

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

1<sup>ST</sup> Appeal No.75 of 2025

Present: Justice Jawad Akbar Sarwana

Appellant : Muhammad Waseem s/o Muhammad Ibrar  
Through Mr.Munawar Ali Shah, Advocate

Respondent : Inayatullah Memon (deceased) through LRs:  
a) Mst.Falak Yasmeen w/o Inayatullah  
b) Huda Inayat d/o Inayatullah Memon  
c) Hamza Inayat s/o Inayatullah  
Nemo.

Date of hearing : 27.11.2025

Date of decision : 27.11.2025

## O R D E R

**JAWAD AKBAR SARWANA, J:** Appellant/defendant Muhammad Waseem is aggrieved by the Judgment dated 27.8.2025 and Decree dated 28.08.2025, passed by the VIII-Additional District Judge, Hyderabad, in Summary Suit No.46/2022. He contends that during the period after the death of the respondent/plaintiff and on account of Revision No.194/2022 filed by respondent/plaintiff, which was pending in the High Court and was ultimately dismissed on 04.11.2024 (the respondent/plaintiff was aggrieved by the interim order passed by the VIII-Additional District Judge, Hyderabad, granting “unconditional” leave to defend to the appellant/defendant hence the Revision) the appellant/defendant did not follow-up the Summary suit proceedings diligently, during such period. Furthermore, this was compounded by the fact that the Court in which the Summary Suit was pending was also lying vacant for most of the period. Resultantly, Counsel contended that by the time the appellant/defendant rejoined proceedings in the Summary Suit, the matter was being listed in Court for final arguments, and Counsel duly submitted arguments at that

trial stage. But, the appellant/defendant could not bring on record evidence already available in the written statement, which was necessary for the complete and proper adjudication of the suit. On merits, Counsel for the appellant contended that the cheques in question, which were dishonoured, were not in relation to any rent agreement as pleaded by the respondent/plaintiff, but in fact related to another contract concerning the alleged commercial sale of tiles. He contended that since the terms and conditions of that contract were not fulfilled i.e., apparently customs duty had to be paid on the said tiles by the respondent/plaintiff but was not, the said contract stood rescinded and therefore the cheques, which were consideration of the agreement ought to have been returned to the appellant/defendant and even otherwise because of breach of contract, there was no underlying agreement in support of the cheques. This defence counsel alleged was set out in the appellant/defendant's written statement, which was not taken into consideration by the VIII-Additional District Judge, Hyderabad. Therefore, the Summary Suit filed by the respondent/plaintiff could not be maintained/sustained against the appellant/defendant.

2. Heard learned Counsel for the appellant/defendant. I have perused the impugned judgment and decree, wherein the learned VIII-Additional District Judge, Hyderabad, observed that although the defendant had filed his written statement, no one came forward to cross-examine the plaintiff, nor did the defendant produce any witness in support of his defence. In the circumstances the appellant/defendant cannot equate a written statement to be of the same evidentiary status as the testimony of witness. Hence neither written statement was produced nor its statement brought on record through evidence. Therefore, the VIII-Additional District Judge, rightly discarded it. I also have sight of the list of witnesses

submitted by the Advocate for the defendant dated 02.04.2022, which is available at Page-55. Learned counsel for the appellant/defendant concedes that no application was filed either allowing defendant to cross-examine the plaintiff's witness or for re-opening the side of the defendant in order to lead evidence through the defendant's witness and to provide an opportunity to the appellant /defendant to record evidence. The appellant/defendant did nothing. He appears to have treated this lacuna too lightly, which has now become fatal to his defence. There is no evidence available of the appellant/defendant to controvert the sworn testimony of the respondent/plaintiff. With regard to the plea that these cheques were issued concerning the contract that had been rescinded, once the cheques had been produced in evidence, even though the underlying contract may not exactly have been the one pleaded, nevertheless there was still an agreement between the parties in relation to a commercial transaction, if not a rent agreement, as per the written statement. Thus, the respondent/plaintiff's claim against the appellant/defendant was based on the underlying agreement linked to the cheques. The appellant/defendant also had the option of filing a suit for damages or any other relief against the respondent/plaintiff for breach of contract or variation of the contract, if aggrieved by the respondent/plaintiff on this account. However, this defence could not have come in the way of the Summary Suit based on dishonoured cheques filed by the respondent/plaintiff against the appellant/defendant.

Given the above, the instant 1<sup>st</sup> appeal is dismissed for the above reasons.

**JUDGE**