ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

1st Appeal No.S-15 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE

For hearing of main case.

28-09-2026

Mr. Shahzeb Abbasi, advocate for the respondent.

JAWAD AKBAR SARWANA, J:- Rehmatullah son of Ghulam Rasool, by caste Brohi, appellant/plaintiff, is aggrieved by the order dated 18.02.2022 passed by 8th Additional District Judge, Hyderabad (trial Court) in Summary Suit No.121 of 2019, which was filed against Touq Ali son of Muhammad Usman, respondent/defendant, wherein the learned trial Court rejected the plaint of the appellant/plaintiff under Order VII Rule 11 CPC.

Although the appellant's counsel attended on the last several dates of hearing, none attended on behalf of the respondent. Although this matter was listed today with his consent, with date and time, none are in attendance on behalf of the appellant. No intimation has been received. I have perused the impugned Order dated 18.02.2022, and it transpired that Summary Suit No.121 of 2019 involved a claim for recovery based on five dishonoured cheques under Order 37 CPC. The impugned order records that all five cheques, which were also impugned in five separate criminal proceedings initiated against the respondent/defendant under (i) FIR No.30/2018, (ii) FIR No.31/2018, (iii) FIR No.35/2018, (iv) FIR No.39/2018 and (v) FIR No.40/2018, all culminated in the respondent/defendant being acquitted based on compromise agreements between the parties.

The learned trial Court recorded that the underlying transactions forming the basis of the summary proceedings concerning five (5) cheques were in connection with the sale and purchase of certain properties, inter se, between the parties. Yet, the trial Court also noted that, as per the compromise, the appellant/plaintiff secured the entire outstanding sum, viz. the five (5) bounced cheques, and at no stage did the appellant/plaintiff claim any balance amount. The appellant/defendant has alleged in paragraph 8 of the memo of this revision that there was no compromise between the parties; however, he has not attached any contemporaneous evidence and/or certified copy of any Order in support of his arguments. In contrast, the respondent/defendant in the Written Statement filed in the summary proceedings has attached receipts of payments received by the appellant/plaintiff as well as the certified copies of the compromise application and

copy of the Court's Order (paragraphs 2 and 5 of the Written Statement). However, the appellant/plaintiff has not filed the complete Written Statement along with annexures/exhibits, and the respondent/defendant has not appeared for the hearing. Be that as it may, the onus was/is on the appellant/plaintiff to corroborate the grounds agitated in this revision with supporting documents, which are clearly missing and have not been filed by him.

Summary proceedings are initiated for recovery of claims based on negotiable instruments. Concurrently, the plaintiff/claimant under summary proceedings retains the right to initiate criminal proceedings on the same cheque; and both proceedings can run simultaneously, and the law does not bar this.

In the present case, once the plaintiff/appellant acknowledged receipt of the entire sum of the principal claim based on the negotiable instruments, he essentially recovered the claim concerning the five (5) bounced cheques during the criminal proceedings, and could not recover the same amount twice, now in the summary suit initiated by him. Accordingly, the trial Court rejected the plaint filed in the summary suit.

I do not find any illegality or irregularity in the impugned order dated 18.02.2022 passed by the learned Additional District Judge-VIII, Hyderabad, in Summary Suit No.121 of 2019. Consequently, the 1st Appeal is misconceived and is accordingly dismissed, with no order as to costs.

J U D G E

Irfan Ali