

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Appeal No. S – 11 of 2008

(Mst. Kalsoom Qazi V/s Riaz Ahmed and others)

Date of Hearing: **14-03-2022**

Date of Judgment: **14-03-2022**

Mr. Nishad Ali Shaikh, Associate of Mr. A.M Mobeen Khan, Advocate for the Appellant.

Nemo for the Respondents.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – This 1st Appeal is directed against Judgment dated 07.06.2008, passed by Additional District Judge Gambat in Summary Suit No.06 of 2007 (**Mst. Kalsoom v. Riaz Ahmed and another**), whereby the Summary Suit has been dismissed.

2. Appellant’s Counsel has chosen to file written arguments; whereas, pursuant to order dated 16.12.2021, publication has been made in ‘Daily Kawish’ dated 28.02.2022 and notice has also been issued through various modes including courier, but nobody has turned upon behalf of the Respondents and they stand duly served; hence declared *ex parte*.

3. I have perused the arguments filed on behalf of the Appellant and so also the record available before the Court. It appears that the Appellant had filed a Summary Suit for recovery of Rs.45,000/- with a plea that the Respondent No.2 had requested for loan of Rs.1,50,000/- and thereafter returned an amount of Rs.100,000/- on 18.01.2007 and 13.06.2007 by bank transfer of Rs.50,000/- each; whereas, also paid Rs. 5000/- in cash and for rest of Rs.45,000/- issued a cheque bearing No.461531 from account No.000476-1 dated 15.07.2007, which on presentation was dishonored; hence Summary Suit in hand.

4. The Respondents filed leave to defend application which was granted and the learned Trial Court after recording of evidence has been pleased to dismiss the Suit of the Appellant in the following terms:

“ISSUE NO.1

9. The plaintiff claims that she gave loan of Rs:1,50,000/- to the defendant while the defendant denied such version and he states that it

was loan of Rs:45,000/- on interest basis and he executed cheque for principal amount and paid remaining amount and amount of cheque was also paid through bank but the cheque remained with plaintiff which she is now using against him with malafides intention.

10. It is admitted position that amount of Rs: 50,000/- was deposited in the account of plaintiff on 18.1.2007 and 13.6.2007 and this total amount of Rs:1,00,000/- was on behalf of defendant.

11. D.W-3 Muhammad Akram who is Manager of United Bank Gambat has confirmed such version of plaintiff in his evidence at Ex:21 and he further added hat on 18.1.2007 he received cheque of Rs:50,000/- from Mst: Kalsoom in the name of Niaz Ahmed which was encashed on the same day. This fact has not been denied by plaintiff and this gives support to defendants case that he called amount through account of plaintiff and same amount of Rs:50,000/- was given by plaintiff to Niaz Ahmed on his behalf.

12. If the version of the plaintiff is believed that entire amount of Rs:1,00,000/- deposited in her account on 18.1.2007 and 13.6.2007 was towards loan of Rs:1,50,000/- extended by her to the defendant then question arises as to why she gave amount of Rs:50,000/- to Niaz for which defendant claims that this amount was his amount and it was called through plaintiff because of facility of online account and said amount of Rs:50,000/- was returned to him (Defendant No:1) through the cheque in the name of Niaz Ahmed. There is no evidence on behalf of plaintiff to believe that amount of Rs:50,000/- given to Niaz Ahmed through cheque was consumed by plaintiff for her own. Thus this payment of Rs:50,000/- goes towards defendant No:1.

13. Now remains only amount of Rs:50,000/- deposited in account of plaintiff on 13.6.2007 which admittedly is not withdrawn from the account of plaintiff. This amount appears to have been given to plaintiff on account of loan.

14. The plaintiff has mentioned in paragraph-5 of the plaint that defendant No:1 filed civil suit in the court of Senior Civil Judge Gambat against plaintiff to prevent the encashment of the cheque No:465131 dated:15.7.2007 amounting to Rs:50,000/-. The defendant has also admitted this fact in her affidavit (See Para No:8 of W.S of affidavit) wherein he has stated that he had filed the suit but the plaint was returned to him vide order dated:6.9.2007.

15. The copy of plaint of suit No:82/2007 has not been produced by either party but it remains fact that this suit was filed earlier to the filing of present summary suit and this fact however reveals that defendant had no malafides intention to deceive the plaintiff because if he had malafides then he would not have knocked the door of civil court for getting cheque back before presentation in the concerned Bank.

16. It has been discussed in preceding paragraph No:11 and 12 that out of Rs:1,00,000/- received by plaintiff through her Bank account on 18.1.2007 and 13.6.2007 amount of Rs:50,000/- was returned by her while remaining amount of Rs:50,000/- remained with plaintiff. The only inference which can be drawn from this fact is that amount of Rs.50,000/- returned by plaintiff on 18.1.2007 was amount of defendant called through account of plaintiff and this further proves the version of defendant that he paid Rs:50,000/- to plaintiff on 13.06.2007 account of loan received by him.

17. In view of above discussions and reasons I am clear in my mind that it was loan of Rs:45,000/- on interest and not Rs:1,50,000/- and that amount was given to plaintiff and no amount is outstanding against defendant and accordingly issue No:1 is replied in negative.

ISSUE NO:2.

18. As a result of my findings on issue No:1 the plaintiff has failed to prove her case against the defendants. Hence the suit of the plaintiff is dismissed with no order as to costs”.

5. Perusal of aforesaid findings clearly reflects that insofar as the appellant is concerned, she miserably failed to establish her case inasmuch the cheque in question was not in respect of loan which was allegedly granted to the Respondents; rather the amount already stood paid and instead of returning the cheque, its encashment was sought. DW-3 Muhammad Akram, Manager, United Bank Limited, Gambat was called in evidence at Exh.21, wherein he stated that appellant issued cheque of Rs.50,000- in the name of Niaz Ahmed, which was en-cashed on the same date and such fact was never denied; whereas, the Respondents’ case is that said payment of Rs.50,000/- was in fact made to the Respondents in the name of Niaz Ahmed and on this account, the Appellant failed to establish that a loan of Rs.1,50,000/- was given and out of which Rs.100,000/- has been repaid to her. This was so held by the Trial Court on the ground that why an amount of Rs.50,000/- was returned to Niaz Ahmed, which the Respondents claimed to be their amount and was only routed through the Appellant by availing the online facility available to her bank account. In the written arguments as well, appellant’s Counsel has not been able to first establish that an amount of Rs.1,50,000/-was given out of which Rs.100,000/- was repaid; whereas, there is no on record to controvert the stance of Respondents as to returning of Rs.50,000/- by the Appellant herself to them in the name of Niaz Ahmed Bhatti. Therefore, from perusal of the record and evidence led by the parties it appears that the Appellant had failed to prove the case; hence the Trial Court was fully justified in dismissing the Summary Suit of the appellant.

6. In view of hereinabove facts and circumstances of this case, no case for interference is made out by the Appellant and therefore by means of a short order, this 1st Appeal was **dismissed** in the earlier part of the day and these are the reasons thereof.

JUDGE

Ahmad