JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Second Appeal No. S-38 of 2025

Appellant	:	Qasim through Mr. Muhammad Asif Zia, Advocate
Respondent	:	Ghulam Rasool through Mr. Nadeem Abbasi
		Mr. Muhammad Sharif Solangi, Assistant Advocate General Sindh
Date of Hearing	:	27.08.2026
Date of Judgment	:	07.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: The Appellant, feeling aggrieved and dissatisfied with the judgment and decree dated 20.09.2025 passed by the learned II-Additional District Judge, Mirpurkhas, in Civil Appeal No.126 of 2024, whereby his appeal was dismissed and the judgment and decree dated 30.10.2024 passed by the learned II-Senior Civil Judge, Mirpurkhas, in F.C. Suit No.139 of 2023 was maintained, has preferred the instant Second Civil Appeal under s. 100 of the CPC The underlying suit had been instituted by the Respondent for recovery of Rs.43,00,000/-, which was decreed by the learned trial Court; whereafter, the Appellant unsuccessfully assailed the said decree before the first appellate Court and has now invoked the second appellate jurisdiction of this Court, seeking reversal of the concurrent judgments and decrees of the Courts below.

2. The brief background of the case is that the Respondent instituted F.C. Suit No.139 of 2023 before the learned II-Senior Civil Judge, Mirpurkhas, seeking recovery of Rs.43,00,000/- from the Appellant. According to the Appellant, the dispute emanated from a compromise statement dated 20.07.2022 concerning sale of the subject land, under which certain terms and conditions were agreed between the parties. The Respondent claimed return/recovery of the amount paid by him, whereas the Appellant resisted the suit through his written statement, asserting that he had obtained the requisite sale permission and remained willing to execute the sale deed, but the Respondent himself failed to perform his obligations

within the stipulated period; consequently, according to the Appellant, the amount stood forfeited in terms of condition No.7 of the compromise.

3. The Appellant further maintained that the Respondent continued to remain in possession and cultivation of the land and was deriving benefits therefrom. After recording evidence of the parties, the learned II-Senior Civil Judge, Mirpurkhas, vide judgment and decree dated 30.10.2024, decreed the suit for recovery, principally taking into consideration, inter alia, the Appellant's admission during cross-examination that he had received Rs.43,00,000/- from the Respondent. Feeling aggrieved, the Appellant preferred Civil Appeal No.126 of 2024, which came to be heard by the learned II-Additional District Judge, Mirpurkhas.

4. During the appellate proceedings, the question of execution of the sale deed also arose; however, the Appellant took the position that he was prepared to execute the same at the prevailing value of the land, whereas the Respondent insisted upon performance in terms of the compromise dated 20.07.2022. The first appellate Court ultimately dismissed the appeal vide judgment and decree dated 20.09.2025, thereby maintaining the judgment and decree of the trial Court. Consequently, the Appellant has preferred the instant Second Civil Appeal under s. 100 of the CPC, assailing the concurrent judgments and decrees of both Courts below and seeking their reversal and remand of the matter to the trial Court for decision afresh on merits.

5. Mr. Muhammad Asif Zia, learned counsel for the appellant, argued that the concurrent judgments and decrees passed by the Courts below are contrary to the material available on record and suffer from misreading and non-reading of evidence. He contended that the Respondent had based his claim upon the compromise statement dated 20.07.2022 but had himself failed to comply with its terms and conditions, particularly by not completing the purchase of the land within the stipulated period, as a consequence whereof the amount paid by him stood forfeited in terms of condition No.7 thereof. Learned counsel further submitted that the appellant had obtained the requisite sale permission and remained ready to execute the sale deed, whereas it was the Respondent who avoided completion of the transaction and, despite such default, continued

to retain possession and cultivate the subject land. He maintained that the learned trial Court placed undue reliance upon the appellant's admission regarding receipt of Rs.43,00,000/- while failing to appreciate his evidence as a whole and the surrounding circumstances under which the amount had been received. He further argued that the Respondent's attorney, during cross-examination, admitted material facts regarding possession and cultivation of the land, which were not properly appreciated by either Court below. It was thus contended that the Respondent, having himself failed to perform his obligations under the compromise, could not simultaneously retain the benefit of possession and seek recovery of the amount paid thereunder; therefore, the impugned concurrent judgments and decrees are liable to be set aside.

6. I have heard Mr. Muhammad Asif Zia, Advocate for the Appellant and Mr. Nadeem Abbasi for the Respondent, as well as Mr. Muhammad Sharif, the learned Assistant Advocate General Sindh. In view of the controversy arising from the record and the limited parameters of s. 100 of the CPC, the following points arise for determination:

i) Whether the concurrent findings of the Courts below regarding receipt of Rs.43,00,000/- and the appellant's liability to refund the same suffer from any misreading or non-reading of evidence or error of law warranting interference under s. 100 of the CPC?

ii) Whether the Courts below, while decreeing recovery of the entire amount of Rs.43,00,000/-, failed to give effect to the reciprocal terms of the compromise dated 20.07.2022, particularly those governing performance, refund/forfeiture of the advance consideration and restoration of possession of the subject land?

iii) Whether the decree for unconditional recovery of Rs.43,00,000/- can legally coexist with the Respondent's admitted continued possession and enjoyment of the land forming subject matter of the transaction, and, if not, what modification of the decree is warranted?

iv) What should the decree be?

7. The controversy becomes considerably clearer once the compromise application/statement dated 20.07.2022 is read as a whole instead of isolating the appellant's acknowledgment of receipt of money. The compromise was jointly executed in the earlier litigation and neither side has denied its execution. It records, inter alia, that agricultural land bearing Survey Nos.76, 77, 78, 80, 81 and 82, admeasuring 94-04 acres in Deh 215, Taluka Kot Ghulam Muhammad, was jointly held; that Muhammad Qasim had transacted with the Respondent regarding the relevant shares; and that Rs.37,00,000/- had been received as advance against one component of the transaction while Rs.6,00,000/- had been received against the land of Mst. Naimat Bibi.

8. The material clauses of the compromise deserve reproduction because the rights and liabilities of the parties cannot properly be adjudicated by looking merely at the admission of receipt of Rs.43,00,000/-. Clause 6, in substance, required Muhammad Qasim to execute the registered sale deed in favour of Ghulam Rasool within eight months. Clause 7 simultaneously obligated Ghulam Rasool to pay the entire remaining consideration for the Fitwa land and the 15 acres within fifteen days after the Fitwa of the Shia Aalim, with the stipulated consequence that, upon his default, the advance of Rs.37,00,000/- would be forfeited and possession would be handed back to Muhammad Qasim. Clause 8, conversely, provided that if Muhammad Qasim failed to execute the sale deed and procure the requisite Fitwa within eight months, he would return Rs.37,00,000/- and the contract would stand cancelled.

9. The arrangement concerning Mst. Naimat Bibi's land was similarly reciprocal. Clause 10 contemplated that if Muhammad Qasim failed to execute the registered sale deed within eight months, Rs.6,00,000/- would be returned to Ghulam Rasool; whereas, if Ghulam Rasool failed to pay the remaining sale consideration, the advance of Rs.6,00,000/- would stand forfeited and Muhammad Qasim would take over possession of that land. Clause 13 once again acknowledged receipt by Muhammad Qasim of advances of Rs.37,00,000/- and Rs.6,00,000/-. The document, therefore, does two things simultaneously: it unequivocally acknowledges the money received by the appellant, but it equally demonstrates that

such money was advance sale consideration governed by reciprocal contractual obligations, and not an independent loan or an unconditional debt simpliciter.

10. Ss. 51 and 52 of the Contract Act, 1872 assume significance in this context. S. 51 embodies the rule that where reciprocal promises are to be simultaneously performed, a promisor is not bound to perform unless the promisee is ready and willing to perform his reciprocal promise. S. 52 further commands that where the order of performance has expressly been fixed by the contract, the promises are to be performed in that order. S. 54 deals with the consequence of default in performance of the promise which ought first to have been performed. The contractual obligations in the present matter therefore could not legitimately be dissected by enforcing one consequence of the compromise while leaving the corresponding obligation wholly untouched.

11. Turning to the oral evidence, Ali Ghulam, attorney of the Respondent/Plaintiff, appeared at Exh-13. In examination-in-chief, he maintained that the appellant had represented himself as attorney of Alamdar Shah, that Rs.37,00,000/- was paid as part consideration and that a further amount was paid concerning the land of Mst. Naimat Bibi. He also relied upon the compromise application produced at Exh-13/B. His cross-examination, however, contains admissions of considerable importance. He acknowledged that under the compromise an eight-month period was stipulated for execution of the registry; he accepted that the Plaintiff was required to purchase the total agreed agricultural land; and, most significantly for present purposes, admitted that the land of Alamdar Shah and Naimat Bibi remained in possession of the Plaintiff, that the Plaintiff had remained in possession since 2018, and that they were cultivating the suit land and obtaining its yield. Thus, continued possession and beneficial enjoyment of the land by the Respondent does not rest merely upon an assertion of the appellant; it emanates from the evidence of the Respondent's own attorney.

12. Muhammad Qasim, Appellant, appeared at Exh-22. His examination-in-chief contains an unequivocal acknowledgment that the transaction concerning Alamdar Shah and his brothers was settled at Rs.3,30,000/- per acre and that he had received

Rs.37,00,000/- as advance; likewise, he admitted receiving Rs.6,00,000/- as advance in respect of Mst. Naimat Bibi's land. He further deposed that the written arrangement dated 20.07.2022 required him to execute the registry within eight months, failing which Rs.43,00,000/- would be returned, while failure of Ghulam Rasool to deposit the balance consideration would entail forfeiture of the advance and return of possession. He relied upon the sale permission certificate dated 11.04.2023 and asserted that after obtaining such permission he approached the Respondent for completion of the transaction.

13. The appellant's cross-examination, however, materially weakens his assertion that the Respondent alone committed the breach. He admitted that he had not issued any legal notice to Ghulam Rasool demanding payment of the balance sale consideration within the stipulated period and had not instituted any suit for specific performance of the compromise. More importantly, when confronted with the suggestion concerning the Respondent's refusal to execute the transaction, he stated in substance that it was wrong to suggest that Ghulam Rasool had refused execution of the registry. This admission is difficult to reconcile with his examination-in-chief that the Respondent had flatly refused to complete the transaction. The Courts below were, therefore, justified in declining to accept the appellant's version that the Respondent's default stood conclusively established.

14. The receipt of Rs.43,00,000/- consequently stands beyond legitimate controversy. It is admitted not only in the compromise but by the appellant himself in his evidence. Article 113 of the Qanun-e-Shahadat Order, 1984 embodies the elementary rule that facts admitted need not be proved. In *Mst. Baswar Sultan v Mst. Adeeba Alvi* 2002 SCMR 326, the Supreme Court treated an admission in the pleadings, corroborated by admission in cross-examination, as binding upon its maker. The same principle has repeatedly been applied that an admission made by a party in pleadings or evidence constitutes formidable evidence against that party unless satisfactorily explained.Thus, the appellant cannot now avoid the admitted factum of receipt merely by describing the original transaction differently.

15. I am, therefore, unable to accept the appellant's contention that the Respondent's suit ought to have been dismissed outright or that the entire advance automatically stood forfeited. Such a conclusion would require an established default attributable to the Respondent under the very conditions upon which forfeiture depended. The evidence, particularly the appellant's own cross-examination, does not permit such a categorical finding. To this extent, the concurrent conclusions of the Courts below require no interference.

16. The learned trial Court, however, approached s. 74 of the Contract Act somewhat broadly by treating the forfeiture provision itself as legally inadmissible because it was punitive. Such proposition, stated without qualification, does not represent the complete law. In the celebrated case of *Province of West Pakistan v Messrs Mistri Patel & Co.* PLD 1969 SC 80, followed and explained in *Syed Sibte Raza and another v Habib Bank Ltd.* PLD 1971 SC 743, the Supreme Court explained that s. 74 encompasses a stipulation for forfeiture, but the Court is concerned with awarding or permitting retention only of reasonable compensation, not exceeding the amount stipulated.

17. The principle was reiterated in *Messrs Khanzada Muhammad Abdul Haq Khan Khattak & Co. v WAPDA* 1991 SCMR 1436, where the Supreme Court again explained that s. 74 embraces stipulated compensation, penalty and forfeiture and that the controlling criterion is reasonable compensation. Most recently, the Supreme Court in *Trading Corporation of Pakistan v M/s Abdullah Mezroei Metal Trading Company and another* 2026 SCP 213 (book citation awaited) has reiterated that s. 74 neither automatically invalidates a contractual stipulation upon breach nor permits its mechanical enforcement; the Court retains jurisdiction to determine whether the stipulated consequence constitutes reasonable compensation or is excessive, harsh or unconscionable having regard to the contract, conduct of the parties and circumstances of breach. Thus, the mere presence of a forfeiture clause could not, by itself, conclude the controversy either for or against the appellant.

18. Equally important is the contractual structure. Clauses 7, 8 and 10 did not provide a unilateral forfeiture exclusively favouring the appellant. They allocated consequences to default by either side:

default by the appellant attracted refund, while default by the Respondent attracted forfeiture and restoration of possession. The Court was therefore required to examine the compromise as an integrated whole. In contractual matters, the Court must ascertain and enforce the obligations which the parties themselves undertook rather than isolate one clause from the reciprocal scheme in which it operates.

19. There is yet another aspect which, in my view, has not received the attention it deserved from either Court below. The Respondent seeks and has obtained a decree returning the entire Rs.43,00,000/-, thereby substantially restoring him monetarily to the position preceding the failed transaction. Yet his own attorney admits that the Respondent continues to possess, cultivate and obtain yield from the very agricultural land forming the subject matter of the transaction. The compromise itself contemplated return of possession as the corresponding consequence when the transaction did not culminate. The decree of the Courts below, however, directs recovery of the entire amount without simultaneously addressing the admitted possession of the Respondent.

20. A party cannot, upon treating a transaction as having failed and recovering the consideration paid under it, retain indefinitely the corresponding benefit received under that very transaction. Such a result would sever the reciprocal obligations and confer an unintended double advantage. The Respondent cannot have the entire consideration restored to him while continuing, by virtue of the same transaction, to retain possession and agricultural enjoyment of the property. Conversely, the appellant cannot retain Rs.43,00,000/- once his liability to refund has arisen and simultaneously demand restoration of possession without accounting for the money. Restoration of the consideration and restoration of possession must, therefore, operate concurrently.

21. It is precisely on this limited but material aspect that interference under s. 100 of the CPC becomes warranted. This is not a case of substituting this Court's appreciation of oral evidence for that of two Courts below. The material fact of possession stands admitted by the Respondent's own witness. The error lies in the legal consequence attached to an admitted fact and in failure to give effect

to the reciprocal structure of the compromise while moulding the decree. Such an omission goes beyond a mere question of fact. In *Muhammad Umar (deceased) through LRs v Sikandar Ali and others* 2023 CLC 284, it was recognised that jurisdiction under s. 100 of the CPC may be attracted where a material issue of law has remained undetermined or where misreading/non-reading or a substantial procedural error has materially affected the decision.

22. The Supreme Court's decision in *Muhammad Ashraf Anjum v Sabir Hussain* 2026 SCMR 36 also bears relevance to the importance of contractual consequences expressly attached to non-performance. The Supreme Court emphasised that where parties have deliberately stipulated a period for performance together with consequences of non-performance, their intention gathered from the contract cannot simply be replaced by an altogether different arrangement. Though that case arose in the context of specific performance and its facts are distinguishable, the underlying principle that contractual stipulations and consequences must be read as an integrated whole reinforces the conclusion reached here.

23. Consequently, I find no legal justification for disturbing the concurrent finding that the appellant received Rs.43,00,000/- and is liable to refund the same upon failure of the transaction. I likewise find insufficient evidence to declare that the Respondent alone committed such default as would automatically entitle the appellant to forfeit the entire amount. However, the concurrent decrees cannot be sustained in their unconditional form, because they permit recovery of the entire consideration without requiring restoration of the admitted possession retained under the same transaction. The omission amounts to non-consideration of material evidence and failure to give full legal effect to the reciprocal terms of the compromise.

24. For these reasons, this appeal is allowed in the following limited terms:

i) The Respondent/Plaintiff shall remain entitled to recover Rs.43,00,000/- (Rupees Forty-Three Lacs only) from the Appellant.

ii) Such recovery shall, however, be subject to and simultaneous with restoration of vacant and peaceful possession by the Respondent/Plaintiff to the Appellant of the land of which possession was delivered to and retained by the Respondent pursuant to the transactions/compromise in question.

iii) The Respondent shall not be entitled, on the one hand, to obtain restitution of the entire amount of Rs.43,00,000/- and, on the other, continue to retain possession and enjoyment of the land under the same failed transaction.

iv) For purposes of execution, payment/tender of the decretal amount and restoration of possession shall, as far as practicable, be effected simultaneously through the Executing Court, which shall be competent to issue such consequential directions as are necessary to identify and secure restoration of the land actually held by the Respondent pursuant to the transaction, strictly on the basis of the existing record and without enlarging the subject matter of the decree.

v) Save for the above modification, the findings of the Courts below regarding receipt of Rs.43,00,000/- and the Respondent's entitlement to restitution thereof are maintained. There shall be no order as to costs.

25. All listed applications are disposed of. Office is directed to prepare a decree in the above terms. R&Ps may be returned with a copy of this judgment for information and compliance.

JUDGE

Faisal