

# IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No.121 of 2023

**Present:**

**Mr. Justice Zafar Ahmed Rajput**

**Mr. Justice Arshad Hussain Khan**

Appellant : Abdul Rasheed s/o Noor Muhammad,  
through Mr. Faiz Durrani, Advocate &  
Mrs. Samia Faiz Durrani, Advocate.

Respondent No.1 : Muhammad Raees S/o. Mashiullah, through  
Mr. Mazhar Iqbal Tabassum, Advocate.

Respondent No.2 : The Presiding Officer, Court of XIV<sup>th</sup>  
Additional District Judge, Karachi (East)  
(*Nemo, being proforma party*).  
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Date of hearing : 17.01.2025  
Date of decision : 17.01.2025  
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## **JUDGMENT**

**ZAFAR AHMED RAJPUT, J:** This First Appeal is directed against the judgment and decree, dated 29.11.2023, whereby the XIV<sup>th</sup> Additional District Judge, Karachi-East (**Trial Court**), decreed Summary Suit No. 22 of 2023 (**Suit**), filed under Order XXXVII, Rule 1 of the Civil Procedure Code, 1908 (**CPC**), by the Respondent No.1-plaintiff against the Appellant-defendant, for recovery of Rs. 2,25,00,000/-.

2. Brief facts of the case are that the Respondent No.1 herein filed the Suit alleging therein that, on 25.09.2019, he being a contractor entered into a joint venture agreement with the Appellant, owner of house bearing No.221, situated in Sector 13/D-2, Jamali Colony, Gulshan-e-Iqbal, Karachi for construction of upper stories from 1<sup>st</sup> to 3<sup>rd</sup> floor. He constructed total six flats, two flats on each floor. The Appellant kept with him two flats of 1<sup>st</sup> floor and assured the Respondent No.1 to pay him Rs. 1,30,00,000/- after adjusting 50% profit, but he then sold out a flat of 3<sup>rd</sup> floor and to settle the dispute, he executed a Promissory

Note, dated 10.08.2021 and *Iqrar Nama*, dated 13.08.2021 but remained failed to pay total Rs. 2,25,00,000/-, outstanding against him. Hence, the Respondent No.1 filed the Suit, *inter alia*, with following prayers: -

- a) *Judgment and decree for recoveries of Rs2,25,00,000/- (Two crore twenty-five lac) in favour of the Plaintiff against the Defendant.*
- b) *Issue direction to the Nazir of this Honorable Court take over the all constructed Six flats into his custody and further the tenants may be directed to deposit the rent into the lodger of the Nazir of this Honorable Court.*

3. On failure of the Appellant to make his appearance pursuant to summons issued at the first instance through ordinary modes and then through substitute mode vide publication in daily “Ummat” Karachi, dated 22.02.2023, the Trial Court debarred the Appellant from filing Application for Leave to Defend. Then, on 17.03.2023, Mr. Humza Mughal Advocate appeared before the Trial Court and filed an undertaking on behalf of the Appellant; thereafter, on 20.03.2023, he filed his *Vakalatnama* with an Application for Leave to Defend (“**Application**”) as well as an application for recalling of the debarring order. The Trial Court, vide order dated 18.04.2023, allowed the application for recalling the debarring order; thereafter, it allowed the Application vide order, dated 31.07.2023, subject to furnishing surety of Rs.20,00,000/- within 30 days. The Appellant failed to furnish surety; as such, his written statement was discarded by the Trial Court and the matter was fixed for *exparte* evidence, vide order dated 30.08.2023. For recalling of the said order, the counsel for the Appellant filed an application, which was dismissed by the Trial Court, vide order dated 11.10.2023. Thereafter, the Respondent No.1 filed Affidavit-in-*Exparte* Proof and produced original Agreement dated 25.09.2019 at Exh. P/2, original Promissory Note along with receipt at Exh. P/3, original *Iqrar Nama* at Exh. P/4 and photocopy of legal notice at Exh. P/5. Subsequently, the trial Court after hearing the learned counsel for the parties decreed the Suit vide impugned judgment and decree.

4. Learned counsel for the Appellant has contended that the impugned judgment and decree is not sustainable in law as the Trial Court has failed to take into account various questions of law and fact raised by the Appellant in his Application; that the Trial Court has erred in recording *exparte* proof and considered the contentions of Respondent No.1 without applying its judicious mind; that the Trial Court has failed to consider that the Promissory Note, dated 10.08.2021, and *Iqrar Nama*, dated 13.08.2021, were fake, frivolous and forged documents on the basis whereof Respondent No.1 agitated his claim for recovery of alleged amount; that in case the Appellant is given a chance to lead evidence, he will be able to prove the alleged documents forged and fabricated; that the Appellant has been deprived of his valuable right to fair trial as enunciated under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

5. Conversely, learned counsel for Respondent No.1 has fully supported the impugned judgment and decree by maintaining that the alleged Promissory Note and *Iqrar Nama* are genuine documents executed by the Appellant, and it is the Appellant who has failed to avail the opportunity of defending himself before the Trial Court.

6. Heard. Record perused.

7. It is matter of record that the Respondent filed the Suit on the basis of negotiable instruments i.e. Promissory Note dated 10.08.2021 amounting to Rs.2,25,00,000/-. The Trial Court provided an opportunity to Appellant to rebut the contentions of Respondent by allowing his Application conditionally vide order dated 31.07.2023, but he failed to furnish requisite surety. The Appellant did not challenge the order of Trial Court, dated 31.07.2023, before higher forum claiming grant of leave to defend as a matter of right unconditionally. The claim of the Respondent is supported by agreement between the parties, which has gone unimpeded.

8. It may be observed that when leave to appear and defend the suit is granted to a defendant subject to any condition, it would imply that if such condition is not fulfilled and the conditional leave granting order is not complied with by the defendant, such order shall cease to have effect to the extent of grant of leave to appear and defend the suit; and in such an event, the defendant's application for leave to appear and defend the suit shall be deemed to have been dismissed. The overall effect of the above would be that the averments and allegations made in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree under Rule (2) of Order XXXVII, CPC. Therefore, in the instant matter, the Trial Court has rightly admitted the claim of the Respondent No.1.

9. For the foregoing facts and reasons, we have not found any illegality or irregularity in the impugned judgment and decree requiring any interference of this Court under its appellate jurisdiction; hence, this First Appeal is dismissed in limine, along with pending applications.

Above are the reasons of our short order dated 17.01.2025.

JUDGE

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