

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 433 of 2003

[Trading Corporation of Pakistanv...Continental Cargo Service]

Present

Mr. Justice Zulfiqar Ahmad Khan.

Mr. Justice Muhammad Abdul Rehman.

Date of Hearing : 18.09.2023

Appellant through : Mr. Bilal, Advocate holding brief for
Mr. Ghulam Shabbir Shah,
Advocate.

Respondent through : N.R.

ORDER

Zulfiqar Ahmad Khan, J:- A brief is held for counsel for the appellant who is reported to be busy before another bench. Perusal of record reveals that on 06.10.2020 vakalatnama of G. Shabbir Shah Law Associates was filed on behalf of the appellant, thereafter, on 26.04.2021 a brief was held on behalf of appellant's counsel. On 26.10.2021, as well as on 01.12.2021 brief were also held on behalf of appellant's counsel. It thus turns out that after filing of vakalatnama, learned counsel for the appellant never appeared before this Court to proceed with this HCA which is pending in our docket since 2003 against the judgment and Decree dated 10.10.2003.

2. Perusal of record reveals that learned counsel for the appellant was afforded with several opportunities to proceed with the matter. A "peremptory order" of the court, which specifies a time to do a certain act in the proceedings of the case with a warning of last opportunity, is to be followed and in failure consequences for its non-compliance have to be faced. Orders granting repetitive adjournments with warnings of "last and final opportunity" become

meaningless and shatter the confidence of the litigants and consequentially weaken the authority and fiat of the court.

3. Coming to the merits of the case at hand, the appellant through this High Court Appeal impugned the Judgment & Decree dated 10.10.2003, whereby, the suit filed by the appellant was dismissed. Per contents of memo of appeal, appellant entered into a contract dated 27.11.1982 with respondent for handling the rice crop at Landhi Rice Warehouse and rice stock. Per appellant, the respondent rendered unsatisfactory services owing to which the appellant could not meet the requisite requirement of rice export, therefore, the appellant filed a suit for recovery against the respondent on account of shortage of rice.

4. The lis was contested by the respondent and having examined the pleadings of the parties, the learned Single Judge framed the following issues:

i. Whether it is the contractual obligation of the defendant to exercise all care in respect of stocks including its bye-products etc, entrusted to him and is liable for and make good any loss or damage therein. If so its effect?

ii. Whether defendant failed to hand over the physical possession of stocks in his custody to plaintiff? If so its effect?

iii. Whether defendant is liable for the account of shortage of rice and other stocks and for its value?

iv. What should the decree be?

5. The learned Single Judge recorded the evidence and having heard the respective learned counsel dismissed the suit for recovery filed by the appellant, as stated above. Perusal of record reveals that the learned Single Judge premised his findings on the facts that the documents on which the appellant placed reliance were never

exhibited during the course of evidence and it is settled principle of law that when a fact is asserted in the pleadings, it ought to be substantiated through evidence. Furthermore, the appellant's witness admitted a number of suggestions of the respondent's counsel during the course of cross-examination which are delineated hereunder:-

“It is correct to suggest that the entry and exit of all the stores and stocks at all the gates of the area is supervised and controlled by the plaintiff.

It is correct to suggest that it is the responsibility of security staff of the plaintiff to open and close the exist gates of the whole area belonging to the plaintiff.

It is correct to say that all the export, transfer of stocks and stores were done by the defendant under the orders and direction of the plaintiff as well as supervision of the plaintiff

It is correct that in January, 1985, certain quantity of stock and store were transferred by the defendant to M/s. Punjab Trading Agency under the orders of the plaintiff.

It is correct to suggest that there was no complaint or charge on the record of plaintiff against the defendant.

It is correct to say that during the currency of the contract, the defendant used to submit monthly statement of account to the plaintiff of every transaction of receipt and issue of stocks and stores.”

6. Upon scanning the evidence so produced hitherto, it unequivocally reveals that the appellant's witness during his testimony introduced on record that the respondent used to submit monthly statement of accounts to the appellant of receipt and issuance of stocks from the stores which were also produced by the respondent during its testimony. Furthermore, the appellant's witness testified that the entry and exit of all the stores and stocks

at all the gates of the area was being supervised and controlled by the appellant and it was the responsibility of security staff of the appellant to open and close the gates of the area belonging to the appellant, therefore, the shortage (if any as alleged by the appellant) could not be posed against respondent and the work performed by the respondent was solely upon instructions of the appellant as admitted by the appellant's witness, as well, no complaint of whatsoever was received by the appellant against the acts of the respondent, therefore, the learned Single Judge having examined the evidence and material on records, rightly chose to dismiss the suit, therefore, interference by this Court would be against the interest of justice.

8. Also the respondent's witness Irtiza Hussain Jaffery introduced on record the facts and stance of the respondent on the basis thereof, the learned Single Judge in the impugned judgment held that:-

“The learned counsel for the defendant contended that defendant's witness was not cross-examined on the material points involved in the suit, as such, the assertions made by him in his examination in chief are deemed to have been admitted by the plaintiff. In support of this contention he has relied upon the case law reported in (i) 1991 SCMR 2300, (ii). PLD 1981 Karachi 537 (iii) 2000 YLR 326 and (iv) 1985 CLC (Karachi) 2327).

The ratio decidendi of all the above cited authorities is that where on a material part of evidence of a witness, he is not cross-examined, it may be inferred that the truth of such statement has been accepted. In the instant case, the learned counsel for the plaintiff was not able to shake/shatter the evidence of the defendant's witness namely Irtiza Hussain Jaffery. In fact, no specific questions were put to the said witness on the material points involved in the suit, as such little options is left not to accept the evidence adduced by the defendant”.

9. In view of the rationale and deliberations delineated above, we are of the considered view that the impugned Judgment and Decree neither suffers from any illegality or irregularity nor any case of misreading and non-reading of evidence has been established by the appellant. Resultantly, instant High Court Appeal is dismissed.

Karachi
Dated 18.09.2023

JUDGE

JUDGE

Aadil Arab