

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan

Mr. Justice Amjad Ali Sahito

First Appeal No.22 of 2025

Appellant : Muhammad Shafqat Nawaz S/o Ali Nawaz Bhutto through Mr. Muhammad Yaseen, Advocate

Respondents : Ravi Kumar S/o Ashok Kumar & other Respondent No.1 present in person.

Date of Hearing : 28.09.2026

Date of Order : 28.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through this First Appeal under Section 96 read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”), the appellant has called in question the order dated 09.01.2025 passed by the learned Additional District Judge-II, Karachi South, in Summary Suit No.91/2022, whereby the application filed by the defendants under Order XXXVII Rule 3, CPC for leave to defend was dismissed and the suit was decreed.

2. Briefly stated, the facts necessary for disposal of the instant appeal are that respondent No.1/plaintiff instituted Summary Suit No.91/2022 against the appellant and respondent No.2 for recovery of Rs.25,000,000/- along with markup. The plaintiff’s case was that, in November 2021, the defendants approached him stating that their import consignment had been stuck and they required funds for continuation of their medicines business. According to the plaintiff, a total sum of Rs.25,000,000/- was advanced to the defendants on different dates, against which post-dated cheques were issued from the Bank Alfalah account. The plaint referred to five cheques for Rs.5,000,000/-, Rs.7,250,000/-, Rs.2,400,000/-, Rs.4,800,000/- and Rs.2,600,000/-, aggregating to Rs.22,050,000/-. Upon

presentation, the first two cheques were dishonoured for insufficiency of funds, while the remaining three were returned with the endorsement that the account was closed/inactive.

3. Despite repeated demands and assurances, the defendants failed to discharge the outstanding liability. A legal notice was accordingly served, but the amount remained unpaid, whereafter the plaintiff instituted the summary suit. The defendants appeared through counsel and filed an application under Order XXXVII Rule 3, CPC seeking leave to defend.

4. The defence set up by the appellant before the learned trial Court was that respondent No.2, his father, was the account holder of the relevant Bank Alfalah accounts and that the cheques had been signed and retained by him but were subsequently misplaced. It was further asserted that instructions had been issued for stopping payment and information regarding the alleged loss had been furnished to the concerned police authorities. Reliance was also placed upon Civil Suit No.991/2022, instituted for declaration, cancellation of the cheques and permanent injunction. On this basis, unconditional leave to defend was sought.

5. The plaintiff controverted the defence, contending that no bona fide or substantial defence had been disclosed. It was pointed out that the signatures appearing on the cheques had not specifically been denied and that the instruments related to the account of respondent No.2. The plea that signed cheques had been retained and thereafter misplaced was asserted to be inherently implausible. It was further contended that the mere institution of proceedings for cancellation of the cheques did not constitute a defence to the plaintiff's claim.

6. The learned trial Court, after hearing the parties, found that issuance of the cheques constituted an acknowledgment of liability and that their dishonour supported the plaintiff's claim. It further observed that the appellant had not disputed the signatures on the instruments and had produced no material in support of the alleged misplacement. The proceedings instituted

for cancellation of the cheques were also considered but were found insufficient to constitute a defence to the summary claim. Consequently, the application for leave to defend was dismissed and the suit was decreed to the extent of Rs.22,050,000/- with interest at the rate of 7% per annum. Hence, the present appeal.

7. Learned counsel for the appellant assailed the impugned order, contending that the learned trial Court had failed to properly appreciate the facts and had denied the appellant a fair opportunity to defend the suit. It was argued that material contradictions existed in the plaintiff's version regarding the transaction and that proceedings for cancellation of the cheques were already pending. Reliance was also placed upon the order dated 02.09.2024 whereby the appellant was acquitted in the criminal case arising out of the same transaction. It was further contended that the procedure prescribed under Order XXXVII, CPC had not been duly followed, that the plaintiff had failed to produce the original cheques or sufficient evidence, and that denial of leave to defend offended Article 10-A of the Constitution.

8. Respondent No.1, appearing in person, supported the impugned order and submitted that the appellant had failed to disclose any substantial defence. According to him, neither the issuance of the cheques nor the signatures thereon, nor their connection with the account of respondent No.2, had been disputed. The dishonour of the instruments and failure to discharge the outstanding liability, according to him, sufficiently established the basis of the claim.

9. We have heard learned counsel for the appellant and respondent No.1, who appeared in person, and have carefully examined the record with their assistance.

10. The controversy before us essentially revolves around the question whether the appellant disclosed a bona fide, substantial and plausible defence so as to entitle him to leave to defend the summary suit and whether the learned trial Court was justified in declining such leave. The ancillary question is whether the

alleged misplacement of the cheques, the subsequent proceedings for their cancellation and the appellant's acquittal in the criminal case furnish any ground for interference.

11. At the outset, it may be observed that the appellant has not denied that the cheques bear the signatures of respondent No.2, his father. His case is that the cheques were signed and retained by respondent No.2 but were subsequently misplaced, whereafter efforts were allegedly made to trace them and instructions were issued for stopping payment. The learned trial Court considered this explanation and found it unsupported by any material. Even before us, no cogent explanation has been furnished as to when, where or in what circumstances the cheques were allegedly misplaced, nor has any material been produced to explain their subsequent possession by the plaintiff.

12. The mere institution of proceedings for cancellation of the cheques does not, by itself, establish that the plaintiff's claim was false or disclose a triable defence. The appellant was required to place before the Court material facts which, if proved, would constitute a real defence to the claim. A bare assertion of misplacement, without particulars or supporting material, does not meet that threshold.

13. The appellant has also relied upon his acquittal in the criminal proceedings arising out of the same transaction. Such acquittal, however, cannot ipso facto determine the civil liability asserted in the present proceedings. Criminal and civil proceedings operate in distinct fields and are governed by different standards of proof. The order dated 02.09.2024 resulted in the appellant's acquittal upon failure of the prosecution to establish the ingredients of the alleged criminal offence beyond reasonable doubt. It did not adjudicate upon or extinguish any civil liability arising from the underlying transaction.

14. Accordingly, the said acquittal cannot, by itself, constitute a defence to the plaintiff's civil claim. The appellant was still required to disclose a specific and credible defence in the present proceedings.

15. The legal position is also settled that a proceeding must ordinarily be determined on the evidence brought on its own record. A finding recorded in one proceeding does not, merely by reason of its existence, become substantive evidence of the facts in issue in another proceeding. Article 57 of the Qanun-e-Shahadat Order, 1984 governs the relevancy of previous judgments and confines their evidentiary effect to the circumstances contemplated therein. A criminal judgment cannot ordinarily be relied upon in a civil action for establishing the truth of the facts upon which such judgment was founded. Reference in this regard may be made to *Malik Khuda Bakhsh v. The State* (1995 SCMR 1621).

16. Likewise, the pendency of Civil Suit No.991/2022 for cancellation of the cheques does not advance the appellant's case. No interim order restraining the plaintiff from presenting or relying upon the cheques has been brought on record, nor has any final adjudication been produced declaring the instruments invalid or otherwise defeating the plaintiff's claim. Mere pendency of independent proceedings cannot, in the circumstances, operate as a bar to the summary proceedings.

17. The contention that the appellant was entitled to leave merely because the transaction was disputed is equally without substance. In proceedings under Order XXXVII, CPC, the defendant is required to disclose facts constituting a substantial and bona fide defence to the claim. A mere assertion, unsupported by material particulars, does not convert an otherwise summary claim into a triable dispute. In the present case, the appellant's defence rests essentially upon the alleged misplacement of signed cheques. No satisfactory explanation has been furnished as to the circumstances in which the instruments came into the plaintiff's possession or how they were allegedly misused. The defence, therefore, does not raise a substantial issue requiring trial.

18. The record further belies the contention that the appellant was denied an opportunity of hearing. The defendants appeared before the learned trial Court through counsel and invoked the

jurisdiction of the Court by filing an application for leave to defend. The said application was heard and decided on its merits. The plea that the appellant was condemned unheard, therefore, cannot be sustained.

19. As regards the alleged non-compliance with the procedure prescribed under Order XXXVII, CPC, no specific prejudice occasioned to the appellant has been demonstrated. Having appeared and availed the remedy of seeking leave to defend, the appellant was required to establish that the defence disclosed by him raised a genuine and substantial issue. For the reasons discussed above, no such defence has been made out.

20. The learned trial Court was also justified in taking into consideration the statutory presumption attached to negotiable instruments. The issuance of the cheques attracts the presumption contemplated under Section 118 of the Negotiable Instruments Act, subject to rebuttal by the person against whom liability is asserted. In the present case, however, the plea of misplacement was unsupported by material sufficient to displace the plaintiff's claim at the stage of leave to defend. The finding that no credible defence had been disclosed, therefore, calls for no interference.

21. It is pertinent to note that the learned trial Court did not mechanically decree the entire amount claimed in the plaint. The decree was confined to Rs.22,050,000/-, representing the aggregate amount of the dishonoured cheques, together with interest at the rate specified in the impugned order. The claim against defendant No.1 was dismissed as the cheques did not pertain to his bank account. The impugned judgment thus reflects consideration of the material available on record rather than a mechanical acceptance of the plaintiff's entire claim.

22. For what has been discussed above, the appellant has failed to point out any illegality, material irregularity, misreading or non-reading warranting interference with the impugned order and decree. The grounds urged in the appeal substantially reiterate the defence already considered and rejected by the

learned trial Court. No bona fide, substantial or plausible defence has been disclosed which could entitle the appellant to leave to defend.

23. Consequently, the instant First Appeal is **dismissed**. The impugned order and decree dated 09.01.2025 passed by the learned Additional District Judge-II, Karachi South, in Summary Suit No.91/2022 are **maintained**.

JUDGE

JUDGE

KAMRAN/PS