

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Ist Appeal No.S-26 of 2023

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.
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1. *For hearing of main case.*

26.10.2026

Mr. Aqleem Hyder Shar, Advocate for Applicant.

ORDER

Despite repeated calls and being date and time fixed matter, no one is in attendance on behalf of the Respondent, though Respondent is aware about the instant Ist Appeal, because Ms. Salma Sarwari, Advocate filed Vakalatnama on behalf of Respondent on 23.04.2026.

2. This Appeal is preferred against the Judgment and Decree dated 28.04.2023, handed down by the Trial Court in Summary Suit No.09 of 2022, dismissing the same on the ground that details of the sale transaction between the Parties could not be proved, as required.

3. Learned Counsel for the Applicant read the impugned Judgment and states that Trial Court has erred in law and facts because earlier conditional leave granting order was also violated by the Respondent, thus leave was refused, but instead of decreeing the suit, the evidence was led and above finding was given.

4. Undisputedly, leave to defend was granted conditionally vide Order dated 29.06.2022 (at Page 41), which was violated by the

Respondent, as observed in the Judgment itself, with the observation that defense was struck off.

5. In view of the Judicial pronouncements on the subject, the judgment and decree should have been passed (with a judicious mind and carefully considering the record) after either dismissal of leave to defend or its violation is of such a nature, that conditional leave in effect is recalled.

6. Whereas in the present case, the learned Trial Court proceeded with the *lis* as if it is an ordinary suit of specific performance and not the one filed under summary chapter (Order XXXVII) of Code of Civil Procedure in respect of the dishonored cheque. It is mentioned in the impugned Judgment that cheque bearing No.191671166, drawn on National Bank of Pakistan for an amount of Rs.57,00,000/- (Rupees 5.7million) was given to the Appellant, had been dishonored. Learned Counsel has placed on record copy of disputed cheque so also bank memo showing the reason of dishonoring as “Insufficient Funds”.

7. I have gone through the plaint as well, in which neither any damages was claimed nor any relief with regard to the sale transaction, but simply it is stated that the Defendant/Respondent may be directed to pay the amount of Rs.57,00,000/- to the Plaintiff/Appellant against the cheque issued by him with interest mentioned in Section 79 and 80 of the Negotiable Instrument Act 1881, at the rate of 06% percent per annum.

8. In view of the above the learned Trial Court has not exercised the jurisdiction properly and decided the matter beyond pleadings and provision of law.

9. In view of the well known judgment of the Hon'ble Supreme Court of Pakistan -- **PLD 1990 Supreme Court 497** (*Messrs. Ahmed Autos and another v. Allied Bank of Pakistan Limited*), **1996 SCMR 1530** (*Naeem Iqbal v. Mst. Zarina*) and **2004 SCMR 882** (*Murtaza Haseeb Textile Mills v. Sitara Chemical Industries*), the impugned Judgment is set-aside, **this Appeal is allowed**, with the result that the **Summary Suit** filed by the Appellant **is decreed** to the extent of its prayer clause **(a)** only.

J U D G E

S.Nawaz(St)'

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