

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.58 of 2017

Appellant : M/s. Pangrio Sugar Mills Ltd.
through Mr. Zeeshan Bashir Khan,
Advocate

Respondent : Ali Bux Shah S/o Abdul Rasool Shah
Nemo.

Date of Hearing : 16.09.2026

Date of Order : 16.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through the instant First Appeal filed under Section 96, C.P.C., the appellant/plaintiff has called in question the judgment and decree dated 28.02.2011, passed by the learned VII Additional District Judge, Karachi (South), in Suit No.204 of 2004 (Old Suit No.854 of 1991), whereby the suit instituted by the appellant/plaintiff for recovery of Rs.2,379,895/- was dismissed with no order as to costs.

2. Briefly stated, the facts giving rise to the present appeal are that the appellant/plaintiff is a listed public company engaged in the business of manufacturing sugar at its Sugar Mill situated at Deh Rajuri-2, Taluka Tando Bago, District Badin. The respondent/defendant was a cane grower/supplier in the area and used to supply sugarcane to the appellant's Sugar Mill for the purpose of sugar production. It was the case of the appellant that during the crushing season 1990-91, commencing from October 1990 and ending in March 1991, the respondent agreed to supply 90,000 maunds of sugarcane to the appellant.

3. It was further pleaded that, in accordance with the prevailing practice relating to the supply of sugarcane, advance payments and adjustment of accounts, a formal written

agreement was executed between the parties at Karachi on 23.09.1990. Under the said agreement, the respondent undertook to supply 90,000 maunds of sugarcane to the appellant at the prescribed rate and received an advance payment of Rs.400,000/-. It was also pleaded that the respondent acknowledged an earlier outstanding liability of Rs.1,716,309/- payable to the appellant in respect of previous transactions, together with mark-up thereon. According to the appellant, after taking into account the advance payment and the previously outstanding amount, the aggregate liability of the respondent stood at Rs.2,116,309/-, which was agreed to be adjusted during the relevant crushing season, with the remaining balance to be carried forward to the succeeding crushing season.

4. The appellant further pleaded that, pursuant to the aforesaid agreement, a sum of Rs.400,000/- was paid to the respondent through cheque dated 25.09.1990, against which the respondent executed an acknowledgment receipt. It was further alleged that, on the same date, i.e. 25.09.1990, the respondent executed and delivered a demand promissory note in favour of the appellant for a sum of Rs.2,116,309/-, unconditionally undertaking to pay the said amount on demand together with mark-up, as security for the aforesaid liability. The appellant alleged that, thereafter, the respondent failed, neglected and/or refused to supply the agreed quantity of sugarcane during the relevant crushing season and also failed to discharge the outstanding liability. Consequently, the appellant claimed a sum of Rs.2,379,895/-, inclusive of mark-up calculated up to the date of institution of the suit.

5. The respondent/defendant contested the suit by filing his written statement. Upon completion of the pleadings, the learned trial Court framed the following issues for determination:

- (i)** Whether the suit amount is due and payable by the defendant?
- (ii)** Whether the demand promissory note is a forged document and, if so, its effect?
- (iii)** Relief.

Thereafter, the parties were called upon to produce their respective evidence. The appellant/plaintiff produced its evidence through Tahir Mahmood, who tendered his affidavit-in-evidence and was subjected to cross-examination before the learned Commissioner appointed by the Court for recording evidence. The respondent/defendant, however, failed to appear before the learned Commissioner for the purpose of his cross-examination and subsequently also failed to appear before the learned trial Court. After considering the pleadings and the evidence available on record, the learned trial Court proceeded to hear the matter and ultimately passed the judgment and decree impugned herein.

6. Learned counsel for the appellant contended that the learned trial Court had misread and misappreciated the evidence available on record and had failed to properly consider the documentary evidence produced by the appellant along with its affidavit-in-evidence. It was argued that the agreement dated 23.09.1990, the acknowledgment evidencing payment of Rs.400,000/-, and the demand promissory note dated 25.09.1990, when read together, were sufficient to establish the transaction between the parties as well as the liability of the respondent. Learned counsel further submitted that the respondent had failed to appear before the learned Commissioner for his cross-examination and had also failed to produce any evidence in rebuttal; consequently, the evidence adduced by the appellant remained substantially unrebutted. It was further contended that the learned trial Court had failed to examine the documentary evidence in conjunction with the oral testimony and had, on such account, arrived at erroneous findings on the issues framed in the suit. Learned counsel maintained that the findings recorded in the impugned judgment were contrary to the evidence available on record as well as the applicable law and, therefore, warranted interference by this Court in its appellate jurisdiction. He lastly prayed that the impugned judgment and decree be set aside and the suit filed by the appellant be decreed as prayed. In support of his contentions, learned counsel has relied upon the judgment of the Hon'ble Supreme Court reported

as *Federation of Pakistan through Secretary, Ministry of Defence and another v. Jaffar Khan and others* (PLD 2010 Supreme Court 604).

7. None is present on behalf of the respondent/defendant. No intimation has been received on his behalf. However, considering that the present appeal is an old matter and relates to the year 2017, we deem it appropriate to proceed with the matter in the absence of the respondent and decide the appeal on the basis of the available record.

8. We have heard the arguments advanced by learned counsel for the appellant and have carefully examined the material available on record.

9. The controversy essentially centres around the question whether the appellant/plaintiff succeeded in establishing, through legally admissible, cogent and confidence-inspiring evidence, that the amount claimed in the suit was in fact due and payable by the respondent/defendant on the basis of the alleged transaction, agreement, advance payment and demand promissory note relied upon by the appellant. The mere fact that the respondent ultimately failed to lead evidence does not, by itself, absolve the plaintiff of the initial burden of proving its claim. The plaintiff was required to establish the underlying transaction and the liability asserted against the defendant through reliable and convincing evidence.

10. In the present case, the testimony of the appellant's own witness assumes considerable significance. Although the witness claimed to have been authorized to depose on behalf of the company, during cross-examination he admitted that no authority letter or other document had been provided to him and that the alleged power of attorney had been handed over to the Advocate. He further admitted that he neither possessed a copy thereof nor remembered the date on which it had been executed. While this circumstance, by itself, may not necessarily be fatal to the appellant's claim as a corporate entity, it assumes significance when the same witness is relied upon to establish the particulars of a transaction allegedly entered into several

years earlier and his testimony regarding material aspects thereof is itself uncertain.

11. More importantly, the testimony of the said witness concerning the very documents upon which the appellant founded its claim was not of such a character as to conclusively establish their execution or the liability purportedly arising therefrom. The witness stated that he was personally aware of the execution of Exh.P/3; however, he admitted that he did not remember whether he was present at the time of its execution. He further admitted that there was no written agreement between the parties prior to 1991. With regard to Exh.P/4, he likewise could not state whether the same had been executed in his presence. Similarly, although the appellant relied upon a cheque for Rs.400,000/- dated 25.09.1990, the witness was admittedly not its signatory, nor was any documentary evidence produced by him to establish its encashment, notwithstanding his assertion that the relevant entry was available in the company's books of account. PW-1, Tahir Mahmood, further admitted that *"At present I do not know and/or possess any documentary evidence to substantiate encashment of Cheque of Rs.40,00,000/- dated 25.9.90. It has been cleared in our book of account but I have not produced evidence to that effect."*

12. We are conscious of the fact that the witness denied the suggestions that the documents relied upon by the appellant were forged or fabricated and also denied the suggestion that the respondent was not liable to pay the amount claimed in the suit. However, such denials, made during cross-examination, cannot, by themselves, discharge the plaintiff's burden of establishing the foundational facts constituting its claim. The question before the Court was not merely whether the witness had denied the defence of the respondent, but whether the appellant had independently established the alleged transaction, the advance payment, the previously outstanding liability, the execution of the documents relied upon and, consequently, the amount legally recoverable from the respondent. Upon examining the testimony as a whole, the learned trial Court found deficiencies in the proof of these material aspects. We find no sufficient basis in the

record to hold that such conclusion is perverse or the result of any material misreading or non-reading of the evidence.

13. It is also significant that the appellant's witness admitted that the company had not issued any written demand to the respondent for payment of the alleged outstanding amount. The appellant's claim substantially rested upon transactions stated to have originated prior to and during the crushing season of 1990-91, whereas the suit was instituted subsequently. In such circumstances, documentary evidence substantiating the underlying liability assumed particular significance. The absence of satisfactory corroboration regarding the alleged payment and outstanding liability, coupled with the uncertainties appearing in the testimony of the appellant's own witness, was therefore a circumstance which the learned trial Court was justified in taking into consideration while determining whether the appellant had discharged the burden of proof resting upon it.

14. The learned trial Court, while taking note of the fact that the respondent had failed to appear for cross-examination and had not led any evidence, nevertheless correctly observed that the absence of rebuttal evidence does not, by itself, relieve the plaintiff of its burden to prove its case. Upon examining the affidavit-in-evidence and the cross-examination of the appellant's witness, the learned trial Court concluded that the appellant had failed to establish its claim through reliable oral and documentary evidence. Consequently, Issue No.1 was answered against the appellant and, in view thereof, Issue No.2 was not considered necessary for determination.

15. Upon our own appraisal of the material available on record, we are unable to find any material misreading or non-reading of evidence on the part of the learned trial Court warranting interference in appellate jurisdiction. The appellant was required to establish its claim through reliable and legally acceptable evidence, whereas the deficiencies appearing in the testimony of its principal witness relate to matters going to the very root of the alleged transaction. The fact that the respondent did not effectively contest the matter at the stage of evidence cannot, in

law, transform insufficient proof into sufficient proof. The findings recorded by the learned trial Court are supported by the material available on record and do not warrant interference by this Court.

16. Consequently, the appellant/plaintiff has failed to demonstrate that the impugned judgment and decree dated 28.02.2011 suffer from any illegality, material irregularity, misreading or non-reading of evidence warranting interference by this Court in exercise of its appellate jurisdiction. The learned trial Court, upon proper appreciation of the evidence available before it, concluded that the appellant had failed to prove its claim. We find no compelling reason, either on facts or in law, to take a different view.

17. For the foregoing reasons, we find no merit in the instant First Appeal, which is accordingly **dismissed**. Consequently, the judgment and decree dated 28.02.2011, passed by the learned VII Additional District Judge, Karachi (South), in Civil Suit No.204 of 2004 (Old Suit No.854 of 1991), are **maintained**. There shall be no order as to costs.

JUDGE

JUDGE

Kamran/PS