

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 1253 of 2011

BEFORE:**Mr. Justice Arshad Hussain Khan.***Abdul Aziz**Vs.**Abdul Wahab and others*

Plaintiff: Abdul Aziz
Through Barrister Mohsin Shahwani

Defendants: Abdul Wahab and others.

Date of Hg: 17.09.2018.

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The present suit was filed by the plaintiff on 19.10.2011 against the defendants for declaration, direction, cancellation and injunction with the following prayers:-

- A. Declare that the cheques bearing No.3103176, 3103177, 3103178, 3103179, 3103174, 3103175 and 3103180 of Bank Al-Habib bearing account No.0081-002143-01-3 and all cheques in respect of account no._____ UBL Bank Limited are stolen or removed dishonestly and fraudulently by the defendant No.1.
- B. Cancel the stolen cheque bearing No.3103180 of Bank Al-Habib which was dishonoured by placing forged signatures of the plaintiff.
- C. Cancel all the stolen cheque bearing No.3103176, 3103177, 3103178, 3103179, 3103174, 3103175 and 3103180 of Bank Al-Habib bearing account No.0081-002143-01-3 and all cheques of account no._____ UBL Clifton Branch which were all dishonored by placing forged and fictitious signatures of the plaintiff by the employees of the defendant No.1.
- D. Direct the defendants not to lodge any FIR or take any coercive action against the plaintiff including filing of summary suits on the basis of the stolen cheque bearing no.3103180 of Bank Al-Habib;
- E. Permanently restrain the defendant No.1 from using the stolen cheques and or taking any coercive action against the plaintiff including of lodging an FIR and filing any summary suit;
- F. Permanently restrain the defendant No.1 from harassing and threatening the plaintiff and their family.
- G. Costs of the suit and other appropriate reliefs during course of the proceedings.

2. The facts leading to filing of this suit as averred in the plaint are that the plaintiff is a doctor by profession and also the shareholders of various family businesses. The defendant No.1, real brother of the plaintiff, for the greed of money and to unlawfully usurp the family business, has become the enemy of his own brother (plaintiff). The deceased father of the plaintiff and defendant No.1 left behind two established family businesses under the name and style of 'TAJ Transport Company' and 'Mehran Tanker Company' engaged in the business of transportation since 1949-1950 and holding a fleet of lorries and tankers. After the death of the father, the plaintiff along with defendant No.1 worked hard and expanded the family business by establishing number of other companies in the name of Delta Water services, Delta Enterprises, Wahab Enterprises, Delta Water, Rehman Motor Car Company and Al-Rahim Trucking Station. It is also averred that all the three brothers namely the plaintiff, defendant No.1 and (late) Abdul Reman, as per their agreement, were meant to hold equal shareholding of 33% in all the aforementioned properties and businesses, irrespective of the title documents. It is also averred that besides the present *lis*, Suit No.11 of 2008 filed by the plaintiff against the defendant No.1 and Mr. Abdul Rehman, likewise Suit No.252 of 2008 filed by defendant No.1 & Mr. Abdul Rehman against the plaintiff are also pending adjudication before this Court. It is also averred that the office of Mehran Tanker Company is situated at 118-119 1st Floor, Clifton Centre, Block-5, Khayaban-e-Roomi, Clifton, where the plaintiff and defendant No.1 had been carrying on the business of transportation since many years. It is also averred that the plaintiff kept a number of valuables in his table drawer since 2002, including property documents, cheque books of account No.1019-0081-111243-01-3 Bank Al-Habib Clifton branch and UBL Clifton branch. To the utter shock and surprise of the plaintiff on 14th November 2007, the property documents and cheque books were found missing upon which the plaintiff immediately lodged complaint with the concerned police station of Boat Basin. It is also averred that due to ill-behavior of defendant No.1, the plaintiff, in order to avoid unnecessary confrontation with his brothers, along with his family left for United States of America for temporary period, however, he had to come back

in 2008 on account of severe illness of his mother. It is further averred that the plaintiff after his return faced with bogus and frivolous FIRs No.467/2010, 662/2010 and 597/2010 under section 489-F lodged by defendants No.2 to 4, all employees of family concern namely Mehran Tanker Company acting on malicious direction of defendant No.1 to blackmail, harass and to pressurize the plaintiff to withdraw his aforementioned suit by placing forged and fictitious signatures of the plaintiff on the stolen cheques. The defendants No.2 to 4, all three, are the complainants in the aforesaid bogus FIRs lodged against the plaintiff were accused in another FIR No.520/2010 wherein all three of them were disclosed as employees of Mehran Oil Tanker Company run by defendant No.1 and furthermore, the said defendants were also declared absconders in another case on account of similar crime of forgoing signatures on a cheques. It is also averred that on account of the said bogus FIRs, the plaintiff was arrested, though was released on Bail subsequently, however, due to said arrest the plaintiff was humiliated and suffered immense stress and mental torture. It is also averred that plaintiffs Account bearing No.1019-0081-001243-01-3 of Bank Al-Habib Clifton branch was one of his personal accounts and the same had been dormant since many years and the Bank had been deducting dormancy charges from the said account. Furthermore, one Mr. Riazuddin, employee of Mehran Tanker, on malicious direction of defendant No.1 by placing forged and fictitious signature of plaintiff wrote to the bank vide letter dated 08.02.2010 to reactivate the dormant account of the plaintiff. Upon the said letter, the Bank, in absence of the plaintiff and without verifying the signature of the plaintiff, reactivated the dormant account. Further averred that defendants No.1 to 4, in collusion with each other with malafide intention and ulterior motives by placing forged and fictitious signatures of the plaintiff, deposited three (3) cheques bearing Nos. 3103176, 3103177, 3103178 of Rs.1500,000/- each, 3103179 of Rs.7,500,000/-, 3103174 and 3103175 of Rs.2500,000/-, 2,250,000/- respectively and 3103180 of Rs.7,500,000/. It is also averred that the signatures on the cheques were different from the specimen in their record and even then, knowingly the Bank malafidely in collusion with defendants No.1 to 4 deposited the said stolen cheques and stamped stating insufficient funds. It is also averred that during investigation of the aforementioned FIRs the

forensic division, vide its examination reports dated 10.09.2011 and 26.09.2011 after taking several signatures from the plaintiff confirmed that the signatures on the cheques were different from the signatures on the specimen of the plaintiff, in other words confirming that the signatures on the aforesaid cheques were forged and fictitious. The final challans dated 27.09.2011 and 21.09.2011 in FIRs No.662 and 467 both of 2010, submitted before the trial Court further confirmed the aforesaid facts. The said final challans sought approval from the trial court to declare the FIRs under 'B' class. Thereafter, the learned trial court acquitted the plaintiff in the aforesaid bogus criminal cases. It is also stated that the plaintiff seriously apprehends that defendant No.1 in order to further harass, blackmail and humiliate the plaintiff will lodge another bogus and frivolous FIR on the basis of cheque No.3103180 which they managed to get dishonoured from defendant No.5 (Bank) once again by placing the plaintiffs forged and fictitious signatures as evident from the examination report dated 10th September, 2011 and 26th September, 2011 of Forensic Division of Sindh Police in the abovementioned FIRs. The plaintiff having no option filed the present suit.

3. From the record, it appears that notices and summons of the present suit were issued to the defendants, however, when the defendants were not served through ordinary course, the publication was made in daily JANG Karachi dated 1.12.2012, thereafter, upon non-appearance of defendants No. 1 to 4, this Court on 31.05.2013 declared defendants No.1 to 4 ex-parte. Whereas defendant No.5 (Bank) upon receiving the notice though engaged the counsel, who also filed vakalatnama and had been appearing in the case, however, no written statement on behalf of defendant No.5 was filed in the present case. Consequently, Defendant-Bank was debarred from filing written statement, vide order 18.10.2012.

4. Record also shows that ad-interim injunction in favour of the plaintiff was confirmed on 11.12.2013, where after, pursuant to the directions of this Court, plaintiff filed his affidavit in ex-parte proof, and was subsequently examined and produced the following documents:-

<u>NAME OF DOCUMENTS</u>		<u>EXHIBIT NO.</u>
1.	Ex-parte proof.	PW/1.
2.	Plaint Suit No.11/2008.	X.
3.	Roznamacha Report dt.14.11.2007.	X-1.
4.	True translation of FIR No.467/2010 dated 28.07.2010.	PW/2.
5.	Final Report. No. 158/2011 Dt. 21.09.2011 in FIR No. 467/2101.	PW/3.
6.	Translation FIR 662/10 dt.13.11.2010.	PW/4.
7.	Translation FIR 597/10 dt.20.07.2010.	PW/5.
8.	Translation FIR 520/10 dt.02.09.2010.	X-3.
9.	Order dt. 20.08.2011 passed by High Court in Protective Bail Appl. No. 961/2011.	X-4.
10.	Order dt. 06.09.2011 passed by First ADJ in Cr. Bail Appl. No. 896/2011.	X-5.
11.	Order dt. 03.10.2011 passed by First ADJ in Cr. Bail Appl. No. 896/2011.	X-6.
12.	Order dt.13.10.2011 passed by High Court in Protective Bail Appl. No.1161/2011.	X-7.
13.	Bank statement of Bank Al-Habib in respect of bank account No. 1019-0081-00124301-3 for period from 29.11.2002 to 07.08.2011.	X-8.
14.	Application of plaintiff for bank statement dated 08.08.2011.	X-9.
15.	Letter dt. 08.02.2010 written by Riazuddin to Manager of Bank Al-Habib for reactivation of plaintiff's account.	PW/6.
16.	Letter dt.18.08.2011 by the Bank Manager to Boat Basin Police.	PW/7.
17.	True Copy of Cheque No. 3103179 dated 31.08.2010 with plaintiff's forge signature, a/w returned memo.	PW/8.
18.	True Copy of Cheque No. 3103176 dated 04.03.2010 with plaintiff's forge signature, a/w returned memo.	PW/9
19.	True Copy of Cheque No. 3103177 dated 04.03.2010 with plaintiff's forge signature, a/w returned memo.	PW/10
20.	True Copy of Cheque No. 3103178 dated 04.03.2010 with plaintiff's forge signature, a/w returned memo.	PW/11

21.	Letter dt. 30.11.2010 by the Bank to ASI K-1268. INV Officer CCP, Karachi	PW/12
22.	Examination report dt.10.9.11 by the Office of Assistant Inspector General of Police Forensic Division Sindh, Karachi.	X-10
23.	Specimen signatures of the plaintiff obtained in case crime No. 467/2010	PW/13 to 15.
24.	Examination report dt.29.6.11 by the Office of Assistant Inspector General of Police Forensic Division Sindh, Karachi. In respect case crime No. 662/2010	PW/16 to 19.
25.	Translation of final reports dated 27.09.2011 in case crime No. 662.	PW/20.
26.	Report u/s 168 Cr.P.C. dt. 26.09.2011.	PW/21
27.	Charge sheet dated 28.12.2010.	PW/22.
28.	Judgment dated 22.12.2012 in Cr. Case No.4112/2010	PW/23.
29.	Judgment dt.22.12.2012	PW/24.

5. Learned counsel for the plaintiff during the course of his arguments while reiterating the contents of the plaint has contended that forgery on the plaintiff's subject cheques were proved from the reports dated 10.09.2011 and 26.09.2011, which were submitted by Assistant Inspector General of Police Forensic Division, Sindh, Karachi, in respect of investigation in FIR No. 467/2010 and 662/2010 and pursuant to the said report, the plaintiff was acquitted in the cases registered against him under FIRs No. 467/2010 and 662/2010. Learned counsel further contended that no appeal has been preferred against the said judgments, hence the same have attained finality. He has further contended that in the present case the defendants, despite being served, have failed to come forward and contest the case, hence, the stance of the plaintiff has gone unrebutted and un-contested and the plaintiff is entitled to the relieves as prayed. In support of the plaintiff's stance in the case, learned counsel has relied upon the following case law:-

- (i) **2009 PLC (C.S.) 824** Messrs HOLY FAMILY HOSPITAL through Administrator v. GOVERNMENT OF SINDH and another
- (ii) **2000 CLC 1722** CIVIL AVIATION AUTHORITY v. Messrs PROVIDENCE AVIATION (PVT.) LTD.
- (iii) **2001 MLD 1257** Mst. BUSHRA SADIQ v. KARACHI DEVELOPMENT through Director General and other.

6. Though the present proceedings are ex-parte proceedings against the defendants and as such the plea of the plaintiff has gone un-rebutted and unchallenged, yet the court being custodian of the rights of litigants, is required to dispense with justice keeping in view their entitlement. As it is well settled that every Court is required to apply its mind before passing any order or judgment notwithstanding the fact that no person has appeared before it to oppose such an order or that the person who wanted to oppose was not allowed to oppose because he failed to fulfill the requirement of law. Reliance in this regard can be placed on the case of Haji ALI KHAN & COMPANY, ABBOTTABAD and 8 others v. M/s. ALLIED BANK OF PAKISTAN LIMITED, ABBOTTABAD (PLD 1995 SC 362).

7. Accordingly, I have gone through the evidence produced in the matter and have seen the Plaintiff's affidavit-in-ex parte proof as well as the documents exhibited in evidence. From the record, it appears that the plaintiff through instant proceedings has sought declaration and cancellation of his cheques bearing No. 3103176, 3103177, 3103178, 3103179, , 3103174, 3103175 and 3103180 all drawn on Bank Al-Habib, Clifton Branch, Karachi, from bank account No.0081-00124-01-3. Besides this, the plaintiff has also sought cancellation of all cheques in respect of UBL, Clifton Branch, Karachi. The said cheques were stolen and subsequently by putting false signatures of the plaintiff presented in the bank and got them dishonored. After getting the said cheques dishonored, FIRs bearing No. 467/2010 dated 28.07.2010, 662/2010 dated 13.11.2010 and 597/2010 dated 03.03.2010 were registered under Section 489-F PPC against the plaintiff. From the record, it reveals that there are disputes inter se amongst the plaintiff (Abdul Aziz) and his brother namely Abdul Wahab and Abdul Rehman, in respect of properties and businesses and in this regard litigations are pending amongst them before this Court. Record also reveals that the plaintiff on 14.11.2007 lodged a complaint [marked as X-1] bearing entry No.44 with police station Boat Basin, Karachi, inter alia, for loss of two (2) cheque books of bank account No. 1019-0081-001243-01-3 maintained in Bank Al-Habib and UBL, both at Clifton Branch Karachi, which the plaintiff used to keep along with other

valuable, i.e. property documents in his office located at the premises where plaintiff and his other brother had been carrying out their businesses. Record also reveals that the investigation were carried out in the case registered under the abovementioned FIRs, wherein Examination Report dated 10.09.2011 [marked X-10] submitted by the Assistant Inspector General of Police, Forensic Division, Sindh, Karachi, reflects that the signatures of the plaintiff on the subject cheques and other documents were different from the admitted signature. Relevant portion of the said report for the sake of ready reference is reproduced as under:

“03. OPINION.

The examination/comparison of the documents have revealed that the questioned signatures of three cheques nos. 3103176, 3103177 and 3103178 dts. 04.03.2010 including on re-activation of dormant marked as ‘Q-1 to Q-4, are dissimilar with those of the specimen/routine signatures of Abdul Aziz marked as S-1 to S-27 and R-1 to R-3.”

Another examination report dated 26.09.2011 [Exh.PW/16] was also submitted by Assistant Inspector General of Police Forensic Division, Sindh, Karachi {in another case}, reflects that the signatures of the plaintiff on the subject cheque bearing No. 3103179 and other documents were different from the admitted signature. Relevant portion of the said report for the sake of ready reference is also reproduced as under:

“03. OPINION.

The examination/comparison of the documents have revealed that the questioned signatures on cheques nos. 3103179, dt. 31.08.2010 including on re-activation of dormant marked as ‘Q-1 to Q-4, are dissimilar with those of the specimen/routine signatures of Abdul Aziz marked as S-1 to S-27 and R-1 to R-3.”

Record also reveals that pursuant to the investigations in the cases registered under the above said FIRs, Reports under Section 168 Cr.P.C. [Exh.PW/21] were submitted after completing the investigation have sought approval for B class. And in pursuance thereof the judgments dated 22.12.2012[Exh. PW/23] in criminal case No. 4112 of 2010 initiated under FIR 467/2010 and dated 22.12.2012 [Exh.PW/24] in criminal case No. 222/2011, initiated under FIR No. 662/2010, were passed whereby the plaintiff was acquitted in both the cases.

8. The plaint, the affidavit-in-ex-parte proof and the examination-in-chief of the plaintiff are on oath and remain unrebutted. Moreover, from the record, it is apparent that the plaintiff's bank account No. 1019-0081-001243-01-3, maintained in Bank Al-Habib was reactivated through bogus signature of the plaintiff and subsequently subject cheques were issued from the stolen cheque book of Bank Al-Habib, Clifton Branch, Karachi relating to the bank account No. 1019-0081-001243-01-3 and got the same bounced with malafide intentions.

9. In view of the above discussion and the evidence adduced by the plaintiff in support of his stance, I am of the opinion that the plaintiff has established his case for the relieves claimed in the present case only in respect of subject cheques issued from the stolen cheque book of Bank Al-Habib, Clifton Branch, Karachi, relating to the bank account No. 1019-0081-001243-01-3.

In the circumstances, and in absence of any rebuttal of the evidence produced by the plaintiff in the matter, present suit is decreed in terms of prayers clauses (A) to (E), only in respect of subject cheques drawn from Bank Al-Habib, Clifton Branch, Karachi.

JUDGE

Karachi
Dated 11.10.2018

*Jamil****