

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

First Appeal No.153 of 2024

Appellant : Syed Furqan Ali S/o Syed Ashfaq Ali
through Mrs. Arjumand Khan, Advocate

Respondent : Muhammad Salman S/o Muhammad
Rizwan
Nemo.

Date of Hearing : 07.10.2026

Date of Order : 07.10.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through this First Appeal under Section 96 of the Code of Civil Procedure, 1908 (“CPC”), the Appellant/Defendant (hereinafter referred to as “**the Appellant**”) has called in question the judgment and decree dated 23.10.2024 passed by the learned VII Additional District Judge, Karachi South in Summary Suit No.94 of 2024, whereby the suit filed by the Respondent/Plaintiff (hereinafter referred to as “**the Respondent**”) under Order XXXVII CPC for recovery of Rs.15,000,000/- was decreed.

2. The facts, as set out in the plaint, are that the Respondent was engaged in the business of supplying flour, sugar and cooking oil to various shops and markets along with his partners, namely Muhammad Ali and Muhammad Aban. According to the Respondent, the Appellant approached him claiming that he had a large number of shopkeepers and could arrange the supply of commodities to the market. It was represented that the capital would be utilized for purchasing oil from companies and supplying the same to shopkeepers, whereafter the amount invested by the Respondent would be returned along with profit within the agreed period.

3. Relying upon the aforesaid arrangement, the Respondent allegedly advanced substantial amounts to the Appellant for investment in the business. As the amount was not returned despite repeated demands, the Appellant issued a cheque bearing No.1757187780 dated 15.12.2023, drawn on MCB Bank Limited, Bhim Pura Branch, for Rs.15,000,000/- in favour of the Respondent towards the outstanding liability. Upon presentation, however, the cheque was dishonoured due to insufficient funds.

4. The Respondent further pleaded that, notwithstanding the dishonour of the cheque, the Appellant failed to discharge the liability and continued to make assurances regarding payment. Criminal proceedings were also initiated in relation to the dishonoured cheque. As the amount remained unpaid despite repeated demands, the Respondent instituted the summary suit for recovery of Rs.15,000,000/-.

5. Upon service of summons, the Appellant entered appearance and sought leave to defend. His case, as set out in the application and supporting affidavit, was that the Respondent had failed to produce any written agreement or documentary evidence establishing the alleged transaction or liability. The Appellant disputed the Respondent's characterization of the transaction and maintained that the parties had entered into an oral arrangement concerning the supply of commodities and investment of money.

6. The Appellant further asserted that substantial amounts had been paid by the Respondent in connection with the alleged business arrangement and that two cheques had been handed over merely as security, which did not constitute acknowledgment of any existing debt. According to him, the said cheques were subsequently misused and criminal proceedings were initiated against him. It was, therefore, contended that disputed questions of fact arose which could only be resolved after recording evidence and that a bona fide defence had consequently been disclosed, entitling him to unconditional leave to defend.

7. The learned trial Court, after hearing the parties, found that the Appellant had failed to disclose a reasonable or plausible defence warranting leave to defend. The application was accordingly dismissed and the suit was decreed for Rs.15,000,000/-, while the claim for interest was declined in the form sought. Hence, the present appeal.

8. Learned counsel for the Appellant contended that the Respondent had produced no written agreement, statement of account or other documentary evidence establishing the alleged liability against which the cheque was issued. According to learned counsel, the Respondent's claim rested entirely upon an alleged business arrangement and investment, and the disputed nature of the underlying transaction could not properly be adjudicated through summary proceedings. It was argued that the Appellant ought to have been granted leave to defend to enable the parties to establish their respective versions through evidence.

9. Learned counsel further submitted that the cheque had not been issued in the manner alleged by the Respondent and that the circumstances in which it came into the Respondent's possession and was subsequently presented for encashment required determination upon evidence. It was, therefore, argued that the learned trial Court erred in treating the defence as insufficient and in decreeing the suit without affording the Appellant an opportunity to establish his case.

10. On the last date of hearing, i.e. 16.09.2026, learned counsel for the Appellant was present, whereas the Respondent remained absent despite having been served through all prescribed modes, including publication. Service was accordingly held good. As a final indulgence, the matter was adjourned with the specific direction that, in the event of further non-appearance on behalf of the Respondent, the appeal would be decided on the basis of the material available on record and with the assistance of learned counsel for the Appellant, without granting any further opportunity. Today, the Respondent has again remained absent. We have, therefore, proceeded with the matter accordingly.

11. We have heard learned counsel for the Appellant and carefully examined the material available on record.

12. The controversy in the present appeal is confined to the nature of the liability underlying the cheque and the circumstances in which it was issued. The existence of the cheque itself is not seriously disputed. The Respondent relies upon the business arrangement between the parties and the amounts allegedly advanced by him, culminating in issuance of the cheque for Rs.15,000,000/-.

13. We have considered the contention that no separate written document was produced to establish the precise liability underlying the cheque. Such objection cannot be disregarded altogether. However, the matter has to be examined in the context of the Appellant's own pleadings and the admitted circumstances appearing on record. While disputing the Respondent's description of the transaction, the Appellant has not furnished any satisfactory explanation for issuance of the cheque for Rs.15,000,000/- in favour of the Respondent.

14. The Appellant, in his application for leave to defend under Order XXXVII Rule 3 read with Section 151 CPC, while denying the allegations contained in paragraphs 3 to 6 of the plaint, admitted that during June/July the parties had entered into an oral arrangement and that two cheques bearing Nos.1957187780 and 1957187781 were delivered to the Respondent as security. Thus, the relationship between the parties and the underlying business dealings were not wholly denied. The record further shows that the cheque relied upon by the Respondent, bearing No.1757187780 dated 15.12.2023 for Rs.15,000,000/-, was issued in his favour and, upon presentation, was dishonoured for insufficient funds.

15. Section 6 of the Negotiable Instruments Act, 1881 defines a cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. In the circumstances of the present case, nothing convincing has been placed on record to establish that the cheque for

Rs.15,000,000/- was issued merely as security. Rather, the Respondent's case is that it was issued towards an outstanding liability, and the Appellant has failed to furnish a satisfactory explanation inconsistent with that assertion.

16. Mere absence of an independent document setting out the entire transaction does not, by itself, confer an automatic right to defend a summary suit. Once the cheque relied upon by the Respondent is shown to exist and its issuance in his favour is not specifically and convincingly denied, the Appellant is required to disclose a credible defence raising a genuine triable issue. In the present case, his version regarding the business arrangement and subsequent proceedings does not satisfactorily explain the issuance of the cheque for Rs.15,000,000/-.

17. The allegations concerning the nature of the transaction, the alleged investment and the criminal proceedings initiated between the parties do not, in themselves, displace the liability represented by the cheque. Such collateral circumstances cannot constitute a defence to the civil claim where the issuance of the cheque remains substantially unexplained.

18. The learned trial Court was, therefore, required to determine whether the defence disclosed by the Appellant was sufficient to justify departure from the summary procedure and to permit the matter to proceed to trial. Upon examination of the pleadings and material placed before it, the learned trial Court found that no reasonable or bona fide defence had been disclosed. We find no material on record to conclude that such finding was arbitrary, perverse or the result of misreading or non-reading of the record.

19. It is well settled that the object of Order XXXVII CPC is to provide a summary remedy in cases falling within its ambit and to prevent a defendant from delaying adjudication by raising vague or unsupported pleas. At the same time, where a defendant discloses a genuine and substantial defence raising a triable issue, leave ought ordinarily to be granted. The question, therefore, is whether the defence disclosed by the Appellant was

sufficient to warrant setting aside the summary decree and allowing the suit to proceed to trial.

20. In the present case, we are unable to find such a defence. The Appellant has disputed the Respondent's explanation of the underlying transaction, but has failed to provide a convincing account of the cheque for Rs.15,000,000/- admittedly issued in favour of the Respondent. The absence of a separate written instrument documenting the entire business arrangement, therefore, cannot outweigh the existence of the cheque and the Appellant's failure to satisfactorily explain its issuance.

21. In view of the foregoing, we are of the considered opinion that the learned trial Court rightly declined leave to defend and proceeded to decree the suit. No illegality, material irregularity, misreading or non-reading of the record has been demonstrated which would warrant interference in appellate jurisdiction.

22. Consequently, the instant First Appeal, being devoid of merit, is **dismissed**. The judgment and decree dated 23.10.2024 passed by the learned VII Additional District Judge, Karachi South in Summary Suit No.94 of 2024 are hereby **maintained**.

JUDGE

JUDGE

KAMRAN/PS