

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI.
Suit No. 1481 of 2005

Date	Order with signature of Judge
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For hearing of CMA Nos.

1. 9215/06
2. 5741/09
3. 2190/06
4. 6602/07
5. 9857/05
6. 2663/07

20.02.2018.

Mr. Khawaja Shamsul Islam, Advocate for the Plaintiff.

Mr. Sohail Hameed, Advocate for Defendant No.5.

Today arguments were heard on C. M. A. No.9215 of 2006, which is seeking review of the order dated 28.11.2006 and C. M. A. No.2190 of 2006 and 6602 of 2007; all these applications have been filed by Defendant No.5. In the second application, Defendant No.5 has prayed that the present suit may be treated against him as an ordinary suit and not under summary jurisdiction for the facts stated in his review application, whereas in the third application Defendant No.5 is seeking injunctive relief against the earlier order of 28.11.2006.

On 28.11.2006, a decree was passed against Defendants No.4 and 5 on the ground that they failed to file their Leave to Defend application in terms of Order XXXVII, Rule 2 of C.P.C., within the prescribed time of ten (10) days. Thereafter Defendant No.5 preferred the aforementioned Review Application and on 28.05.2008, ad-interim relief was granted to the said Defendant No.5 and the earlier order of 28.11.2006 only to the extent of Defendant No.5 was suspended.

Mr. Sohail Hameed, Advocate for Defendant No.5, referred to paragraphs-10, 14 and 17 of the plaint to demonstrate that Defendant No.5

is not a drawer of the cheques, which are the subject matter of this proceeding and all the four cheques of different amounts were signed by other Defendants. He further stated that in view of the rule laid down in the following two Judgments of the Honourable Supreme Court, the proceeding of the nature can only be taken against that person who has executed any negotiable instrument in favour of the claimant, in the present case the Plaintiff, but not against those persons who merely were involved in a transaction in some other capacity, for instance, as guarantors, or signed any other instrument which does not fall under the ambit of negotiable instrument_

1. 1992 S C M R page-718
[Messrs National Security Insurance Company Limited and others v. Messrs Hoechst Pakistan Limited and others]
2. P L D 1988 Supreme Court page-124
[Sh. Abdul Majid v. Syed Akhtar Hussain Zaidi]

The impugned cheques are available at pages-89 and 125 with the plaint and on a specific query, it has been acknowledged by both sides that these cheques were not signed by the said Defendant No.5 (Syed Saeed Mir).

In rebuttal, Mr. Khawaja Shamsul Islam, learned counsel representing the Plaintiff, has stated that Defendant No.5 was actively involved in the entire transaction and defrauded the Plaintiff, which resulted in filing of present *lis*. He further submits that Defendant No.5 cannot be exonerated from the entire transaction as there is tangible evidence available against him.

The conclusion that I can draw from the above arguments is that Defendant No.5 is / was not a drawer / signatory of all the subject cheques, but he may be involved in the entire transaction, as alleged; but to what extent a relief can be granted against him, can only be decided after

conclusion of the proper trial. As far as summary proceeding is concerned, the present suit, in view of the aforementioned reported decisions of the Honourable Apex Court, cannot be extended to Defendant No.5, against whom the present case will be treated as a long cause. Resultantly application [C. M. A. No.9215 of 2006] is allowed and the Judgment and Decree passed on 28.11.2006, to the extent of Defendant No.5 only, is set aside and he is allowed to contest the case by filing Written Statement within two weeks from today.

Accordingly, other two applications [C. M. A. Nos.2190 of 2006 and 6602 of 2007] in view of the above order, stand disposed of and this matter shall proceed against Defendant No.5 as an ordinary suit.

With regard to other Defendants, the matter will be considered on the next date of hearing and if their Leave to Defend applications are found to have been filed beyond the stipulated period, then necessary consequences will follow.

It is clarified that any observation(s) made hereinabove is tentative in nature and will not influence the trial of the present suit.

To come up after two weeks.

Riaz, P.S./*

Judge