

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

Ist Appeal No. 15 of 2024

Nabeel Akhtar

Vs.

Zahid Hussain

1. For hearing of CMA 1307/2024.
2. For hearing of main case.

Date of hearing: 27.10.2025.

Date of Order: 27.10.2025.

Appellant : Nabeel Akhtar s/o Muhammad Akhtar through
Mr. Muhammad Younus, Advocate.

Respondent : Zahid Hussain s/o Bashir Ahmed through Mr.
Arbab Ali Jinjh, Advocate.

ORDER

JAWAD AKBAR SARWANA, J.: Nabeel Akhtar Gill, appellant/defendant, has impugned judgment and decree dated 14.02.2024 passed by the IInd Additional District Judge, Sanghar, in the Summary Suit No.16/2022, allowing the said Summary Suit filed by Zahid Hussain Jat, respondent/plaintiff, against the appellant/defendant. The Counsel for the appellant/defendant, Nabeel Akhtar Gill, submits that the impugned judgment and decree are defective on the following grounds:-

- (i) The cheque in question, which was dishonoured, had already been stopped by him vide his instructions to the Bank dated 20.01.2022 (produced in evidence marked as Exhibits "40/A" and "40/C").
- (ii) There was no agreement between him and Zahid Hussain Jat, respondent/plaintiff.
- (iii) The vehicle in question, which Zahid Hussain Jat, respondent/plaintiff, claimed to have sold to him, was never in fact in the ownership of Zahid Hussain Jat and therefore Zahid Hussain's contention that he allegedly received the cheque as part of the sale consideration of the vehicle was/is false.
- (iv) Zahid Hussain Jat, respondent/plaintiff, had initiated criminal proceedings under 489-F of the Code of Criminal Procedure,

1898, in which the appellant/defendant has been acquitted vide judgment dated 10.10.2022; thus, no case was/is sustainable against the appellant/defendant in summary proceedings.

2. Counsel for the respondent Zahid Hussain Jat contended that, in fact, although there was no agreement in writing, yet the sale transaction was supported by the evidence brought on record by the respondent/plaintiff and his witnesses, namely Shahid Ali and Touqeer Ali, deposed that a sale and purchase transaction took place between the contesting parties in connection with a vehicle on 15.06.2020. He contended that Nabeel Akhtar Gill, appellant/defendant, had not filed any suit for cancellation of the cheque. He submitted that leave to defend was subject to the condition of deposit of surety by the appellant/defendant (Nabeel Akhtar Gill), and he deposited none before the IInd Addl. District Judge, Sanghar, until this Court passed the ad-interim order dated 01.04.2024, on the very first date of hearing of this appeal. He further submitted that the criminal proceedings are separate and distinct from the civil remedies and therefore, one cannot come in the way of the other.

3. Heard counsel, considered the documents available on record.

4. It is apparent from the documents produced in evidence that an agreement was made out between the parties on 15.06.2020. Both counsels have candidly admitted that the date of the alleged sale transaction, 15.06.2020, has not been challenged in the examination-in-chief or cross-examination by either party and remains an admitted position. Consequently, even if there is no written agreement strictly speaking between the parties in support of the dishonoured cheque, and yet the parties agreed to a specific date for the transaction. If both parties agree in principle to the date of 15.06.2020, the same cannot be for no good reason. It begs the question, so what happened on that date. In the facts and circumstances of the case, clearly a case is made out for a transaction between the parties.

5. Given the background that the date of execution of the alleged oral agreement was corroborated by the plaintiff's witnesses as having taken place on 15.06.2020, it is strange that the entire cheque book had already been instructed by the appellant Nabeel Akhtar to be stopped. According to the documents available on record, the appellant Nabeel Akhtar instructed the Bank to stop all his cheques on 03.01.2020, yet it was only after 05 months

that a sale transaction for the car took place on 15.06.2020 and also a cheque duly signed by the appellant/defendant had emerged post the stop instructions to the bank. From the record, it appears that when Nabeel Akhtar handed over the cheque to Zahid Hussain five months earlier, he had already instructed his Bank to stop all cheques. There is neither any allegation of theft of a cheque by Nabeel Akhtar nor any complaint filed for the loss/theft of a cheque, notwithstanding that he had already submitted instructions to the bank to stop payment of the cheques. Further, Nabeel Akhtar offers no defence theory as to how the cheque physically reached the hands of Zahid Hussain. There is also no evidence available indicating that Nabeel Akhtar has denied his signature. There is also no request made by him during evidence in the summary trial to prove the signature endorsed on the said cheque is not that of the appellant/defendant. In the circumstances, in short, no explanation has been provided for how this cheque from a cheque book that was already cancelled five months earlier reached the hands of the respondent Zahid Hussain Gill which cheque was also signed by the appellant/defendant. This background does not inspire confidence in the appellant/defendant's submissions/case before this bench in appeal.

6. Concerning the appellant's contention that the vehicle was never owned by the respondent Zahid Hussain, such contention is reduced to a cipher as when the exhibit regarding the sale of vehicle was produced in evidence as Ex.33/b which evidences that the vehicle has been purchased through the Car Dealer Association (MPS) and transferred to Zahiid Hussain. This car receipt issued on the letter pad of Car Dealers Association (MPS) same has not been challenged. In light of the evidence on record and the absence of any challenge by Nabeel Akhtar to the first sale and no evidence to discredit such sale having come on record, Nabeel Akhtar, cannot argue that the second sale could never took place because the car was not in the legal ownership of Zahid Hussain. Indeed, if Nabeel Akhtar offered to purchase the car and had handed Zahid Hussain a cheque for such sale, he did so fully aware of the consequences, and could not challenge the first sale to wriggle out of the consideration for the car, i.e. the cheque in question, which eventually bounced.

7. With regard to the contention that the appellant Nabeel Akhtar had succeeded in his criminal complaint, it is of no concern to this Court. No doubt, the appellant/defendant, Nabeel Akhtar Gill, was successful in his defence in the criminal proceedings initiated against him by Zahid Hussain

Jat, and Nabeel Akhtar was acquitted; yet, this has no bearing on the outcome of the summary trial in the facts and circumstances of the case. Civil and criminal proceedings follow separate pathways, and the points to be considered on these pathways are governed by their own principles, rules, and practices. The twain seldom or never crisscross and/or cross-reference or depend on one another except perhaps in exceptional circumstances in the aid of justice. The purpose of the civil proceedings is to achieve recovery, whereas the purpose of the criminal action is to punish the alleged accused. Hence, the learned counsel's contention regarding the success of criminal acquittal should translate into reducing the summary proceedings a cipher, does find any favor on my part.

8. Given the above, I do not find any irregularity in the impugned judgment and decree dated 14.02.2024; the same is well-reasoned. I have no cause to intervene in the same, and it is hereby upheld.

9. The 1st Appeal stands dismissed in the above terms along with the pending application.

JUDGE

Tufail