

**IN THE HIGH COURT OF SINDH AT KARACHI**

I.A No. 16 of 2023

Present:

Mr. Justice Irfan Saadat Khan  
Justice Mrs. Kausar Sultana Hussain

Muhammad Irfan Hasnain,  
Appellant:

Ms. Durdana Tanvweer,  
Advocate for the Appellant.

..Vs..

Syed Imran Ali  
Respondent No.1:

Mr. Iftikhar Javed Qazi, Advocate.

Learned Vth Additonal  
District & Sessions Judge  
Central, Karachi.

Nemo for Respondent No.2.

Date of hearing: 03.04.2023.

Date of decision: 06.04.2023.

**J U D G M E N T**

**IRFAN SAADAT KHAN, J.** This First Appeal (1<sup>st</sup> Appeal) has been filed against the judgment dated 20.01.2023 passed in Summary Suit No.91/2021 by the Vth Additional District Judge, Karachi Central.

2. Briefly stated, the facts of the case are that the Respondent No.1 (hereinafter referred to as Respondent) filed the above mentioned summary suit under Order XXXVII CPC for recovery of an amount of Rs.11,900,000/- on the ground that on the instigation of the present Appellant, the Respondent invested the above amount in the Appellant's business on the promise that he will pay profit on the invested amount to the Respondent. However, subsequently when either no profit was paid or the profit paid was less than the agreed amount, the Respondent demanded from the Appellant to return the invested amount to

him. The appellant then issued certain cheques to the Respondent. However when the said cheques were dishonored, thereafter firstly FIRs were registered against the appellant and then summary suit was filed for recovery of the above mentioned amount. The matter proceeded before the learned Trial Court, who asked the Appellant to furnish security of the like amount. However, it is an admitted position that no security was furnished by the appellant, thereafter the matter proceeded ex-parte before the learned trial Court, who after examining the entire matter came to the conclusion that the Respondent has established his claim against the present Appellant thereafter decreed the suit as prayed however with no order as to costs. It is against the above mentioned order that the present First Appeal has been filed.

3. Ms. Durdana Tanweer, Advocate has appeared on behalf of the Appellant and stated that the Appellant and the Respondent were friends and neighbors to each other. She stated that the Appellant was running business of supplies of certain items. The Respondent invested the disputed amount with that the appellant on the promise that he will pay profit on the said invested amount to the Respondent, however, due to Covid-19 the business of the Appellant suffered and could not pay the agreed profit amount to the Respondent. She stated when the Respondent demanded the return of the invested amount from the Appellant, he gave postdated cheques in his favour. According to the learned counsel these cheques were not meant for encashment but were only a guarantee to return the amount to the Respondent or as a guarantee to the creditors of the Respondents who have taken certain amounts from those persons and was unable to pay the same. She also stated that the Appellant issued instructions to

the bank not to encash the cheques till the matter is finally settled between the parties. According to her, the Respondent however, with malafide intention and without bringing into the knowledge of the Appellant, deposited these cheques in the bank, which were returned due to '*insufficient funds*'. She stated that thereafter the Respondent lodged FIR against the appellant in respect of which he was arrested. She stated that due to Covid-19 the Appellant suffered heavy losses, which he duly brought into the knowledge of the Respondent but he did not pay any heed to it and lodged FIRs as well as filed summary suit against the Appellant. She further stated that her leave to defend was duly allowed by the learned Trial Court but since the appellant has no sufficient funds to furnish security this aspect was brought into the knowledge of the learned Judge, who did not grant sufficient time to the appellant to furnish security and thereafter passed the judgment against the appellant, which according to her is not in accordance with law. She therefore has prayed that the impugned order may be set aside as the same has been passed without granting proper opportunity of hearing to the appellant.

4. Mr. Iftikhar Javed Qazi, Advocate has appeared on behalf of the Respondent and stated that this is a straight forward case, where the appellant has miserably failed to furnish the security as directed to him by the learned Trial Court and has defaulted in returning back the invested amount to the Respondent. He stated that the Respondent has invested in the business of the appellant on the promise that he will pay profit to him, however subsequently on the lame excuse of covid-19 defaulted in making payment of profit to the Respondent. According to the learned counsel when the appellant failed to pay the profit to the

Respondent he was left with no option but to ask for return of the invested amount. He stated that when the Respondent asked for return of the invested amount the Appellant issued certain cheques to him and upon dishonoring of those cheques FIRs against the Appellant were registered and summary suit for recovery of the invested amount was filed. He submitted that the Appellant has issued various cheques to the Respondent but whenever those were deposited they were dishonored due to '*insufficient funds*'. He stated that before the Trial Court also the Appellant has miserably failed to defend his case and to furnish the security, as clearly directed by the Court. Learned counsel further stated that before the trial Court Respondent filed affidavit-in-exparte proof, entered into the witness box, got examined himself and produced all the necessary documents required in his behalf. He stated that the learned Judge proceeded with the matter quite meticulously and after considering all the documents produced with affidavit-in-exparte proof came to the conclusion that the Appellant has failed to return the amount invested by the Respondent. As per the learned counsel the evidence produced by the Respondent has remained un-shattered therefore the decree issued in the suit in favour of the Respondent was in accordance with law as the appellant has miserably failed to adduce any evidence or cogent material before the Trial Court in support of his contentions. He therefore has prayed that the order of the learned Trial Court may be affirmed.

5. We have heard both the learned counsel present before us and have perused the record.

6. It is an admitted position that the Respondent invested an amount of Rs.11,900,000/- with the Appellant for business purposes. It is also an admitted position that the cheques given by the Appellant to the Respondent were dishonored on the ground '*insufficient funds*'. It is also an admitted position that the Appellant has failed to arrange security, as clearly directed by the learned Trial Court. It is also an admitted position that whatever documents have been furnished by the Respondent in affidavit-in-exparte proof have remained un-rebutted. It is also an admitted position that in respect of FIRs registered against the Appellant, he had remained in jail for quite some time and in respect of some FIRs he is on bail and facing trial.

7. Facts of the case further reveal that initially the Respondent invested an amount of Rs.44,00,000/- with the appellant but subsequently invested a further sum of Rs.75,00,000/-. The record also reveals that from February, 2020 onwards either no profit on the invested amount has been paid to the Appellant by the Respondent or the amount of profit paid was less than the agreed amount. It has also come on the record that when the Respondent asked the Appellant to pay the profit on the invested amount, an excuse of Covid-19 was taken by the Appellant. It is also a matter of record that on the demand of Respondent, for return of invested amount, a cheque bearing No.00000129 of HBL Samanabad Branch amounting to Rs.6,00,000/- was firstly issued by the Appellant to the Respondent but the said cheque was dishonored on the ground of '*insufficient funds*'. After the dishonor of the said cheque an agreement was entered between the parties that the Appellant would return the balance amount in installments to the Respondent and he thereafter issued three cheques bearing

No.00000152 dated 01.3.2021 for Rs.20,00,000/-, cheque No. 00000154 dated 16.3.2021 for Rs.20,00,000/- and another cheque bearing No.00000156 dated 26.3.2021 for Rs.10,00,000/-, all of HBL Samanabad Branch, were given to the Respondent by the Appellant, as return of the invested amount, but it is a matter of record that all these cheques were subsequently dishonored. The Appellant has also given a cheque bearing No.00000142 dated 02.3.2021, of HBL Samanabad, for Rs.15,00,000/- to the Respondent but that cheque too was dishonored. It is also noted that after dishonoring of the cheques Respondent tried to contact the Appellant but he did not respond. It is in this background that the FIR at P.S Zaman Town, was registered against the appellant, under Section 489-F PPC. Though the Appellant has taken the defence that the cheques given by the Appellant to the Respondent were in fact meant for the creditors of the Respondent, from whom Respondent has some business dealing as the guarantee money, but no material to prove this aspect has been furnished by the Appellant either before the trial Court or to this Court in order to substantiate his claim. Moreover this aspect cannot be appreciated now as it is an undeniable aspect that the Appellant issued certain cheques in favour of the Respondent and none of these cheques were realized due to the 'insufficient funds', which belies the assertion of the appellant.

8. It is evident from the above noted facts that the Appellant has either kept the Respondent on false hopes or on lame excuses and has failed to pay the due agreed profit to the Respondent and even the cheques issued for return of invested amount were dishonored on the ground of '*insufficient funds*'. It is also noted that in respect of the affidavit-in-exparte proof the Respondent

was duly examined, who produced the cheques and memo of the banks clearly denoting that the appellant was not having sufficient amount in his account. Moreover, it is also an admitted position that before the trial Court the Appellant has failed to furnish security, as clearly directed by the Court.

9. We, therefore, in view of the above uncontroverted facts have come to the conclusion that the Appellant has miserably failed to pay back the amount to the Respondent and the matter decreed by the trial Court do not suffer from any illegality or infirmity, as no deficiency or shortcoming in the order passed by the trial Court has been pointed out by the counsel for the Appellant. The appeal thus is found to be without any merit; the same therefore stands dismissed, alongwith the pending application(s).

JUDGE

JUDGE

Karachi:  
Dated:06.04.2023.