

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

First Appeal No.43 of 2022
[Saran Nagori v. *Tanveer Ahmed & others*]

Date	Order with signature of Judge
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Hearing Case (Priority).

- 1. For orders on office objection at ‘A’
- 2. For hearing of main case.
- 3. For hearing of CMA No.1199/2022

03.08.2026

M/s. Asif Ibrahim and Tajammul Azam Choudhry, Advocates for appellant.

Mr. Kabir A. K. Ghouri, Advocate for the respondents.

The appellant, through the instant First Appeal under Section 96, C.P.C., has assailed the judgment and decree dated 25.03.2022 passed by the learned IXth Additional District Judge, Karachi-South, in Summary Suit No.109 of 2021, whereby the suit filed by the respondent No.1 under Order XXXVII, C.P.C. for recovery was decreed in the sum of Rs.45,00,000/- without mark-up, with no order as to cost.

The facts giving rise to the present appeal, as set out in the plaint, are that approximately 10 to 15 days prior to Eid-ul-Adha 2020, Respondent No. 1 (Plaintiff), a businessman, invested a sum of Rs.55,00,000/- with Appellant/Defendant No. 1 for the purchase and trade of sacrificial animals, on the assurances of Respondent/Defendant Nos. 2 and 3. It is alleged that after the Eid season, despite repeated demands, Appellant/Defendant No. 1 failed to return the principal amount along with the agreed profit and instead resorted to delaying tactics. Eventually, he issued three cheques drawn on Faysal Bank, IBB Cattle Branch, Karachi, for amounts of Rs.400,000/-, Rs.600,000/-, and Rs.3,500,000/-, respectively. Upon presentation, all three cheques were dishonoured due to insufficient funds. Consequently, Respondent No.1 lodged FIR No.76/2021 under Section 489-F, PPC at Police Station Garden, Karachi. Thereafter, as the Appellant/Defendant No. 1 allegedly failed to repay the outstanding amount despite repeated demands, Respondent No.1 instituted the present suit for recovery against the defendants.

Upon service of summons, the Appellant/Defendant sought leave to defend the suit. The learned trial Court, vide order dated 09.02.2022, granted conditional leave; however, the Appellant failed to comply with the conditions

imposed. Consequently, the defence was struck off, and the suit was decreed in the sum of Rs.45,00,000/- without mark-up and with no order as to costs. Aggrieved by the said judgment and decree, the Appellant has preferred the present First Appeal.

During the pendency of the present appeal, the Appellant secured the amount required under the order granting conditional leave to defend by furnishing security before the Nazir of this Court, in terms of the order dated 26.10.2023. The security comprised a Declaration of Gift in respect of a single-storey residential plot bearing No.96, situated at H.M.D. Village, Liaquatabad, Karachi, deposited vide Bond No. 98180-81 dated 18.12.2023.

After addressing the Court at some length, learned counsel for the parties, without prejudice to their respective rights and contentions on the merits, arrived at a consensus that the present First Appeal may be disposed of by setting aside the impugned judgment and decree and remanding the matter to the learned trial Court for a fresh decision on the merits, strictly in accordance with law.

Accordingly, the instant First Appeal is allowed. The impugned judgment and decree are hereby set aside, and the matter is remanded to the learned trial Court for a fresh decision on the merits after recording the evidence and affording fair and reasonable opportunity of hearing to all concerned parties, strictly in accordance with law. The learned trial Court shall endeavor to conclude the proceedings and decide the suit preferably within a period of three (03) months from the date of receipt of a copy of this order.

To safeguard the equities and the subject claim, the property documents deposited by the Appellant before the Nazir of this Court by way of security shall remain intact and encumbered until the final disposal of the suit. The release, enforcement, or satisfaction of the said security shall strictly depend upon, and be subject to, the final judgment and decree to be passed by the learned Trial Court.

In the above terms, instant First Appeal stands disposed of alongwith pending applications.

JUDGE

JUDGE