

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit NO.344 OF 2007

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

For Examination of parties/settlement of issues.

02-03-2018

None present for the Plaintiff.

Mr. Muhammad Mustafa Hussain, Advocate for Defendant No.1.

ADNAN IQBAL CHAUDHRY J. :- It is the plaintiff's case essentially that on determination of his business with the defendant, he does not owe the defendant more than Rs.643,000 – ie., for relief that can be classified as one for accounts. On the other hand, it is the case of the defendant (the other defendants being struck off on 23-4-2008) that the business between him and the plaintiff had culminated into an 'Agreement of Investment' dated 26-02-2007 whereunder the plaintiff had acknowledged that he owed a sum of Rs.3,160,000 to the defendant and had agreed to pay the same in installments along with profit. The defendant has thus made a counter-claim against the plaintiff for Rs.3,160,000 plus profit thereon, and for damages for defamation. Given the contents of the said counter-claim, it is essentially a counter-suit. In his reply to the counter-suit, the plaintiff has not denied his signatures on the Agreement of Investment dated 26-2-2017, nor on the receipt of Rs.3,160,000/-, nor has he denied giving the defendant the cheques mentioned in para 1 of the counter-suit *albeit* he has stated that the cheque for Rs.3,160,000 dated 15-2-2008 was taken from him by the defendant 'forcibly'. He has nonetheless admitted liability to the extent of Rs.643,000/-.

None has appeared for the plaintiff on the last four dates of hearing when the case was fixed for examination

of parties and settlement of issues. Today again, when the suit has been fixed for the same purpose, while the defendant's counsel is present, none is present for the plaintiff. In the circumstances, the provision of Order IX Rule 8 C.P.C. is attracted, and **the plaintiff's suit is hereby dismissed for non-prosecution.**

Coming to the counter-suit of the defendant, since the plaintiff has admitted liability to the extent of Rs.643,000 I am inclined to pass a preliminary judgment and decree in favor of the defendant and against the plaintiff for a sum of Rs.643,000/- while leaving the remainder of the defendant's counter-claim to be decided after the recording of evidence. I am conscious that the nature of the preliminary decree being passed herein is not dealt with by the provisions of Order XX Rules 12 to 6 and 18 C.P.C., but in the case of *Aijaz Haroon v. Inam Durrani* (PLD 1989 Kar 304) this Court had held that the said provisions are not exhaustive of the instances where a preliminary decree can be passed and that a preliminary decree can nonetheless be passed "*...where the requirements of a case so dictate under section 2(2) C.P.C., which is the basic provision in the Code in that behalf*". Reliance can also be placed on the case of *Bai Chanchal v. Syed Jalaluddin* decided by the Supreme Court of India (AIR 1971 SC 1081) wherein while noticing the provisions of Order XXIII Rule 3 C.P.C. and Order XII Rule 6 C.P.C. it was held that, "*Thus, it is clear that in the same suit, there can be more than one decree passed at different stages.*" **Therefore, the office is directed to draw up a preliminary decree in the counter-suit as aforesaid.**

With regards to the remainder of the defendant's claim in the counter-suit, the following issues arising from the counter-claim and the plaintiff's reply thereto are settled:

1. Whether the 'Agreement of Investment' dated 26-2-2007 is an acknowledgment by the plaintiff to pay Rs. 3,160,000 to the defendant ? If so, what amount stands paid by the plaintiff to the defendant ?
2. Whether the stipulation in the 'Agreement of Investment' dated 26-2-2007 to pay profit on the principal amount is lawful ? If yes, what amount of profit is payable in addition to the sum of Rs. 3,160,000 ?
3. Whether cheque No.CA 3320043 dated 15.2.2008 for Rs.3,160,000/- was taken by the defendant from the plaintiff by force ?
4. Whether the plaintiff is liable to the defendant for defamation ? If so, to what damages is the defendant entitled to ?
5. What should the decree be?

List of witnesses to be filed within seven days and list of documents within one month. For considering appointing a Commissioner for recording evidence, to come up after two weeks.

J U D G E