

## IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1078 of 2002

*[Inamullah Shaikh vs. M/s. City Securities and another]*

None present for the parties.

Date of hearing : 20.02.2019

Date of Judgment : 20.02.2019

### **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** The Plaintiff has filed this suit primarily for Recovery of Rs.41,33,750/- (*Rupees Forty One Lac Thirty Three Thousand Seven Hundred Fifty Only*) against the Defendants, with the following prayer clause\_

***“It is, therefore, respectfully prayed that this Hon’ble Court may be pleased to pass Judgment and Decree in favour of the Plaintiff and against the Defendants as under: -***

- i) ***For recovery of a sum of Rs.11,33,750/- against the Defendants with mark-up rate from the date of filing of this suit till realization of the principal amount***
- ii) ***Rs.30,00,000/- as damages against the Defendants with interest at the mark-up rate with quarterly rest from the date of suit till payment.***
- iii) ***Cost of the suit.***
- iv) ***Any other relief or reliefs as this Hon’ble Court may deem fit and proper under the circumstances.”***

2. The claim of the Plaintiff is that he being a businessman purchased the shares of different entities from the Defendants as the Defendants are the stock brokers. Further submitted that the Plaintiff also expressed his desire to

purchase 50,000 shares of Hub Power Company on 21.08.2002 at the rate of Rs.26.95 and paid to the Defendants a sum of Rs.8,00,000/- which the Defendants duly acknowledged. It is further averred that the Defendants demanded security due to fluctuation price of shares in the market, which the Plaintiff gave to Defendants, but till date they have failed to transfer the shares purchased by the Plaintiff against consideration from them inspite of repeated demands. Plaintiff also sent notices but of no avail.

3. Upon service of summons, the Defendants No.1 and 2 have contested the claim of Plaintiff by filing their joint Written Statement. They refuted the claim of Plaintiff by averring that in fact Plaintiff was indebted in the sum of Rs.753,993/- (*Rupees Seven Lac Fifty Three Thousand Nine Hundred Ninety Three Only*) and before entering into any further transaction by the Defendants on behalf of Plaintiff, the latter was asked to furnish security but the Plaintiff did not furnish the required security, as such, no further transaction took place. Maintainability of present *lis* is also seriously challenged, *inter alia*, that this Court lacks pecuniary jurisdiction.

4. On 16.02.2004, following Issues were adopted by the Court as Court Issues\_

- “1. Whether the suit is not maintainable under the law?***
- 2. Whether Civil Court has got any jurisdiction to try the suit without first invoking jurisdiction of Karachi Stock Exchange by the parties of the suit as required by the bylaws of Karachi Stock Exchange?***
- 3. Whether the Plaintiff has any cause of action to file present suit against the Defendants?***
- 4. Whether the Plaintiff has over valued the suit with a view to bring it within the jurisdiction of this Hon’ble Court?***
- 5. Whether the Plaintiff is entitled for recovery of a sum of Rs.11,33,750/- and Rs.30,00,000/- as damages against the Defendants?***

6. *Whether the Plaintiff has performed his part of the contract and is ready and willing to perform his part of contract, if so what its effect?*
7. *Whether the Defendants were obliged under the law to purchase 50,000 Hub Power's shares of Plaintiff?*
8. *Whether the Plaintiff has paid Rs.800,000/- to the Defendants for purchase of 50,000 Hub Powers shares?*
9. *Whether the Plaintiff is entitled to the relief claimed?*
10. *What should the decree be?"*
11. *Reliefs?"*

5. After settlement of Issues, the matter was adjourned for want of evidence. On 28.11.2018, intimation notice to the parties as well as their counsel was issued but no one has come forward to proceed with the matter. On 07.02.2019, despite intimation notice, no one was present on behalf of the parties, therefore, the matter was adjourned to 20.02.2019 with a note of caution that if on the next date of hearing, learned counsel for Plaintiff fails to appear and lead the evidence then necessary orders may be passed. Today, a fixed date was given enabling the Plaintiff to adduce the evidence but despite repeated calls no one is present to lead the evidence.

6. The Plaintiff's side has not pursued the matter diligently nor has come forward to lead the evidence, *inter alia*, at least Plaintiff could have examined himself, but he did not. It appears that the Plaintiff has lost interest in the matter. Unnecessarily a case for want of evidence should not be kept pending if the conduct of the parties does not seem to be *bona fide*, as is the present case, in view of the above discussion.

7. It is an established Rule that pleadings themselves cannot be considered as evidence unless the Plaintiff or Defendant, as the case may be, enters the witness Box and lead the evidence in support of his / her claim or defence. In the present case, despite providing ample opportunities, the Plaintiff has not

come forward to testify and discharge the onus to proof in respect of the claim. The reported decision of Hon'ble Supreme Court handed down in the case of Rana Tanveer Khan v. Naseer Khan-2015 SCMR page-1401, is relevant. Since Plaintiff has failed to prove the allegations against the Defendants, thus the former (Plaintiff) is not entitled to any relief.

8. Consequently, this suit is dismissed, with no order as to costs.

**JUDGE**

**Dated 20.02.2019**  
M.Javid.PA