IN THE HIGH COURT OF SINDH AT KARACHI

Second Appeal No. 71 of 2024

[Syed Khalid Mushtaque v. M/s Friends Corporation Private Limited]

Appellant	:	Through Mr. Naseer Nehal Hashmi, Advocate
Respondent		Through Mr. Irfan Mir Halepota, Advocate
Date of Hearing	:	03.11.2026

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J U D G M E N T

SAMAN RAFAT IMTIAZ, J.- This Second Appeal under Section 100 CPC is directed against the judgment dated 21.12.2023 passed by the learned VIth Additional District Judge, Karachi Central in Civil Appeal No. 45 of 2023. By that judgment the appeal of the Appellant [Syed Khalid Mushtaque] against the judgment and decree dated 07.02.2023 and 10.02.2023 passed by the learned VIIth Senior Civil Judge, Karachi Central in Civil Suit No. 31 of 2018 was disposed of and the judgment and decree of the Trial Court was modified.

2. The background of the dispute, as narrated in the memo of appeal, is that the Respondent [M/s Friends Corporation Private Limited] filed Civil Suit No. 31 of 2018 against the Appellant for recovery of Rs. 2,000,000/- as damages. It is stated that the Appellant, employed as Technical Engineer since 22.05.2014, executed a Service Bond dated 22.09.2014 for Rs. 500,000/- undertaking to serve the Respondent for three years after completion of training in Germany, Italy and Switzerland, from October 2014 to October 2017 and not to seek other employment without prior written consent. In case of breach, he was liable to reimburse the bond amount along with consequential losses. It is stated further that pursuant to an arrangement with Fedegari Italy, the Appellant and another engineer were scheduled to undergo training in Milan and Lugano, for which airfare, insurance and visa expenses were incurred. However, the Appellant tendered his resignation on 21.02.2017 with one week's notice and left for employment with a competitor in breach of the bond. It is stated that his departure and unauthorized interference with machinery caused losses in after-sales service, rendered calibration instruments idle and resulted in estimated damages of Rs. 1,500,000/- apart from the bond amount.

3. The Appellant filed his written statement denying the allegations and contending that he was employed as Technical Sales Engineer on a salary of Rs. 20,000/- and was compelled to execute the Service Bond of Rs. 500,000/- which was void and unenforceable under Section 27 of the Contract Act, 1872. He further alleged that the Respondent sought another five-year bond and

threatened to withhold his salary, compelling him to resign, despite his satisfactory service and long-pending promotion. He denied that the calibration instruments were lying idle, asserting that they were being used by the Respondent's employees, and also denied contacting its clients or interfering with machinery. He disputed the alleged damages of Rs. 1,500,000/- as unsubstantiated and not proved by the Respondent.

4. After leading evidence and hearing the parties, Trial Court decreed the suit as prayed by Judgment dated 07.02.2023 and Decree dated 10.02.2023. Being aggrieved, the Appellant challenged the above judgment and decree in Civil Appeal No. 45 of 2023. By Judgment dated 21.12.2023 the learned Appellate Court held that the Respondent failed to produce cogent evidence to show that it sustained loss for which it was entitled to damages of Rs. 1,500,000/-, and that the Trial Court judgment suffered irregularities to the extent of grant of those damages. The judgment and decree were, therefore, modified to the extent that the Respondent has been held entitled to the recovery of only Rs.500,000/- (Rupees Five Lacs Only) from the Appellant as per Clause No.4 of the Service Bond for Training Abroad (Exh-P/4), and the appeal was disposed of. Hence this second appeal.

5. On 21.09.2026 the learned counsel for the Appellant argued that the finding of the learned Appellate Court is erroneous, as no evidence was produced by the Respondent that it incurred any expense towards training, traveling, lodging, and boarding expenses for the Appellant and in this regard, he relied upon letter of appointment issued by Fedegari Asia Pte Ltd. that arranged the training, which was produced in evidence as Exh-X/1, whereby it was Fedegari Asia Pte Ltd. who was liable to take care of traveling during training and training was free of charge. When asked as to why the said document was marked as ‘X/1’ and whether it can be taken into consideration if the original was not produced, the learned counsel for the Appellant drew the Court's attention to the examination-in-chief of Sohail Kamran, the authorized representative of the Respondent and the cross-examination conducted by Mr. Muhammad Basim Raza, Advocate upon him and relied upon Article 76(b) of the Qanun-e-Shahadat Order to argue that since the document was admitted by the Appellant, the same could be allowed to be produced through secondary evidence. He refers to Service Bond for Training Abroad and specifically Clause-5 thereof, to highlight that there was no guarantor. He argued that the said service bond is not a legally binding document.

6. On the other hand, the learned counsel for the Respondent, at the very outset, challenged the maintainability of the instant appeal by contending that it does not fall within the scope of Section 100 CPC, as the Appellant has failed to point out any illegality or that it was contrary to law or usage. He also points

out that the arguments submitted are beyond the scope of the grounds taken in the memo of appeal, and that the service bond admittedly executed by the Appellant entitled the Respondent to the amount as claimed and which has been granted by the impugned judgment.

7. Heard the learned counsel for the parties and perused the entire record with their assistance.

8. The Appellant vide Clause-4 of the service bond undertook to pay the company the amount of Rs. 500,000/-, which the company will spend towards his training, traveling, boarding, and lodging expenses. Perusal of the plaint filed by the Respondent in Suit No. 31/2018 shows that the Respondent alleged that it obtained airline tickets and paid health insurance and visa fees for travel to Italy and Switzerland for the Appellant's training. The learned counsel for the Respondent-company was asked repeatedly to show the evidence that was produced by the company to show whether such expenses were, in fact, incurred by the company, however, he failed to do so. Perusal of the examination-in-chief of the Respondent company's witness shows that, *inter alia*, photostat copies of visas issued in favour of the Appellant were produced and were kept on record as Mark “X-7” to Mark “X-9”, and also two photostat copies of passenger itinerary receipts marked as Mark “X-14” and Mark “X-15”.

9. Time and time again, the superior courts of this country have held that marked copies have no legal sanctity attached to them and cannot be taken into consideration. In *Bestway Cement Limited v. Full Bench of National Industrial Relations Commission*, 2023 PLC 101 (Islamabad), it has been held that Courts/Tribunals have to ensure that documents produced in evidence are endorsed in accordance with Order XIII, Rule 5, C.P.C., unless the same are found inadmissible in which case they are to be rejected as per Order XIII, Rule 4, C.P.C. In case an objection is raised to the admissibility of any documentary evidence the Court/Tribunal must determine such objection. Where the Court considers a document relied upon as evidence by either side to be inadmissible, it shall endorse the particulars as stipulated in Order XIII, Rule 6, C.P.C., together with a statement of it having been rejected. As per Order XIII, Rule 7(2), C.P.C., documents not admitted in evidence shall not form part of the record and shall be returned to the person producing it.

10. In view thereof, since the marked documents have not been endorsed as per Order XIII Rules 4 & 6 CPC, they ought to have been rejected rather than being retained on the record and marked as "X". If the Appellant was not objecting to the submission of photocopies of the letters of appointment issued by Fedegari Asia Pte Ltd. (X-1)and the passenger itinerary receipts (X-14 and X-15), such no objection should have been given at the time of production of documents by the Respondent company so that the Trial Court could have

endorsed them as per Order XIII CPC. However, it is evident from the record that the Appellant did not admit the said documents at the relevant time. In the event of non-compliance of the provisions of Order XIII, they should not form part of the record. It is settled law that marked documents have no sanctity in the eyes of law and cannot be considered. Therefore, the argument made on behalf of the Appellant that they may be considered by this Court, as in the instant appeal the Appellant is admitting the document, is to no avail.

11. Be that as it may, no documentary evidence has been produced by the Respondent company in support of their claim of damages. The provisions of the service bond being relied upon by the Respondent company are in the nature of liquidated damages. This Court in *Trading Corporation of Pakistan (Pvt.) Limited v. Agri Impex Trading Company Limited, Budapest Hungary*, PLD 2026 Sindh 422 has held that mere presence of a clause stipulating liquidated damages does not by itself entitle a party to recover the stipulated amount, and the claimant seeking liquidated damages is still required to demonstrate that it has suffered an actual loss, as the law does not permit recovery of damages merely on the basis of a contractual clause without establishing the underlying financial detriment.

12. As observed hereinabove, the learned counsel was unable to point out any evidence produced by the Respondent company that it incurred any amount towards the training, traveling, boarding, and lodging expenses for the Appellant nor is any revealed from the record. Examination of the Trial Court's judgment also does not reveal any discussion of any such evidence. The Trial Court appears to have relied upon the clause of the service bond stipulating the liquidated damages and has relied upon marked documents to conclude that all transportation, board, and lodging costs are from the Respondent company, and as such decreed the Plaintiff's suit as prayed. The learned Appellate Court reduced the amount by relying upon a Supreme Court judgment holding that damages for mental torture, nervous shock, etc. are assessed by employing guesswork despite the fact that the damages claimed by the Respondent company were not in the form of general damages which are awarded as per rule of thumb rather are in the form of special damages which according to settled law have to be proved through evidence.

13. In view of the foregoing, the impugned judgments passed are contrary to the law, and as such, the instant appeal is hereby allowed, both the impugned judgments are set aside, and the suit of the Respondent company is dismissed.

[SAMAN RAFAT IMTIAZ]
JUDGE

Imran