

IN THE HIGH COURT OF SINDH AT KARACHI

I.A No.89 of 2022

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Zulfiqar Ahmad Khan

Muhammad Javed Iqbal,
Appellant No.1 :

Ghulam Mustafa
Appellant No.2 : Mr. Khadim Hussain Soomro,
Advocate.

..Vs..

Abdul Khaliq,
Respondent : Mr. Muhammad Nazim Khokhar,
Advocate.

Dates of hearing: 10.08.2023

Date of decision: 16.08.2023

J U D G M E N T

IRFAN SAADAT KHAN, J. This First Appeal (1st Appeal) is directed against the judgment dated 19.09.2022 passed in Summary Suit No.100/2020 filed by the present Respondent against the present Appellants.

Briefly stated the facts of the case are that the Respondent arranged through his friend namely Muhammad Zeeshan son of Sher Ali, loans amounting to Rs.5 lacs & 6 lacs respectively for the present Appellants sometime in the year 2015. However when the respondent demanded the said amounts from the appellants they issued a cheque dated 09.09.2018 to him amounting to Rs.11,00,000/- which when presented was bounced. The Respondent then filed a summary suit for recovery of the said amount against the present appellants and also moved an

application to the concerned SHO for lodging of FIR against the present appellants. However, when FIR was not lodged by the concerned SHO he moved an application under Section 22-A Cr.P.C and finally got the FIR registered against the present appellants. The matter for recovery of Rs.11,00,000/- proceeded against the appellants in the above mentioned summary suit and the learned Judge vide impugned order observed that the present appellants have failed to pay the said amount to the present Respondent thereafter directed the appellants to pay Rs.11,00,000/- alongwith interest @ 6% per annum from the date of institution of the suit till actual payment of the amount to the present respondent and further gave instructions for preparing a decree accordingly. Apropos, criminal case is concerned, it is brought to our knowledge that the present appellants were acquitted in the said criminal case and a criminal acquittal appeal filed by the present respondent is pending before this Court bearing Cr.Acq.Appeal No.203/2021.

Mr. Khadim Hussain Soomro, Advocate has appeared on behalf of the present Appellants and stated that the no loan was ever given by the present Respondent to the appellants. He stated that the present Respondent has failed to point out as to when the said amounts were arranged by him through his friend namely Muhammad Zeeshan son of Sher Ali to the Appellant. He next stated that there is no witness of the said transaction of giving loan by Zeeshan to the present appellants. He further stated that there is no agreement between the parties with regard to giving of the loans by Muhammad Zeeshan through the present Respondent to the appellants. He stated these factors were totally

ignored by the learned Judge while giving decision in the summary suit.

He next stated that the present appellants were acquitted in the criminal case as it was found in the Cr. Misc. Appeal bearing No.1968/2018 in FIR No.534/2018, registered at P.S Gizri, that the present respondent has failed to prove with concrete evidence the giving of loans to the present Appellants. He further stated that the present Respondent was brother in law of the present Appellants and since the relation between the Respondent and his wife, who is sister of the Appellants was strained, the Respondent in a vindictive manner not only registered a fake FIR against the present appellants in which they were acquitted, but also filed a summary suit against them. He submitted that the order of the learned Judge is not in accordance with law as the material facts going to the roots of the case have been ignored and therefore, request that the order of the learned Judge passed in the summary suit as well as the decree may be set aside.

Mr. Muhammad Nazim Khokhar, Advocate has appeared on behalf of the Respondent and stated that both the appellants did not appear in the summary suit and the matter proceeded *exparte* against them. He next stated that though in the criminal case the appellants were acquitted but factors of a criminal case falls on different pedestal as that in a civil matter and even if it is assumed that the appellants were acquitted in the criminal case would not mean that they should be given a lease in the summary suit. He stated that the learned Single Judge after discussing the matter at some length has found the appellants at fault by not paying back the loan amounts given to them and that the cheque issued by one of the appellant was also bounced as the cheque

was given with the mala fide intention fully knowing the fact that the account of which the cheque was given had already been closed down. He therefore in the end, stated that the order passed by the learned Judge in the summary suit may be upheld and the decree may be directed to be fulfilled / executed.

We have heard both the learned counsel at considerable length and have also perused the record.

The record clearly reveals that admittedly no amount of loan was given by the present Respondent to the appellants. It has been averred in the summary suit that the Respondent only arranged the loans amounting to Rs.5 lacs and Rs.6 lacs respectively for the present appellants through his friend namely Muhammad Zeeshan. We categorically asked a question from the counsel for the Respondent that whether there was any agreement between Muhammad Zeeshan and the appellants with regard to giving of the loan amounts, to which he candidly replied that there was no agreement but it was verbally agreed between the parties that Muhammad Zeeshan would give the said amounts to the appellants which would be repaid as and when demanded by him. We next asked a question from the counsel for the Respondent is/was there any witness to the said giving of the loans amounts by Muhammad Zeeshan through the respondent to the appellants, again he submitted that there is no evidence or witness of the said transaction.

We are of the view that the learned Judge while passing the order has simply ignored this important factor that it was not the Respondent who has given the loan amounts to the present appellants but in fact it was Muhammad Zeeshan, who gave the loans to appellants, who has not come forward to file any suit for

recovery against the present appellants. It is also strange to note that there is neither any agreement between Muhammad Zeeshan and the appellants with regard to giving of the loan amounts nor there is any witness or evidence with regard to such transaction, which has made the transaction in our view quite dubious. We have further noted that the present appellants have been acquitted in the criminal case noted above, wherein it was found that the present Respondent as well as Muhammad Zeeshan have failed to prove with cogent material that the loan amounts were given to the present appellants. It is also an admitted fact that the present Respondent was brother in law of the present appellants and his relations with his wife, who is sister of the present appellants, became strained and the sister of the present appellants had also taken khula from him. The above facts if considered in juxtaposition would reveal that the trial Court while passing the judgment and decree has not considered these facts going to the roots of the case as it is an admitted position in the instant matter that there is neither any agreement between the parties with regard to giving of the loans nor there is any evidence or witness in this behalf.

As stated above, in our view the above facts has made the whole case of the Respondent quite suspicious in nature especially in furtherance of the matter that the criminal case filed by the Respondent against the appellant was decided in favour of the appellants.

We, therefore, are of the view that the learned Judge was not justified in allowing the appeal and passing the decree in favour of the Respondent. We therefore, set aside the order as well as the decree dated 19.09.2022.

As a result thereof the appeal stands allowed in the above manner. Listed application also stands disposed of.

JUDGE

JUDGE

Karachi:
Dated: 16.08.2023
SM