

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

R.A. No.260 of 2014

R.A. No.42 of 2017

Date of Hearing : **09.11.2018**

Date of Judgment : **21.12.2018**

Mr. Imdad Ali R. Unar alongwith Mr. Ghulam Murtaza Shaikh, Advocates, for the Applicants in R.A No.260 of 2014 and for Respondents No.2 and 3 in R.A No.42 of 2017.

Mr. Ishrat Ali Lohar alongwith Mr. Ashok Kumar, Advocates for Applicant in R.A No.42 of 2017.

Mrs. Razia Ali Zaman Khan, Advocate for Respondent No.1 in R.A No.260 of 2014.

Ms. Ambreen Siyal alongwith Mr. Zulqarnain Talpur, Advocates for Respondent No.1 in R.A No.42 of 2017 and for Respondent No.2 in R.A No.260 of 2014.

Mr. Mian Taj Muhammad Keerio, Advocate for L.Rs of Respondent No.3 in R.A. No.260 of 2014.

Mr. Habib-ur-Rehman Jamali, Assistant A.G Sindh.

Law under discussion:

- (1) Specific Relief Act, 1877 (SRA)
- (2) Contract Act, 1872
- (2) Civil Procedure Code, 1908 (CPC)
- (3) Principle of '**Waiver**'.

Case law cited by the Applicants' Counsel

- (1) Haji Baz Muhammad Khan and another v. Noor Ali and another (2018 SCMR 1586)-**Baz case.**
- (2) Government of Sindh, through Secretary Education v. Begum Aisha Ahmed Ibrahim Bawani and another (PLD 2018 Sindh 431)-**Bawani case.**

- (3) Messrs Ittefaq Foundries (Pvt.) Ltd. and 4 others v. Federation of Pakistan, through Secretary, Ministry of Law, Federal Secretariat, Islamabad and 2 others (2015 P.Cr.L.J 1240)-***Ittefaq case.***

Case law relied upon by the Respondents' Advocates

Other Precedent(s):

- (1) Syed Ali Asghar and 3 others v. Creators (Builders) and 3 others (2001 SCMR 279)-***Builders case.***

JUDGMENT

MUHAMMAD FAISAL KAMAL ALAM, J:- Due to commonality of issues involved amongst the parties, both the titled Civil Revision Applications are decided by this common judgment.

2. The Civil Revision Application No.260 of 2014 has been preferred against the decision dated 08.12.2014, passed by the learned District Judge, Tando Allahyar, in Civil Appeal No.27 of 2013, allowing the said Appeal preferred by present Respondent No.1 (Pir Ghulam Kareem Shah), who has impugned the order dated 28.11.2013, passed by the learned Trial Court in First Class (F.C) Suit No.73 of 2013, allowing the application filed by the present Applicants under Order VII, Rule 11 of CPC, consequently rejecting the plaint of the above suit, which was instituted by the present Respondent No.1 (Pir Ghulam Kareem Shah).

3. The subsequent Civil Revision Application No.42 of 2017 has been preferred by the above named Pir Ghulam Kareem Shah

against the order dated 16.01.2017, passed by the learned Additional District Judge, Tando Allahyar, in Summary Suit No.01 of 2016, whereby, the learned Trial Court has granted the Respondents (of Civil Revision Application No.42 of 2017), unconditional leave to defend the said summary suit by allowing the application for leave to defend the suit, filed by the Respondents (Ali Ahmed son of Haji Khuda Bux Memon, Shah Fahad son of Pir Noor Muhammad Qureshi and Mst. Abida Memon wife of Shah Fahad).

4. For the sake of clarity, it is necessary to describe the parties involved in the litigation in the following manner:

- * Pir Ghulam Kareem Shah son of Pir Abdul Qadir Qureshi will be referred to as the **“Objector / Vendor”**, because admittedly the present litigation arises out of a sale transaction entered into between the above referred Objector / Vendor and Applicants of Civil Revision Application No.260 of 2014, namely, Shah Fahad and his wife Mst. Abida Memon; similarly, the latter husband and wife or anyone of them may be referred to as the **“Purchasers”**.
- * Since a specific amount purportedly towards part of sale price was paid by Ali Ahmed son of Haji Khuda Bux Memon, who is a real brother of the above named Applicant No.2 (Mst. Abida) and brother-in-law of Applicant No.1 (Shah Fahad), viz. the said Purchasers, therefore, the said Ali Ahmed may be hereinafter called the **“Financer”**.
- * Similarly, Fayaz Ahmed son of Munawar Khan, to whom a part of the property in question was subsequently sold, can be referred to as the **“Third Party”**.

5. Undisputedly, the above named Objector (Pir Ghulam Kareem Shah) was the owner of an agricultural land falling in Survey Nos.18-9, 10, 15, 16, 19-7, 8, 9, 10, 11, 18-10A, 20-1, 2, 23-1, 2, 3, 4, 19-4, 5, 6, total admeasuring 12-18 acres, **the subject property**, which was sold to the above named Purchasers (Shah Fahad and Mst. Abida Memon) for a total sale consideration of Rs.4.4 Million (*Rupees Forty Four Lacs Only*). Initially, an agreement of sale dated 07.08.2008 was executed between the above named persons, which was subsequently formalized into a registered sale deed dated 15.09.2011. A copy of the sale agreement (afore-referred) and the subsequent sale deed are available at Pages 115 to 125 of the Court file of Civil Revision Application No.260 of 2014.

6. The said Financer tendered a cheque of Rs.2.9 Million (Rupees Two Lacs Ninety Thousand) bearing Cheque No.03797020 dated 18.02.2013 drawn on Allied Bank Limited (ABL)-**the said cheque**, which on presentation was dishonoured, triggering a series of contentious litigation; the Objector / Vendor initiated proceedings against the said Financer by lodging a Criminal Case No. 89 of 2013 in respect of Crime No.76 of 2013, under Sections 489-F, 420, 406 PPC (Pakistan Penal Code), but subsequently upon filing of a joint application under Section 345(6) Cr.P.C (Criminal Procedure Code), relating to the compounding offences, the said Criminal Case No.89 of 2013 (New No.26 of 2017), was compromised (*hereinafter referred to as the "Compromise"*) by and between the parties, viz. the Objector / Vendor (Pir Ghulam Kareem Shah) and the above named Financer (Ali Ahmed) who was accused in the above criminal proceeding, being drawer of the dishonoured cheque. The terms of the said compromise

as contained in the Application under Section 345(6) Cr.P.C were accepted by the Court of the learned Civil Judge and Judicial Magistrate-II, Tando Allahyar. Copy of the afore-referred Compromise and the order dated 05.08.2017, passed thereon have been filed by the learned Counsel for the Applicants under his Statement dated 17.11.2017.

7. **Subsequently and in the intervening period**, in addition to the above, the Objector / Vendor also opted to file a Summary Suit No.01 of 2016 against the above named Purchasers (Shah Fahad and Mst. Abida Memon) and the Financer (Ali Ahmed) on the basis of the same instrument; the dishonoured said cheque dated 18.02.2013; although the said summary suit was filed on 03.03.2016. As already mentioned in the foregoing paragraphs that upon filing leave to defend application in the said summary suit, the same was allowed by the learned Trial Court and the present Respondents of Civil Revision Application No.42 of 2017 were permitted to defend the above summary suit unconditionally by filing the written statement.

8. Mr. Imdad Ali Unar, the learned Counsel for the Applicants (Purchasers) in Civil Revision Application No.260 of 2014 has argued that order of the learned Trial Court, whereby, plaint of the above Suit No.73 of 2013 (filed by the Objector / Vendor) was rejected, is correct and is based on the pleadings of the plaint of the said Objector / Vendor, wherein, material facts about the sale of the subject property has been acknowledged; further submitted, that the entire sale consideration was paid by the Purchasers to the said Vendor/Objector, which fact is specifically highlighted in the Application filed by the said

Purchasers in the above Suit No.73 of 2013, for rejection of its plaint. Per learned Advocate, the impugned order dated 08.12.2014, handed down by the learned Appellate Court (in Civil Appeal No.27 of 2013) preferred by the Objector / Vendor, cannot be termed a decision based on reasoning, rather the learned Appellate Court did not properly exercise the jurisdiction vested in it and thus the impugned judgment is liable to be set aside.

9. The second line of the argument of the learned Counsel for the Applicants / Purchasers is, that after execution of the aforementioned compromise application in the criminal case, which was accepted by the learned Trial Court vide Order dated 05.08.2017, nothing is left in the matter. The Objector / Vendor has received a further payment through the three cheques for the total amount of Rs.21,00,000/- (Rupees Twenty One Hundred Thousand Only), which were issued by Haji Khuda Bux Memon, who is father of the present Financer Ali Ahmed Memon. The learned Counsel has read the terms of the compromise application, particularly the one related to the aforementioned newly issued cheques, that if the same are dishonoured, then the said Objector / Vendor can bring fresh proceedings. It is further argued that the amount / proceeds under the newly issued cheques have already been received by the said Objector / Vendor (Pir Ghulam Kareem Shah).

10. Mrs. Razia Ali Zaman Khan, the learned Counsel representing the Objector / Vendor in Civil Revision Application No.260 of 2014 has opposed the arguments of the Applicants' side. While fully supporting the impugned judgment passed in the Civil Appeal, the

learned Counsel has made submissions that infact the Objector / Vendor was deceived by the present Applicants / Purchasers in collusion with Financer (Ali Ahmed) due to their close relationship *inter se*. She has vehemently argued that the applicants' side (Purchasers) has misconstrued and misinterpreted the terms of the said compromise, while further arguing that nowhere in the compromise it is mentioned that civil proceedings pending at the relevant time when the compromise was entered into, would also be governed by the said compromise, which, according to the learned Advocate, was only specific for withdrawal of criminal case. It was further argued by the learned Counsel for the Objector / Vendor (Pir Ghulam Kareem Shah), that the entire sale transaction failed on account of the fraudulent act of Purchasers and the Financer. Due to dishonoring of cheque issued by the Financer, the Objector / Vendor had faced immense hardship and inconvenience, *inter alia*, while pursuing litigation before different fora.

11. Mr. Ishrat Ali Lohar, Advocate, representing the Objector / Vendor (Pir Ghulam Kareem Shah) in Civil Revision Application No.42 of 2017, while supporting the arguments of Mrs. Razia Ali Zaman Khan, Advocate, has further argued, that the impugned order dated 16.01.2017, passed in the summary suit, instituted by the said Objector / Vendor for recovery of Rs.2.9 Million with mark-up, the leave to defend application should not have been unconditionally granted, considering the peculiar facts of the present case, where a lawful owner was deprived of a huge amount of sale consideration. In these circumstances, Mr. Ishrat Ali Lohar, Advocate, has made submissions that his Civil Revision Application No.42 of 2017 be allowed, and the impugned order dated 16.01.2017, granting unconditional leave in

favour of the Purchasers and Financer to defend the suit, be set aside. As per the learned Counsel, it is a fit case that requires interference in the revisional jurisdiction, because the learned Trial Court, while granting the unconditional leave, did not consider the undisputed facts in its entirety.

12. Ms. Ambreen Siyal, Advocate for Respondent No.1/ Financer (Ali Ahmed) in Civil Revision Application No.42 of 2017, while adopting the arguments of Mr. Imdad Ali Unar, Advocate, has further submitted, that already the said Respondent No.1-Ali Ahmed (Financer), has faced the consequences when he was jailed in connection with the issuing of the said cheque, which was dishonored. She has referred to the order dated 05.08.2017, passed on the aforementioned compromise, to fortify her arguments that when the said compromise was accepted by the learned Trial Court, on that day only, the Respondent No.1 / Financer was directed to be released by the Jail Authority.

13. Mr. Mian Taj Muhammad Keerio, Advocate, has filed his Objections to the Civil Revision Application No.260 of 2014. As per the learned Counsel, part / portion of the aforementioned subject property has been purchased by the third party (Fayaz Ahmed son of Munawar Khan) through a registered Sale Deed, a copy whereof has been filed with the objections. Per learned Counsel, the mutation was also effected and the possession of the portion sold, was handed over to the subsequent third party. The learned Counsel representing the third party and his legal heirs, whose names are mentioned in the title of the Civil Revision

Application No.260 of 2014, has opposed the claim of Respondent No.1-Objector / Vendor.

14. The Respondent No.4 –Mukhtiarkar (Revenue), Taluka Chambar, District Tando Allahyar, has also filed his parawise comments and confirmed both the sale transactions in question. The first one between the Objector / Vendor and Purchasers and subsequent sale transaction between the latter (Purchasers) and the Third Party and his legal heirs.

15. Arguments heard and the record available has been taken into the account.

16. What is pivotal in deciding the issues involved in the instant civil revisions, is the consequence and effect of the afore-mentioned Compromise. Admittedly, the said compromise was given the judicial approval by the order dated 05.08.2017, passed by the learned Civil Judge and Judicial Magistrate-II, Tando Allahyar, in Criminal Case No.89 of 2013 (New Criminal Case No.26 of 2017).

17. The Purchasers (Applicants of Civil Revision Application No.260 of 2014) through their Advocate filed an Application dated 11.09.2013, under Order VII, Rule 11 of CPC (for rejection of plaint) in afore-referred F.C Suit No.73 of 2013 (instituted by the Objector / Vendor, that is, Respondent No.1 herein), which was resisted by the Objector / Vendor, but unsuccessfully; consequently, the plaint of F.C Suit No.73 of 2013 was rejected vide order dated 28.11.2013. The reason for rejection of plaint as mentioned in the order of 28.11.2013 is, that since the Objector / Vendor admitted in his pleadings the sale

transaction between him (Objector / Vendor) and the Purchasers, besides acknowledging the execution of Sale Deed, in which the sale consideration was mentioned as Rs.6,25,000/-, therefore, the plaint of the Objector / Vendor had failed to disclose any cause of action and lacked legal character, resulting in rejection of plaint. With regard to the amount of sale consideration of Rs.4.4 Million, the learned Trial Court came to a contrary finding that since the registered Sale Deed contains a lesser amount (as mentioned above), thus, the plea of non-payment of total sale consideration is incorrect and Objector / Vendor could file a suit for recovery for the claimed amount. Copy of the application under Order VII, Rule 11 of CPC, filed by the present Applicants (Purchasers), and Counter Affidavit thereto, are also available in the record of present Civil Revision Application No.260 of 2014. The present Applicants / Purchasers have taken a specific plea that the entire sale consideration in respect of the subject property was paid to the Objector / Vendor and in this regard has given a breakdown in Paragraph-5 of the aforesaid Application. The present Applicants / Purchasers have also appended the cheques and pay order in support of their claim. Counter Affidavit of the Objector / Vendor to the aforesaid Application has been perused, wherefrom, it appears that the Objector / Vendor has not disputed the factum of issuance of the cheques in favour of the said Objector / Vendor, but as per the defence of the latter (Objector / Vendor), the said payments were made in connection with some other transaction and not the transaction in question. This crucial aspect of the case required a deeper probe by the learned Trial Court and in my considered view, the plaint of F.C Suit No.73 of 2013 should not have been rejected; nevertheless, the said error was correctly rectified

through the impugned judgment dated 08.12.2014 handed down by the learned Appellate Court in Civil Appeal No.27 of 2013, filed by the present Respondent No.1 (Objector / Vendor). It has been rightly determined by the impugned judgment of the Appellate Court that a plaint cannot be rejected in piecemeal and even if single relief / prayer can be granted, then the plaint of the suit shall survive. Consequently, the Appellate Court remanded the case to the learned Trial Court for a full-dress trial.

18. Interestingly, the controversy did not end here. Subsequently, the present Respondent No.1 (Pir Ghulam Kareem Shah, Objector / Vendor) instituted the above mentioned Summary suit No.01 of 2016 by invoking summary jurisdiction of Chapter XXXVII of CPC, on the basis of the same bounced cheque for Rs.2.9 Million. The present Applicants / Purchasers (Shah Fahad and Mst. Abida Memon) and the Financer (Ali Ahmed) were made as Defendants in the said Summary Suit No.01 of 2016, who all filed a leave to defend application, which was accordingly allowed, as already mentioned in the preceding paragraphs. Thus, at the relevant time, there were proceedings of three kinds pending between the parties hereto:-

- (i) F.C Suit No.73 of 2013, filed on 08.12.2014, which is the subject matter of Civil Revision Application No.260 of 2014. The main grievance of the afore-named Vendor/Objector as pleaded has arisen from **the bounced cheque** (as mentioned in the preceding paragraphs).
- (ii) Summary Suit No.01 of 2016, instituted by the above-named Objector / Vendor; who subsequently preferred the title Civil Revision Application No.42 of

2017. **The subject matter of these proceedings** is also the same dishonoured cheque.

- (iii) Criminal Case No.89 of 2013, in respect of Crime No.76 of 2013, under Section 489-F, 420, 406 PPC (Pakistan Penal Code), filed by the above named Objector / Vendor against the Financer, as the **afore-referred cheque** of Rs.2.9 Million, issued by him, was dishonoured.

19. Notwithstanding to the above, the scenario changed after the Objector / Vendor entered into a compromise with the Financer (as referred in the foregoing paragraphs), which was accepted vide order dated 05.08.2017 (*ibid*). As per the contents of the compromise, which is an undisputed document available in the record of present proceeding, Haji Khuda Bux Memon, the father of the Financer (Ali Ahmed), who was accused in the above criminal case, handed over three cheques, whose description is mentioned in the compromise, amounting to Rs.21,00,000/- (Twenty Lacs), to the Objector / Vendor. It would be advantageous to reproduce the terms of the compromise herein under:-

**“APPLICATION U/S 345(vi) CR.P.C
FOR PERMISSION OF COMPROMISE”**

It is respectfully submitted on behalf of complainant Pir Ghulam Kareem Shah and accused Ali Ahmed Memon that due to intervention of their elders, they have arrived at compromise and settled their dispute once for all. In lieu of compromise, Haji Khuda Bux Memon, the father of accused Ali Ahmed Memon has given from his own account, the following cheques to complainant, details of which are given herein below:-

- i) Cheque No.1651973532 dated 07.08.2017 of Rs.900,000/-*
- ii) Cheque No.1651973533 dated 07.08.2017 of Rs.900,000/-*
- ii) Cheque No.1651973534 dated 07.08.2017 of Rs.300,000/-*

all cheques will draw at MCB Bank Tando Allahyar A/C 2967-9

- * *That complainant shall hand over the original cheque No.03797020 dated 18.02.2013 amounting to Rs.29,00,000/- drawn at Allied Bank Limited, Citizen Branch Al-Noor Heights, Hyderabad with Bank's Memo to the accused Ali Ahmed Memon.*
- * *That the complainant as well as accused shall withdraw all the cases lodged / filed against each other in any court of law at an early date under intimation to other side.*
- * *That henceforth the parties would not claim anything from each other.*
- * *That this compromise has been arrived at between the parties without any duress and compulsion but they have mutually agreed and settle their disputes once for all.*
- * *That in case of dishonouring the above mentioned three Cheques, the complainant will have a liberty to initiate civil and criminal proceedings against Haji Khuda Bux Memon who has issued the cheques.*
- * *That in view of the above, this Honourable Court may graciously be pleased to allow this compromise and acquit the accused by way of compromise as the offences are compoundable.*

The prayer is made in the interest of justice.

*Tando Allahyar
Dated 5.8.2017*

Sd/=
Complainant
Pir Ghulam Kareem Shah
CNIC No.41307-3571542-3

Sd/=
Accused
Ali Ahmed Memon

Identified by me

Sd/=
Advocate
Ghulam Murtaza Talpur

Sd/=
Advocate for accused"

20. In order to evaluate the arguments of the learned Advocates for the parties, vis-à-vis the present controversy, it would be advantageous to reproduce herein under the Prayer Clause of Plaint in F.C Suit No.73 of 2013, instituted by the Objector / Vendor (Respondent No.1 in Civil Revision Application No.260 of 2014).

- “a) Declare that defendants No.1 to 3 in collusion with each other issued a forged, fraudulent, bogus cheque of Rs.29,00,000/-to plaintiff against the sale consideration in terms of sale agreement 05.08.2008.*
- b) Declare that defendants in collusion with each other have committed fraud and forgery in respect of execution of impugned registered sale deed.*
- c) To cancel the impugned registered sale deed No.3404 dated 15.09.2011 being fraudulent, bogus, illegal, incompetent without lawful authority, abinitio, void and malafide and without payment.*
- d) To cancel the Revenue Entries in the name of defendant No.2 in respect of suit land on the basis of impugned sale deed.*
- e) To cancel the Qabooliyat / sale agreement execute on non-judicial stamp paper NO.2263 dated 22.11.2012 executed by defendant No.2 in favour of defendant No.4.*
- f) To direct the defendants to hand over vacant possession of the suit land to plaintiff and pay mesne profits at the rate of Rs. Three lakhs per year since plaintiff is out of possession till the plaintiff is put in possession of the suit land.*

- g) *Grant permanent injunction restraining the defendants from alienating, changing, transferring or mortgaging the suit property and disposing off the same or creating third party interest in the suit land through themselves, their agents, servants, relatives, attorneys or through any other manner whatsoever till the final disposal of the suit on merits by this Honourable court same in any manner.*
- h) *Grant the costs of suit.*
- i) *Grant any other relief as deemed fit and proper under the circumstances”*

21. From the terms of the compromise, it is quite apparent that the said dishonoured cheque, which was the real bone of contention between the parties hereto and resulted in a contentious litigation, was returned to the above named father of the Financer in lieu of newly issued cheques to the Objector / Vendor. It is also one of the terms of the above compromise that if the said new cheques issued by the father of Financer are dishonoured, then the Objector / Vendor will be at liberty to initiate civil and criminal proceedings against the above named father of Financer, which means, that for all intents and purposes, the parties hereto, including, the Objector / Vendor agreed that in case of dishonouring of any of the newly drawn cheques, the said Objector / Vendor will have a remedy against the father of the Financer; that is, a fresh default would be considered as a fresh cause of action. The compromise further stipulates that litigation against each other, that is, Financer and Objector / Vendor, shall be withdrawn and henceforth there will be no claim against each other and the said compromise document settles all the disputes between the aforementioned parties.

22. The learned Counsel representing the Objector / Vendor Mrs. Razia Ali Zaman Khan, Advocate, alongwith Mr. Ishrat Ali Lohar, Advocate, have vehemently argued that the terms of the compromise were only for that very criminal case and not the other pending lis, which should be decided on its own merits. In this context, the legal team of the Objector / Vendor has fully supported the impugned judgment passed by the learned Appellate Court in Civil Appeal No.27 of 2013. On the other hand, Mr. Imdad Ali Unar, Advocate, supported in his arguments by Mr. Mian Taj Muhammad Keerio and Ms. Ambreen Siyal, Advocates, have taken a contrary stance on this very issue. The crux of the arguments of the legal team of the Purchasers, Financer and Third Party is, that once the entire sale consideration has been paid to the Objector / Vendor through the aforementioned three subsequent cheques, as mentioned in the compromise, then no further grievance of the Objector / Vendor remains to be redressed, although, the learned Counsel for the Purchasers have reiterated their earlier stance, that entire sale consideration was already paid to the Objector / Vendor at the time of execution of the registered sale deed, which is an admitted document. In this regard, Mr. Imdad Ali Unar, Advocate, has in rebuttal cited the case law, which is mentioned in the opening part of this judgment (*supra*); the legal team of the Purchasers has further relied upon the principle of *waiver* as mentioned in the ***Black's Law Dictionary (Ninth Edition)***, which is reproduced herein under for a ready reference:-

“Waiver (way-ver), n. (17c) 1. The voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; FORFEITURE (2) , <waiver of notice>. * The party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it. Cf. ESTOPPEL [Cases: Estoppel – 52.10.”

23. The gist of the case law relied upon by the Applicants' side of Civil Revision Application No.260 of 2014 (Purchasers) is, that when a party enters into a subsequent arrangement and agreement, then the earlier agreement or arrangement between the parties stood novated in terms of Section 62 of the Contract Act, unless it is specifically stipulated in the fresh agreement that the rights and interest of a particular party as contained in the original agreement will not be prejudiced. In this regard, the second line of arguments of the legal team of the Purchasers, about novation of the contract, has substance. The principle laid down in the cited reported decisions regarding novation of contract is applicable to the facts of the present case, because admittedly the sale transaction in respect of the subject property has been acknowledged by the Objector / Vendor, besides admitting the fact about the execution of registered sale deed and handing over the possession. The sole grievance of the Objector / Vendor about non-payment of the entire sale consideration also stood remedied in terms of the said Compromise.

24. The fact of the matter is that the real dispute between the parties revolves around the factum of the said dishonoured cheque. Admittedly, the date of the said (bounced) cheque is 18.02.2013, **whereas**, the Sale Deed was executed between the Objector / Vendor and one of the Purchasers on 01.09.2011, which is undisputedly a registered instrument bearing Registration Number 3404. It is quite strange that the Objector / Vendor accepted a postdated said cheque bearing a payment date falling due after sixteen months from the date of execution of the sale deed, even though, under the State Bank of

Pakistan Guidelines, such type of cheque even otherwise becomes 'stale' after six months from the date of its issuance and is to be renewed by the drawer (of the cheque). Notwithstanding to this significant aspect of the case, it is a matter of record that subsequently in terms of the aforementioned Compromise, the Objector / Vendor had accepted the three cheques issued by the father of the Financer, in lieu of the dishonoured cheque, which was handed over back to the above named father of the Financer; which clearly means that the parties hereto and particularly the Objector / Vendor had with a conscious mind accepted the three new cheques as a final settlement of his claim and consequently waived his right to proceed further in the other pending cases.

25. **Secondly,** it is further agreed in the Compromise that in case of dishonouring of cheque(s) the present Objector / Vendor (Pir Ghulam Kareem Shah) can initiate a fresh proceeding against the above named father of the Financer but admittedly no such proceeding has been initiated, which means that the amount(s) of the aforementioned newly issued cheques have been received by the Objector / Vendor; meaning thereby, that the balance sale consideration, even if it was not paid earlier, has been paid / settled through the three newly issued cheques, which have been received by the Objector / Vendor. If the dishonouring of the above cheque dated 18.02.2013, issued by the Financer, was the '*casus belli*' between the parties hereto, then the subsequent Compromise in consideration of new cheques, can be termed as '*armistice*'.

26. **Thirdly**, admittedly, a registered Sale Deed was already executed by the Objector / Vendor in favour of the Purchasers, who have further sold / alienated the portion of the subject property to the Third Party and thus a legitimate third party interest has been created in respect of the portion of the subject property.

27. **Fourthly**, in view of the above, after receiving the amount as mentioned in the compromise, nothing is left to be adjudicated upon, as the grievance of the Objector / Vendor has been redressed and after receiving payment in terms of the Compromise, the cause of action for filing both the above civil proceedings; F.C Suit No.73 of 2013 and Summary Suit No.01 of 2016, ceases to exist and the proceeding has to be abated.

28. **Fifthly**, the plaint of F.C Suit No.73 of 2013 does not contain any relief for damages, had that been the case, the cause of action in favour of Objector / Vendor, vis-à-vis the aforementioned F.C Suit No.73 of 2013 would have survived and the impugned decision of the learned Appellate Court in Civil Appeal No.27 of 2013 was to be maintained.

29. **Sixthly**, it is an established rule that Courts can consider such changed circumstances and events, which are relevant for the determination of controversy between the parties. The reported decision of **Builders Case (supra)**, handed down by the Honourable Apex Court, fully supports this view. Admittedly, the post compromise scenario cannot be overlooked. Even though, the parties to the said compromise are the Objector / Vendor and the Financer, but the overall effect of that Compromise is not limited to the aforementioned criminal proceeding, because the basis for all the afore-referred cases / litigation was the

dishonouring of the cheque (afore-referred) and when the same was admittedly and voluntarily returned by the Objector / Vendor to the above named father of the Financer, in consideration of the said three cheques, then no further contentious issue remains to be resolved. Since no cause of action subsists in favour of the Objector / Vendor in his F.C Suit No.73 of 2013, hence the learned Trial Court does not have jurisdiction to try such case / suit; wherefore, the impugned judgment of the learned Appellate Court, which has remanded the case to the learned Trial Court for deciding afresh, cannot be sustained, because it would be a gross illegality and abuse of process of Court. Thus, in these peculiar circumstances, as discussed in the foregoing paragraphs, the impugned judgment dated 08.12.2014, passed in Civil Appeal No.27 of 2013, is to be set aside and the order dated 28.11.2013, passed by the learned Trial Court in F.C Suit No.73 of 2013, rejecting the plaint has to be maintained.

30. The upshot of the above discussion is that, Civil Revision Application No.42 of 2017 is dismissed with no order as to costs. **Whereas**, Civil Revision Application No.260 of 2014 is allowed to the extent that the impugned Appellate Order is set aside, as the plaint of F.C. Suit No.73 of 2013 does not disclose any cause of action, requiring further trial and adjudication. Parties to bear their respective costs.

JUDGE