

# IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1778 of 2014

[Muhammad Iqbal *versus* Mr. Zafar Hussain and others]

Last Date of hearing: 24.12.2020.

Date of Decision : 24.06.2021.

Plaintiff : Muhammad Iqbal, in person.

Defendants : Nemo.

## JUDGMENT

**Muhammad Faisal Kamal Alam, J:-** Plaintiff has filed this suit against the Defendants, who are his real brothers, claiming the following relief\_

- a. Grant a judgment decree in favour of the above named plaintiff against the defendants only in the sum of Rs.2 Crore approximately on accounts of the amount sent by the plaintiff to the defendants to invest / purchase property in Karachi etc.*
- b. Direct the defendants to pay damages in the sum of Rs.200 Crore on account of mental / physical torture agony sustained by the plaintiff due to unlawful acts / committed by defendants.*
- c. Grant the cost of the suit.*

2. Summons were issued against Defendants and vide Diary of Deputy Registrar (O.S) dated 20.11.2014, Plaintiff produced TCS confirmation report showing the summons were delivered, hence, service upon Defendants was held good and matter was adjourned for filing of Written Statement. On 18.05.2015, when matter was fixed in Court, the service upon Defendants was ordered to be effected through publication, which was done in newspaper Daily 'Jang' in its issue of 11.06.2015, but in spite of that Defendants neither appeared nor filed their Written Statement(s), hence on 07.12.2015, they were ordered to be proceeded *ex parte*.

3. Only Plaintiff led the evidence in support of his claim. Record shows that on two dates, 05.03.2019 and 19.03.2019, Ghazanfar Hussain, younger brother of Plaintiff, also appeared as a supporting witness. On 05.03.2019, after partly recording the evidence of Plaintiff, the matter was adjourned by observing that evidence of said Ghazanfar Hussain will be recorded on next date of hearing; however, on that date, he could not testify, because work was suspended. Thereafter, the evidence of Plaintiff was concluded, but the said supporting witness never entered the witness box. It is also necessary to mention that evidence of Plaintiff was recorded in two stages; as mentioned above and on 24.11.2020, he produced exhibit P.W.-1/15 to P.W.-1/20 and articles X & X-1, which are the following documents\_

Passports (of Plaintiffs)	Exhibits P.W.-1/15 to P.W.-1/18
Allotment Letter in respect of property being No.71/71-B	Exhibit P.W.-1/19
Allotment Letter in respect of property being No.80/71-A	Exhibit P.W.-1/20
Transfer Order of Plot No.LS-9	Article X
Transfer Order of Plot No.LS-8	Article X-1

4. On 24.11.2020, it was deemed appropriate that a Report be called from the Karachi Development Authority (“**KDA**”) with regard to following two properties, regarding which the Plaintiff claims that same were purchased with the funds of Plaintiff, but instead of purchasing these properties in the name of Plaintiff, Defendants No.1 and 2, fraudulently purchased the same in the name of Defendant No.1.

5. In compliance of the above directions, Mr. Khursheed Javed, Advocate, appeared in the matter and submitted the Report dated 16.12.2020, signed by Additional Director Land of KDA, so also the afore-named learned counsel. This Report has a caption ‘Verification of Documents’. According to this Report, the first Plot LS-08, in Block-15,

measuring 60 Square Yards, Scheme-36, Gulistan-e-Jauhar, Karachi, was initially allotted in general public auction held on 29.12.1991 to Mr. Muhammad Ayub Khan son of Haji Suleman and eventually, a Sub-Power of Attorney was executed in the name of Defendant No.2 (Mehmood son of Muhammad Hussain) and finally it was transferred in the name of Defendant No.1 – Zafar Hussain; *whereas*, the other Plot LS-09, Block-15, measuring 60 Square Yards, Scheme-36, Gulistan-e-Jauhar, Karachi, also through different process came to vest in Defendant No.1. The Transfer Orders in respect of both the plots were issued in favour of Defendant No.1 on 28.04.2000, whereafter, both plots were amalgamated and the Land Department of KDA issued a letter dated 19.07.2008 to Defendant No.1.

6. From the above Report, it is quite apparent that both properties were never purchased in the name of present Plaintiff, nor the Plaintiff has sought any specific relief of declaration in respect of the said properties, hence, claim in this regard has no value.

7. Adverting to the monetary claim as mentioned in the prayer clause. Plaintiff has claimed a sum of Rupees Two Crores on account of different amounts sent by Plaintiff to Defendants for the investment in properties and *secondly*, Plaintiff has claimed damages in the sum of Rupees Two Hundred Crore on account of mental / physical torture and agony sustained by Plaintiff due to wrongdoings and illegalities of Defendants.

8. Although, testimony of Plaintiff has gone unchallenged, yet Court is clothed with an obligation to decide the matter in accordance with law and grant only that relief to which Plaintiff is entitled, after appraisal of the evidence.

9. This fact cannot be ignored that all the monies sent through banking channel from abroad, is the transaction of 1990's. Without going into the

admissibility of documents produced in the evidence, relating to remittances sent from abroad by Plaintiff (as claimed by him), no claim regarding the same can be entertained in this *Lis*, filed on 24.09.2014. As per the pleadings, paragraph-2 of the plaint, Plaintiff came back to Karachi in the year 2001; then he should have taken the legal steps / proceedings at the relevant time, if he had any grievance against Defendants, but he did not. Hence, filing a suit after thirteen years from the date when he arrived at Karachi (in the year 2001), relating to the remittances, he had sent in nineties, that is, more than a decade back [from the date of filing the present *Lis*], such claim cannot be legally accepted in the present proceeding. The second reason for declining the claim of Plaintiff is that in his pleadings as well as in his testimony, he has produced two very important documents, **viz. P.W.-1/12 and P.W.-1/13**, which are 'Iqrarnama' for payment of money through cheque. Originals of these documents are produced by the Plaintiff as they were in his possession. Perusal of these documents shows that claim of present Plaintiff was settled by the Defendant No.1 through payment of two cheques bearing No.0148477 and 0148480 dated 16<sup>th</sup> February and 16<sup>th</sup> May, respectively, both of year 2008, drawn on United Bank Limited. The first cheque was for an amount of Rupees Three Hundred Thousand and the second one was for Rupees Two Hundred Thousand. It is also stated in P.W.-1/13 that cheques were issued from the Bank account of Defendant No.3 –Mujahid Hussain and Ghazanfar Hussain, who was present one a couple of dates but then he did not appear to give evidence. It is specifically mentioned that if these cheques are dishonoured, then Defendant No.1 shall be liable. **Interestingly, the first document – P.W.-1/12 was witnessed by Muhammad Hussain, that is, father of Plaintiff and Defendants** and by Ghazanfar Hussain, the afore-named supporting witness of Plaintiff, whose testimony could not be recorded. Both documents are also signed by present Plaintiff and are of

**06.02.2008 and 08.02.2008.** It means that claim of Plaintiff was settled under these two documents by his family / Defendants. If both cheques were dishonoured, then Plaintiff had the remedy in Civil and Criminal jurisdiction, but nothing is on record to show that those cheques were dishonoured. The Legal Notices sent by Plaintiff to Defendants, which are part of record, do not mention this fact that whether those cheques were dishonored. It means that way back in the year 2008, monetary claim of Plaintiff was settled. This can be positively presumed as envisaged in Article 129 of the Qanoon-e-Shahadat Order, 1984, *inter alia*, stating that ***“the Court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, .....”*** . Hence, he is not entitled to claim Rupees Two Crores towards investment for purchasing property in Karachi.

10. With regard to the claim of damages of Rupees Two Hundred Crores, for suffering mental agony and physical torture, no evidence has been led by the Plaintiff in support of the same. If Plaintiff was physically assaulted, the first thing, which comes to mind, is that whether any complaint was lodged with the Police? Plaintiff has not led any evidence, nor brought on record anything about the fact that he was physically tortured or suffered mental agony. Thus, this claim also cannot be accepted in absence of positive evidence, as onus to prove the same is on Plaintiff, but he failed to discharge it.

11. In view of the above discussion, the suit of Plaintiff is dismissed. Parties to bear their respective costs.

**Judge**

**Karachi,**  
**Dated: 24.06.2021.**

*Riaz / P.S.*