HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

1st Appeal No.50 of 2026

[Ms.t Dua vs. Noor Muhammad]

Appellant	:	Mst. Dua W/o Muhammad Afaq **By Mr. Pervez Tarique Tagar advocate**
Respondent	:	Noor Muhammad S/o Nazar Muhammad Qureshi **By Mr. Zulfiqar Ali Rajper advocate**
Date of hearing:		08.10.2026
Date of decision:		08.10.2026

O R D E R

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JAWAD AKBAR SARWANA J:- Mst. Dua W/o Muhammad Afaq – appellant/defendant No.2 is aggrieved by the judgment and decree dated 06.05.2026 passed by the VIth Additional District Judge, Hyderabad, in Summary Suit No.191 of 2025 filed by Noor Muhammad – respondent/plaintiff.

2. Counsel for the appellant/defendant No.2 contends that the bounced cheques which were/are the subject matter of the Summary Suit were issued by the husband of the appellant/defendant, namely Muhammad Afaq Memon S/o Muhammad Farooque [defendant No.1]. He contends that, apart from the husband-wife relationship, the appellant/defendant No.2 and her husband, Muhammad Afaq Memon, have no commercial/business relationship inter se and the appellant/defendant No.2 has no nexus to the dishonoured cheques. He further contends that the contents of the Iqrarnama, signed between Muhammad Afaq Memon (the husband of the appellant/defendant No.2) and the respondent/plaintiff--Noor Mohammad, neither mention the appellant/defendant No.2 in its content nor is it witnessed by the appellant/defendant No.2. Therefore, he contends that the negotiable instruments, in this Summary Suit, have nothing to do with the appellant/defendant No.2. Hence, the appellant/defendant No.2 cannot be made/held liable in the summary proceedings for the said negotiable instruments.

3. Learned counsel for the respondent/plaintiff vehemently opposes the contentions raised by the counsel of the appellant/defendant No.2. He relies on paragraph-5 of the plaint filed in Summary Suit No.191 of 2025, which is reproduced herein below:

> *"5. That after days defendant No-1 become dishonest and using different tactics and said he will pay his amount as soon as possible within few days to plaintiff, which defendant No-1 were received amount through some amount in cash, some amount through instead of property (plots) and some amount through online transaction in the account of defendant No-1 & 2 from plaintiff."*

Based on the above averments made in the plaint, Counsel for the respondent/plaintiff submits that the bank transfer deposits involving appellant/defendant No.2 mean that the appellant/defendant No.2 took over her husband's liability. Further, the appellant/defendant No.2 was directed to submit surety, either for herself or on behalf of her husband. Therefore, the judgment and decree may be enforced against the appellant/defendant No.2 and her husband jointly and severally.

4. Heard counsel and perused the available record.

5. The genesis of a Summary Suit is based on Order XXXVII. The core ingredient of a summary suit is that it is based on a negotiable instrument that has been dishonoured and/or bounced. Such negotiable instruments may arise out of and/or in connection with and/or in relation to an underlying agreement. In a Summary Suit, the first port of call for the Court is to examine the negotiable instrument itself. In the present case, the negotiable instruments were four (04) cheques drawn on the account of the husband of the appellant/defendant No.2, namely Muhammad Afaq Memon [defendant No.1], having Account No.0736-84-53-61003180. While the defendant No.1 Muhammad Afaq Memon did not file any leave to defend, his spouse/wife – appellant/defendant No.2 Mst. Dua filed her leave to defend application [available at page-53]. The appellant/defendant in her leave to defend application has not expressly denied her liability based on the negotiable instrument. Instead, she has given an evasive response. The paragraph-2 of her parawise reply in the leave to defend application is reproduced herein below:

> *"2. That, the contents of para No.2 and 3 of the plaint is denied. It is submitting that the defendant No.3 haven't information regarding any his friendship and business between plaintiff and defendant No.1. It is submitting that the defendant No.3 has already break his all relations through publication in Daily News Paper "Jurat" on dated: June 2nd, 2025."*

6. Clearly, based on the well-acknowledged principle of law under Order XXXVII Rule 3 CPC by the Superior Courts of Pakistan including, inter alia, the case of *Fine Textile Mills Ltd Karachi vs. Haji Umar* [**PLD 1963 SC 163**] the trial Court is bound to grant conditional leave only when a plausible defence is made out duly verified by way of an affidavit. To

this extent, the conditional leave to defend was rightly allowed. However, the leave-to-defend application still does not mention the basis of liability of appellant/defendant No. 2 viz. the respondent/plaintiff.

7. Once the leave to defend application was granted, the burden to prove the case shifted from the defendant to the plaintiff. The burden then shifted to the respondent/plaintiff to show, based on documentary evidence, that the appellant/defendant No.2 was liable for cheques drawn on her husband/defendant No. 1's bank account, and that Judgment and Decree ought to be passed against her. As the matter proceeded ex parte against the all the defendants in the Summary Suit, the onus was on the respondent/plaintiff to establish the liability of the appellant/defendant No.2 during the trial. During the course of evidence, neither the respondent/plaintiff nor the trial Court called the Bank official(s) to depose evidence to establish the same.. At this stage, when there was clearly no nexus between the negotiable instrument and/or the appellant/defendant No.2, the Bank official(s) 'depositions were necessary to effectually and completely adjudicate and settle all the questions involved in the suit. In the present case, no evidence is available in the judgment and/or on record that conclusively connects/links the appellant/defendant no.2 with the four (4) cheques, except that appellant/defendant no.2 husband wrote the said cheques.

8. If the Bank's witness had stepped into the witness box, the trial Court could have established whether the defendant No.1 Muhammad Afaq Memon on whose account the four bounced cheques were drawn, at the material time, was either a joint owner of the said account and/or whether the appellant/defendant No.2 had mandate to operate the said account, etc. Instead, the trial Court passed an exparte judgment and decree, without any discussion as to how the appellant/defendant No.2 was liable for the bounced cheques of her husband/defendant No.1, despite having nothing to do with those four (4) cheques and/or the bank account on which the four (4) cheques were drawn. Even if the respondent/plaintiff defendant did not lead evidence on this point, there must be some nexus between the negotiable instrument and the appellant/defendant no.2 to support the conclusion arrived at in the impugned judgment as against the appellant/defendant no.2. To bridge this missing link, this bench passed the following order on 01.10.2026:-

> *On 09.09.2026, this Court had issued directions to the Branch Manager, Muslim Commercial Bank, Cloth Market Branch, Hyderabad, Ward-C, New Cloth Market, to submit the account information of the account holder, Muhammad Afaq Memon (0736 8453 6100 3180), particularly whether the wife of the account holder, Mst.*

Dua (CNIC No.41303-0724035-6) at the material time between 15.08.2023 and 06.05.2025 had the mandate to operate the said account and/or was a joint owner of the said account alongwith her husband. Almost one month has been passed, but compliance has not yet been made….."

9. On 07.10.2026 the concerned officer of the Muslim Commercial Bank Branch, on which four negotiable instruments had been drawn, submitted information in terms of the Court's query discussed in paragraph 7 and 8 above. According to the documents brought on record by the bank, the appellant/defendant No.2 was neither a joint account holder with her husband/defendant No.1 of the bank account on which the four (4) cheques were drawn nor did she have a mandate to operate the said bank account on behalf of her husband at any time. In the circumstances, I cannot find the appellant/defendant No.2 liable for the negotiable instruments drawn on her husband's/defendant No.1's bank account. The Counsel have also seen and perused the bank's documents filed in Court, and conceded this point to the extent of the bank account on which the four (4) cheques were drawn. Even so, the respondent/plaintiff could not identify any material that linked the appellant/defendant No. 2 to her husband's liability.

10. Based on the discussion so far, the respondent/plaintiff's contention that the appellant/defendant No.2 had made certain electronic transfers of sums of money in the bank account of the respondent/plaintiff has no legs to stand on. Bank transfer deposits involving appellant/defendant No. 2, but not made through negotiable instruments, cannot establish that appellant/defendant No. 2 became liable for a matter and/or transaction between appellant/defendant No. 2's husband and respondent No.1/plaintiff. An electronic transfer of funds does not fall within the ambit of a negotiable instrument, and a mere transfer of funds cannot form the basis for filing a Summary Suit.

11. Finally, the appellant/defendant No.2 did not submit any surety, either for herself or on behalf of her husband. Therefore, the judgment and decree impugned by the appellant/defendant No.2 cannot operate against her and her husband jointly on this score.

12. Given the above, this first appeal is allowed, and the impugned judgment and decree dated 06.05.2026 passed in Summary Suit No.191 of 2025 is set aside to the extent of appellant/defendant No.2 only.

13. Counsel for the respondent/plaintiff at this stage has submitted that the respondent/plaintiff will be left without remedy in the Summary proceedings as the respondent/plaintiff has also initiated execution

proceedings which are stalled as no information concerning any other assets of the husband of the appellant/defendant No.2 is available. He further contended, a fact corroborated by the counsel for the appellant/defendant No.2, that the husband of the appellant/defendant No.2 has been declared an absconder by the concerned Sessions Court, where the respondent/plaintiff has initiated criminal proceedings against the husband under Section 489-F PPC. This Bench clarifies that it has excluded the liability of the appellant/defendant No.2 only in respect of the four (4) bounced cheques. The Order passed today does not impede the execution proceedings filed by the respondent/plaintiff against the husband/defendant No.1, Muhammad Afaq Memon. The impugned judgment and decree passed by the trial Court against Muhammad Afaq Memon remains in force.

14. The revision stands allowed in the above terms.

JUDGE

Sajjad Ali Jessar