit, resulting in an erroneous judgment and decree.

**10.** Conversely, learned counsel appearing for Respondent No.1 has supported the impugned judgment and decree and submitted that the claim was duly established through the bills, delivery documents, cheques and cheque return memos produced in evidence. It was contended that the business relationship between the parties and receipt of the goods by the Appellants were not seriously disputed, whereas the plea that the cheques had been issued merely by way of security was neither substantiated through cogent evidence nor sufficient to rebut the documentary evidence produced by Respondent No.1. It was, accordingly, argued that the learned trial Court had rightly appreciated the evidence on record and decreed the suit.

**11.** We have heard learned counsel for the parties and have carefully examined the material available on record.

**12.** The controversy before us essentially concerns whether the seven cheques relied upon by Respondent No.1 represented an enforceable liability arising from the supply of metallic yarn/zari lorex to the Appellants or, as asserted by them, were delivered merely by way of security without any presently enforceable liability. Upon examination of the record, it is evident that the claim was not founded solely upon the cheques. Rather, Respondent No.1 relied upon the underlying commercial transactions and produced the relevant bills and delivery documents evidencing the supplies, followed by the issuance of the cheques and their subsequent dishonour. The record reflects transactions dated 30.11.2020, 05.12.2020, 18.12.2020 and 23.12.2020, against which the cheques were issued during December 2020 and January 2021.

**13.** It is not disputed that the parties had an existing business relationship. The principal defence of the Appellants was that the

cheques had been furnished as security pursuant to an arrangement between the parties. However, the mere characterization of a cheque as a “security cheque” does not, by itself, establish the absence of an underlying liability. The nature and purpose of an instrument must necessarily be determined in the light of the transaction in which it was issued and the evidence produced by the parties.

**14.** In the present case, Respondent No.1 placed on record the bills and delivery documents pertaining to the goods allegedly supplied to the Appellants. The said documents identify the nature of the goods, the dates of the transactions and the amounts involved. The corresponding cheques were also produced, together with the return memos evidencing their dishonour on account of insufficient funds. The documentary evidence, therefore, furnished a direct nexus between the cheques and the commercial transactions relied upon in support of the claim.

**15.** In rebuttal, the Appellants relied upon an alleged agreement, described as a *Karobari Muhaida*, along with certain walk-in orders and receipts, contending that the cheques had been delivered only as security under the alleged business arrangement. The said agreement was, however, specifically denied by Respondent No.1. The Appellants, therefore, were required to establish its execution through legally acceptable evidence, particularly by producing its attesting witnesses. Admittedly, the two attesting witnesses to the document were not examined.

**16.** Furthermore, Respondent No.1 produced a verification report issued by the Superintendent of Stamps Office, City Court, Karachi, indicating that Syed Iqbal Hassan, the stamp vendor whose stamp appeared on the alleged agreement, was not registered as a stamp vendor during the relevant period of 2019-2020. In these circumstances, the evidentiary value of Ex.D/2 was materially weakened, particularly when its execution had been denied and the persons who allegedly witnessed the document were not produced in evidence. The learned trial

Court, therefore, was justified in not placing reliance upon the said document for the purpose of establishing the Appellants' defence.

**17.** Learned counsel for the Appellants has also relied upon the judgment dated 20.07.2022 passed by the learned Judicial Magistrate in FIR No.425/2021, registered under Sections 489-F/34 PPC at Police Station SITE-A, concerning the dishonoured cheques. By the said judgment, the Appellants were acquitted after the learned Magistrate found that the prosecution had failed to establish the charge beyond reasonable doubt and extended to them the benefit of doubt.

**18.** The said acquittal, however, cannot by itself operate to extinguish or determine the civil liability asserted in the present proceedings. Criminal and civil proceedings are governed by distinct considerations and different standards of proof. The issue before the learned trial Court was whether Respondent No.1 had established his entitlement to recover the amount claimed on the basis of the underlying commercial transactions, the documentary evidence and the dishonoured cheques. Consequently, the finding recorded in the criminal proceedings could not, merely by reason of the acquittal, be treated as establishing that the goods had not been supplied, that no amount was outstanding, or that the cheques were incapable of being relied upon in the civil proceedings.

**19.** It is a settled principle that each proceeding is to be determined on the basis of the evidence brought on its own record. A finding recorded in one proceeding does not, merely by virtue of its existence, constitute substantive evidence of the facts in issue in another proceeding. Article 57 of the Qanun-e-Shahadat Order, 1984, specifically governs the relevancy of previous judgments and restricts their evidentiary use to the extent provided therein. A judgment rendered in criminal proceedings cannot ordinarily be relied upon in a civil action for the purpose of establishing the truth of the facts upon which such judgment was based, nor can a judgment in a civil proceeding be treated as evidence of such facts in a criminal

prosecution. Reliance in this regard may be placed upon *Malik Khuda Bakhsh v. The State* (1995 SCMR 1621).

**20.** We have also considered the contention that the learned trial Court failed to properly appreciate the defence evidence. The record demonstrates that the alleged agreement, walk-in orders and receipts relied upon by the Appellants were considered alongside the bills, delivery documents, cheques and return memos produced by Respondent No.1. Upon appraisal of the respective versions, the learned trial Court recorded a finding in favour of Respondent No.1. We find that such conclusion is supported by the material available on record and that the Appellants have not identified any material piece of evidence which was either ignored or misconstrued so as to render the finding unsustainable.

**21.** Another relevant consideration is that the claim was for a specific and quantified amount of Rs.21,28,976/-, corresponding to the transactions and cheques placed on record. Although Respondent No.1 had claimed profit/mark-up at the rate of 30% per annum or the prevailing bank rate, whichever was higher, the learned trial Court, upon consideration of the relief sought and the material before it, awarded interest at the rate of 6% per annum from the date of institution of the suit until realization, in addition to costs of Rs.30,000/-.

**22.** The allegation that the learned trial Court proceeded in haste or failed to consider the material evidence is, therefore, not borne out from the record. The impugned judgment reflects consideration of the pleadings, issues, oral and documentary evidence and the respective contentions of the parties. The learned trial Court ultimately concluded that the Appellants had issued the subject cheques and that the same were dishonoured upon presentation on account of insufficient funds.

**23.** We have further examined the grounds urged in the appeal alleging misreading and non-reading of evidence, disregard of the burden of proof and improper appreciation of the defence documents. No specific material has been identified which, if considered differently, would materially alter the conclusion

reached by the learned trial Court. The grounds raised by the Appellants essentially seek a reappraisal of the evidence and substitution of their interpretation for the assessment already made by the Court of first instance. No such circumstance has been demonstrated as would justify appellate interference with the findings recorded by the learned trial Court.

**24.** For the foregoing reasons, we are of the view that Respondent No.1 established the underlying transactions, supply of goods and the liability corresponding to the seven dishonoured cheques through the documentary material produced in evidence. The plea that the cheques were delivered merely as security was duly considered but remained unsubstantiated, particularly in view of the failure to prove the alleged *Karobari Muhaida*. The findings recorded by the learned trial Court are neither shown to suffer from misreading or non-reading of material evidence nor from any perversity or illegality warranting interference by this Court.

**25.** Consequently, the instant First Appeal, being devoid of merit, is **dismissed**. The judgment and decree dated 08.12.2023 passed by the learned IXth Additional District Judge/MCAC, Karachi East, in Summary Suit No.124 of 2021, is hereby **maintained**.

**JUDGE**

**JUDGE**