

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.404/2024
&
IInd Appeals 405,406,407,408 & 409 of 2024

Appellants in all appeals. Through M/s. Muhammad Mohsin Khan & Junid Hussain, Advocates

Respondent No.1, in all appeals. Through Mr. Amir Raza, Advocate.

Date of Hg:& Order 02.02.2026

ARSHAD HUSSAIN KHAN, J.- Since all the Appeals arise out of identical facts and involve the same questions of law, they are being disposed of through this consolidated order.

Through these Second Appeals, the Appellants have challenged the impugned Judgments and Decrees dated 11.09.2024, passed by learned II-Additional District Judge, South, Karachi, in Civil Appeal Nos.152, 153, 154, 155, 156 & 157 of 2024, whereby learned first appellate court dismissed the appeals and maintained the respective judgments and decrees dated 02.05.2024, passed by the learned trial court in Suit Nos.1472/2018, 270/2019, 271-A/2019, 272/2019 and 273-A/2019, through which the suits were decreed in favour of respondent No.1/plaintiff along with markup at the rate of 10% per annum till its realization of the amount.

2. Precisely, the facts giving rise to the present Second Appeals are that respondent No.1/plaintiff, being sole proprietors and wholesale suppliers of medicines, surgical, allied and other hospital items, participated in tenders floated by the defendants/appellants for the supply of such items to various hospitals under their control and supervision. The plaintiffs in all the aforesaid suits were declared successful bidders and issued work orders, pursuant to which they supplied the items and submitted bills along with requisite affidavits, powers of attorney and supporting documents. However, despite repeated demands and correspondence, the outstanding payments were not released, compelling the plaintiffs to institute suits for recovery of the due amounts along with markup and consequential

reliefs. Upon service of notice, the defendants/appellants filed written statements denying the plaintiffs' claims, raising objections as to maintainability and alleging fabrication of documents. While some defendants contested the suits, and others were proceeded against ex-parte. The authorized representatives, who appeared on behalf of the defendants, however, failed to effectively rebut the plaintiffs' principal claims or the documentary evidence placed on the record. The trial court, after framing issues and recording evidence of the parties, decreed the suits, vide judgments dated 02.05.2024. The said judgments were challenged in appeals, which were dismissed on 11.09.2024, maintaining the findings of the trial court. Aggrieved thereby, the appellants/defendants have filed the present Second Appeals before this Court.

3. Learned counsel for the appellants contended that the impugned judgments and decrees are illegal, based on misreading and non-reading of evidence, and unsustainable in law; hence, the same are liable to be set aside. It was argued that the suits were not maintainable, being barred by limitation, instituted through an invalid Power of Attorney, and filed without mandatory statutory notice. The learned courts below were also said to have wrongly assumed territorial jurisdiction. It was further argued that no liability was established against the appellants, as the respondents/plaintiffs relied upon unverified and unproved documents, and the original record was not produced in accordance with law. The alleged work orders and supply of goods were not proved through reliable or corroborative evidence. It was contended that the burden of proof was wrongly shifted upon the appellants despite their categorical denial, and that material discrepancies and procedural defects in the plaintiffs' evidence were ignored. Lastly, it was argued that the award of markup in the absence of any contractual stipulation amounts to a penal imposition and, therefore, is not legally sustainable. In support of his stance learned counsel has relied upon the case of *Koh-i-Noor Agency v. Koh-i-Noor Textile Mills Ltd.* [1987 MLD 767] and *United Bank Limited v. Karnool Muhammad Muneer* [1991 CLC 1758].

4. Learned counsel for Respondent No.1 supported the concurrent findings of the courts below, contending that they are based on proper

appreciation of evidence and involve no jurisdictional error or perversity. He argued that no substantial question of law arises in this second appeal. It was further argued that the appellants failed to discharge their burden of proof, withheld material evidence, and examined an unauthorized witness, rendering their defence unreliable. The appellants' own admissions and correspondence, including issuance of work orders, support the respondent's claim, and the suit was filed within limitation. Lastly, it was contended that the present appeals, being devoid of merit, are liable to be dismissed with costs.

5. Heard learned counsel for the parties and perused the material available on the record as well as relevant laws.

From the record it appears that the learned trial court, vide judgments dated 02.05.2024, held that the plaintiffs had successfully proved the supply of goods, the outstanding liability of the defendants, and their entitlement to recover the amounts due along with markup, and accordingly decreed the suits. The learned first appellate court, by its judgments dated 11.09.2024, upheld these findings, observing that the plaintiffs had discharged their burden through admissible evidence, while the defendants failed to rebut the claims. It was further held that the suits were properly instituted, within jurisdiction and that markup at 10% per annum was justified.

6. A careful perusal of the impugned judgments, passed by the learned trial court and the learned lower appellate court, reflects that both courts have concurrently recorded findings of fact after proper appreciation of oral and documentary evidence available on the record. It is also well settled law that concurrent findings of facts by the courts below cannot be disturbed by the High Court in second appeal, unless the courts below while recording the findings of fact have either misread the evidence or have ignored the material piece of evidence¹.

7. Upon independent examination of the record, this Court finds that the plaintiffs duly discharged their burden of proof by producing

¹ *Keramat Ali and another v. Muhammad Yunus Haji and another* (PLD 1963 SC 191), *Phatana v. Mst. Wasai and another* (PLD 1965 SC 134) and *Haji Muhammad Din v. Malik Muhammad Abdullah* (PLD 1994 SC 291).

documentary evidence, including tender documents, work orders, invoices, delivery challans, and official correspondence issued by the appellants. These documents collectively establish the issuance of work orders, actual supply of goods, and the subsisting liability of the appellants, and were not effectively rebutted by any contrary record. The record further reflects that the appellants, despite ample opportunity, failed to produce account books, stock registers, payment vouchers, or any other official material to controvert the plaintiffs' claim. It is well-settled that where a party withholds the best available evidence in its possession, an adverse inference may be drawn against it. The appellants' omission in this regard fortifies the respondent No.1/plaintiffs' case and affirms the correctness of the concurrent findings of the courts below.

8. As regards the objection of limitation, the same was rightly repelled by the courts below. The record reveals continuous official correspondence and acknowledgment letters issued by the defendants admitting the outstanding dues. Such acknowledgments, having been made before the expiry of the prescribed period of limitation, effectively extended the limitation in accordance with law. Therefore, the suits cannot be held to be time-barred.

9. The objection regarding lack of authority to institute the suits was also rightly rejected as the record shows that the suits were filed through duly executed powers of attorney, which were proved in the evidence and remained unchallenged in material particulars. No legal infirmity in the institution of the suits has been demonstrated. Similarly, the objections relating to territorial jurisdiction and maintainability are without substance. The supplies were made within the territorial limits of the trial court and the defendants admittedly operate and conduct official business therein. Consequently, the cause of action clearly arose within the jurisdiction of the trial court.

10. A careful review of the record further reveals that the appellate court observed that the appellants neither deposited the requisite court fee at the time of filing the appeals nor sought extension within the prescribed limitation period. Consequently, the appeals were rightly held to be incompetent. This finding, being based on admitted

procedural defaults and grounded in law, independently sustains the dismissal of the appeals.

11. Insofar as the award of markup is concerned, this Court finds no legal infirmity therein. The record reflects that the respondent No.1/plaintiffs were deprived of payment of their admitted dues for a considerable period without lawful justification. In such circumstances, the grant of markup constitutes reasonable compensation for wrongful retention of money rather than a penal imposition. It is well settled that even in the absence of an express contractual stipulation, civil courts are empowered under Section 34, C.P.C., to award reasonable interest or markup in monetary decrees, particularly where an ascertained liability has been wrongfully withheld. The Supreme Court of Pakistan in the case *M. Iqbal Fasih vs. National Bank of Pakistan* [1989 SCMR 1380] has held that interest can validly form part of a decree. Moreover, the Supreme Court in the case of *Raja Muhammad Sadiq v. WAPDA* [PLD 2003 SC 290] held that under Section 34, C.P.C., the award of interest on a decretal amount from the date of institution of the suit until realization is a matter within the discretion of the Court, and where granted, such interest is payable from the date of filing of the suit until withdrawal or realization of the decretal amount. In the circumstances, the rate of 10% per annum awarded by the courts below cannot be termed excessive, arbitrary, or penal in nature; rather, it falls squarely within the discretionary powers of the civil court, particularly in commercial recovery matters.

12. The present Second Appeals have been filed under Section 100, C.P.C., which restricts the jurisdiction of this Court to cases involving a substantial question of law, a material question of law left undetermined, or a substantial procedural error resulting in miscarriage of justice. No second appeal lies on any other ground. In the instant case, the concurrent findings of the courts below; that the supply of goods was proved, the defendants' liability was established, and the plaintiffs were entitled to recovery along with reasonable markup, are based on proper appreciation of evidence and correct application of law. These findings are essentially factual and do not give rise to any substantial question of law warranting interference.

The grounds urged in the present appeals merely seek reappraisal of factual issues already examined by the courts below, which is beyond the limited scope of Section 100, C.P.C.

13. Learned counsel for the appellants was unable to point out any substantial error, illegality, infirmity, or jurisdictional defect in the impugned judgments and decrees. The case law relied upon by him was found distinguishable and, therefore, inapplicable to the facts of the present case. Conversely, the impugned judgments and decrees are well-reasoned and supported by the evidence on record and thus call for no interference. Accordingly, all these appeals being devoid of merit were dismissed, vide my short order dated 02.02.2026.

The foregoing constitute the reasons for my short order dated 02.02.2026.

JUDGE

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