

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
1st. Appeal No. S-48 of 2018

Date of hearing	Order with signature of Judge
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Applicant : Zahid Nawaz son of Ali Nawaz Shar
Advocate in person.

Respondent: Muhammad Waryam S/O Turab Ali Shar,
Through Mr. Zulifqar Ali Leghari, Advocate.

Date of Hearing: 31.03.2023.

J U D G M E N T.

ZULIFQAR AHMAD KHAN. This appeal arises out of the Judgment dated 19.11.2018 passed by learned Additional District Judge-II Khairpur in Summary Suit No. 31/2017 which was filed by the present appellant for the recovery of amount of Rs. 1,000,000/- alleging that he had sold Tractor FIAT-480, Model 2005, Engine No.401996, Chasis No.1998905, B-4, along with one Trolley and one Thrasher to the respondent in the total sum of Rs. 1,100,000/- on 01.08.2016 and the respondent (buyer) paid only Rs. 100,000/- in cash and issued a cheque bearing No.772279 dated 01.02.2017 of his account No. 1109-1 of National Bank of Pakistan Choondiko Branch in the sum of Rs.1,000,000/- (one million). It was alleged that the said transaction took place in the presence of Majid Nawaz and Ali Nawaz Shar who are his brother and father, respectively. Seemingly when the cheque was presented to the Bank it was dishonoured with the note that there were insufficient funds; alteration required full signatures and that it was a joint account operated by the Chairman and General Secretary of SMC Government Primary School Muhammad Waryam, thus joint signature of General Secretary and rubber stamp were also required.

2. Leave to appeal was granted to the respondent and the matter was then properly heard and decided against the appellant holding that plaintiff could not prove that the defendant issued the said cheque in

respect of the transaction which was alleged by the appellant with regards to sale of the Tractor etc.

3. Appellant Zahid Nawaz who himself is an Advocate by profession alleged that trial Court has failed to appreciate the facts of the case and on the ground that there were already civil as well as criminal disputes between the parties, thus in the presence of such an enmity, it was very unlikely that any civil transaction could take place between the parties. He also stated that the error in the model of the Tractor which was observed by the trial Court was "too technical" and that the respondent has cheated him by providing the cheque which was dis-honoured, therefore, he should be compensated by making payment of the differential amount of Rs. 1,000,000/- (one million).

4. Mr. Zulifqar Ali Leghari counsel for the respondent on the contrary stated that the parties were in litigation with each other and brother of the appellant namely Majid Nawaz was serving in the same school and somehow obtained the subject cheque whereupon alteration was made and that even the cheque did not bear the signature of both the account holders nor there was any rubber stamp of the school, and there being civil as well as criminal disputes between the parties, it was very unlikely that the appellant would have made a civil transaction of selling a valuable Tractor and Thrasher etc to his enemy/respondent. It was stated that the entire story was cooked-up upon a blank cheque having been removed from the account of the school by the brother of the Appellant.

5. Heard the parties and perused the record.

6. At the very outset appellant was enquired as to substantiate his claim that he was owner the tractor in question and what was registration number of the tractor and whether there were documents pertaining to the tractor and whether the said documents were ever presented to the trial Court to which appellant himself stated that all the original documents pertaining to the Tractor alongwith Trolley and Thrasher were handed out to the respondent and he has even no copy

thereof which claim, as denied from the evidence presented before the trial Court, in my view is also devoid of any merit. Court further enquired from the appellant who is appearing in person and is an advocate by profession that how could he be negligent enough to hand out a valuable asset (which he failed to fully describe during his evidence as to model of the tractor and date of transaction) upon payment of Rs. 100,000/- only and where the balance was to be paid through a cheque which was post-dated by four months. The said question has been decided by Issue No.1 where the trial Court has observed that not only that the witnesses were related to the appellant as well as the appellant failed to examine his father who was one of the witnesses as he only brought his brother to the witness box. It was also the case that the plaintiff has himself contracted sale transaction in his cross examination and failed to produce any evidence of such transaction or that having received Rs.100,000/- as cash by issuing any receipt there-against. He also admits that there is over-writing on the cheque and that one Muhammad Saleh Chandio filed suit against him, his father and others where the present defendant is a witness of said plaintiff (Muhammad Saleh Chandio) and that he has also lodged FIR bearing No.62/2017 against the said witness i.e defendant which was disposed of as class 'B', that proved enmity between the parties and when there was such an enmity, it not understandable that howcome he delivered possession of the Tractor along with Trolley and Thrasher upon receipt of only Rs.100,000/- while believing that the balance would be paid by a post-dated cheque. The story does not satisfy logic.

To me no illegality is apparent from the Judgment of the trial Court which fully appreciated the facts and the evidence brought before it and where the suit was rightly dismissed. No case of intervention is thus made through the present appeal, which is accordingly dismissed.

J U D G E

