

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui
& Jawad Akbar Sarwana JJ

Irfan Sharfuddin v. Yousuf Sadiq

**First Appeal No.34 of 2017
First Appeal No.35 of 2017**

Appellant: Irfan Sharfuddin, through Mr. Muhammad Iqbal, Advocate

Respondent: Yousuf Sadiq, through Mr. Yousuf Makda

Date of hearing: 23.10.2023

Date of decision: 23.10.2023

J U D G M E N T

Jawad A. Sarwana, J: The Appellant/Defendant has filed First Appeal Nos.34 and 35 of 2017 (Old First Appeal Nos.33 and 35 of 2010) aggrieved by the District & Sessions Judge Karachi (East) impugned judgment dated 06.05.2010 and decree dated 15.05.2010 passed in Suit Nos.16/2010 and 15/2010 respectively.

2. The brief facts are that on 20.02.2010, the Respondent/Plaintiff filed two Summary Suits, i.e. Suit Nos.15 and 16 of 2010, against the Appellant/Defendant. Summons were issued by all modes, including Bailiff, through pasting by Bailiff, Pakistan Post Registered Post A/D, Perfect Express Couriers, and Publication in Nawa-e-Waqt Newspaper. Service was held good by the trial court on 12.04.2010. On 24.04.2010, when no one appeared in Court, the Appellant/Defendant was debarred from filing the application for leave to defend, and the matter was adjourned to 30.04.2010 with directions to Respondent/Plaintiff to file an Affidavit in ex-parte proof. The Respondent/Plaintiff filed ex-parte proof on 06.05.2010, and the trial court announced judgments on even date and passed decrees on 15.05.2010 in the two suits. The Appellant/Defendant did not enter an appearance in the two suits; hence the two first appeals.

3. Counsel for the Appellant/Defendant submitted that he found out about the judgments and decrees on 01.09.2010, obtained certified copies of the ex-parte judgment from the trial court, and immediately filed appeals under Section 96

CPC read with Order XLI Rule 1 CPC. No plausible explanation is made in the appeal by the Appellant/Defendant or was submitted by the Counsel as to why the judgment and decree should be set aside and/or for the delay in filing the leave to defend application except for service of summons. Counsel contended that the Respondent/Plaintiff provided three different addresses of the Appellant/Defendant in the title of the Plaint, yet no proof of service on all three addresses was submitted to the Court. Further, when the Bailiff served the summons on his residential address, his wife and not him acknowledged it. He claimed that the service of summons by pasting was false. Additionally, the publication of summons in Daily Nawa-e-Waqt dated 05.04.2010 was not in his knowledge. Finally, he argued that the 13 cheques of Suit No.16/2010 totalling Rs,28,28,421 and the eight (8) cheques of Suit No.15/2010 totalling Rs.14,34,000 issued by him to the Respondent/Plaintiff were to be allegedly returned under a Memorandum of Understanding. Still, the Respondent/Plaintiff, with malafide intention and ulterior motives, avoided the return of the said cheques to the Appellant/Defendant and filed the summary suits. The Respondent/Plaintiff Counsel opposed the contentions raised by the Appellant. He submitted that the trial court's judgments and decrees are in accordance with law and require no interference.

4. We have heard the arguments of Counsels of both parties and perused the documents available with the Appeal.

5. At the outset, it may be noted that the dispute between the Appellant/Defendant and the Respondent/Plaintiff is old and litigious. Apart from the two suits of 2010, which are the subject matter of the first appeals, the Respondent/Plaintiff had earlier also filed summary suits against the Appellant/Defendant, namely Suit No.3/2007 and Execution No.7/2009 and Suit No.5/2009 and Execution No.9/2009. The trial court also discusses the history of litigation between the parties in the impugned judgments. This is relevant as the background of the dispute between 2007 and 2010 concerns 37 cheques issued by the Appellant/Defendant from time to time, out of which the final 21 cheques were the subject matter of Suit Nos.16 and 15 of 2010.

6. We have perused the trial court's record regarding the service of summons as available in the two suits. The Bailiff's Report dated 08.03.2010 evidences that he served the summons after properly identifying the wife of the Appellant/Defendant, obtained an acknowledgement and signature from the wife of the Appellant/Defendant on the summons and delivered a copy of the summons to her consistent with the provisions of Order 37 Rule 1(2) CPC. The

Appellant/Defendant did not raise any objection regarding the mode of service adopted by the process server in effecting service through his wife. He did not protest that the process server identifying his wife's name was not his spouse, or that the signature acknowledging the summons was not hers. He did not allege that she was a pardahnasheen woman and did not contend that the service address was wrong. He defended that the Bailiff's Report did not state that the Appellant/Defendant received the summons. The defence does not appeal to reason and is also not correct in law. The service through Bailiff by way of pasting on 27.03.2010, with the pasting of a copy of the summons at the residential address of the Appellant/Defendant, including attaching the copy of the CNICs of the persons witnessing the pasting of the summons is available in the Bailiff's Report in the suit files. Once again, the Appellant/Defendant simply denied the service by pasting without giving any reasons for such denial. The plea also does not appear to be bonafide. The newspaper clipping of the summons published in Nawa-e-Waqt dated 05.04.2010 indicating the filing of the summary suit against the Appellant/Defendant is available on record. The Appellant/Defendant's defence that he did not know that the summons of the summary suit was published in a well-known, widely circulated Urdu Daily Newspaper is not a valid ground to challenge that the service is good. While the Pakistan Post Registered Post Acknowledgment Due Card and the Private Courier Delivery Reports were indeed not found by us in the two suit files, yet the Receipts of the Registered Post, Acknowledgment Due bearing the stamp of the Pakistan Post Office with the date of postage and the Courier Receipts were available in the two suit files. In the circumstances, whether the Appellant/Defendant was affected service on all three addresses mentioned in the title of the Plaint by Registered Post Acknowledgement Due was irrelevant. Appellant/Defendant was validly served by Bailiff, Pasting and Publication as per Order 37 Rule 1(3) CPC. The evidence available in the suit file leads us to conclude that the Appellant/Defendant was properly served.

7. Yet despite proper service, the Appellant/Defendant did not file leave to defend application within ten (10) days from service of summons and/or even within ten (10) days from the Court's Order dated 12.04.2010 when the trial Court officially held the service good on Appellant/Defendant. The Defendant has not shown any "special circumstances" regarding his inability to appear and obtain leave within ten (10) days. After ex-parte proceedings culminated into an ex-parte judgment dated 06.05.2010, he took another five (5) months from the date of the ex-parte judgment to file the first appeals on 19.10.2010. The Appellant/Defendant has to live with the consequences of sleeping over his rights with the non-filing of leave to defend application notwithstanding that proper

service had been effected on him. Suffice it to say that since 20.10.2010, when this Court suspended the operation of the impugned judgments and decrees in the suits, the Appellant/Defendant has enjoyed and has been enjoying the fruits of the ex-parte ad-interim suspension orders for the last 13 years.

8. We have perused the impugned judgments and find the same to be well-reasoned. The summary claim against the Appellant/Defendant turned on the dishonoured cheques, and the proof of dishonour was annexed to the Plaint in respect of the 13 cheques in Suit No.16/2010 (IA No.34/2017) and 8 cheques in Suit No.15/2010 (IA No.35/2017). The trial court per the presumption as to the cheques in question under Section 118 of the Negotiable Instruments Act, 1881, rightly concluded their dishonour. The Appellant/Defendant has not raised any material grounds to negate such inference. The trial court even took the more conservative and cautious approach in a summary suit when it ordered the Plaintiff to file an affidavit in evidence of ex-parte proof before passing judgment and decree. This enabled the trial court to satisfy itself further as to the veracity of the Respondent/Plaintiff's claim against the Appellant/Defendant. No exceptional circumstances have been made out to set aside the decrees and, if necessary, to stay or suspend the judgments/decrees. The learned Trial Court has not fallen into any error while passing the impugned judgments/decrees. The impugned judgments are well-reasoned. It is apparent that the Court has applied its mind, and no interference is required.

9. In view of the above, the impugned judgments and subsequent decrees in the two suits do not suffer from any illegality or material irregularity which calls for any interference. Accordingly, we dismiss the appeal along with all listed applications.

The parties shall bear their own costs.

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