JUDGMENT SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

R.A No.S-198 of 2022

Applicant	:	Ramesh Lal s/o Moolo Mal, through Mr. Yameen Ali Khoso, Advocate
Respondents No.1 (a) & 1 (b)	:	Gul Hassan (deceased) through his legal Heirs through M/s. Muhammad Rizwan Chachar and Asif Bashir Bharo, advocates
Date of hearing	:	26.01.2024
Date of Decision	:	23.02.2024

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115, the Civil Procedure Code 1908 (**"the Code"**), the applicant has impugned Judgment and Decree dated 13.10.2022, passed by the District Judge, Sukkur (**"appellate Court"**) in Civil Appeal No.80 of 2020, whereby, the Judgment and Decree dated 16.12.2019, passed by Senior Civil Judge-I, Pano Aqil (**"trial Court"**) in old F.C. Suit No.121 of 2015 (New F.C. Suit No.131/2017), through which the suit of the respondent was decreed has been maintained by dismissing the Appeal.

2. The succinct facts leading to the captioned Civil Revision Application are as follows: The respondent instituted a suit in the trial Court against the applicant, claiming recovery of Rs.1,331,212/- with an interest of Rs.700,000/-. According to the respondent, he and the applicant started a business selling and purchasing motor vehicles, in which he was a sleeping partner. The respondent, from time to time on different dates, paid an amount of Rs.1,331,212/- to the applicant by way of cash as well as through cheques, and acknowledgement receipts were obtained by the respondent in Lal Bandi (notebook). The respondent, along with his witnesses, approached the applicant time and again for

payment of the business profit. At first, the applicant kept him in false hopes, but afterwards, he refused and extended threats not to demand his amount, which constrained the respondent to file a suit.

3. The applicant contested the suit and filed his written statement, resisting the suit on all legal and factual grounds and denying the claim of the respondent, including the running of a business of purchasing and selling motor vehicles. He asserted that his amount is outstanding against the son and nephew of the respondent, and to usurp the said amount, the respondent has filed the suit.

4. From the divergent pleadings of the parties, the trial court framed the following issues: -

i. *Whether the suit of plaintiffs is not maintainable under the law?*

ii. *Whether plaintiff is entitled for the recovery of an amount of Rs.13,31,212/- alongwith profit of about Rs.700,000/-, total amount of Rs.2,031,212?*

iii. *Whether plaintiff is entitled for the relief claimed?*

iv. *What should the decree be?*

5. In support of their claim, the respondent examined himself, produced relevant documents and examined a witness named Gulzar Shaikh. In rebuttal, the applicant examined himself and presented another witness named Kalash to support his claim.

6. After hearing the arguments of learned counsel for the parties in the light of the material available on record, the trial Court decreed the suit for recovery of Rs.1,331,212/- along with markup with standard bank rate vide Judgment and Decree dated 16.12.2019, which was upheld on appeal by the appellate Court vide Judgment and Decree dated 13.10.2022.

7. At the very outset, the learned counsel representing the applicant contended that the impugned judgment and decrees of the courts below contradict the law and facts on record and suffer from misreading and non-reading of evidence. Therefore, they are liable to

be set aside. He contended that the descriptions of cheques given in the impugned judgments do not belong to the applicant. He argued that the trial court compared signatures on its own accord without sending the specimen signature to the expert. He also contended that respondent No.1 registered F.I.R.s against the applicant, which were disposed of under either "B" or "C" Class. He contends that respondent No.1 has failed to prove the payment through reliable and cogent evidence and alleged that the cheques are in the name of the applicant. Lastly, he contended that the courts below committed patent illegalities and irregularities in passing the impugned judgments and decrees.

8. Conversely, while refuting the contention, the learned counsel representing respondent No.1(a) and (b) supported the impugned judgments and decrees. They maintained that both the lower courts recorded concurrent findings of facts based on a proper appreciation of evidence. He argued that no case of misreading or non-reading of evidence has been made out, nor has any legal infirmity been pointed out that would warrant the interference of this Court in its revisional jurisdiction under section 115 of the Code.

9. The arguments have been heard at length, and the available record has been carefully evaluated with the valuable assistance of the learned counsel for the parties. I have also scrutinized the accuracy and thoroughness of the judgments and decrees of both the lower Courts, providing a fair opportunity for the learned counsel for the applicants to convince me about any illegal actions or material irregularities committed by the Courts below in the exercise of their jurisdiction.

10. After reviewing the impugned judgments, I have come to the conclusion that the factual findings made by the trial Court and confirmed by the Appellate Court are based on a proper and fair assessment of the evidence. The judgments of the lower courts have

definitively resolved the arguments raised. A review of the record shows that the applicants did not directly challenge the respondent's statement. A mere claim, without any documentary evidence, is not valid and cannot be used to dismiss the respondent's legitimate and sincere claim. In this case, both the trial Court and the Appellate Court have thoroughly discussed every aspect of the case and have addressed them in detail, leaving no scope for further discussion. The mere claim by the learned counsel for the applicant that the impugned judgments and decrees are contrary to the law and the facts on record, without making a genuine effort to substantiate the same, carries no weight.

11. It's a firmly established legal principle that if the trial court's jurisdiction has been affirmed by the first appellate Court, then this Court rarely intervenes unless the discretion has been used arbitrarily. It's also a recognized legal principle that this Court has very limited authority to meddle in the concurrent decisions of the two Courts below when exercising jurisdiction under Section 115 of the Code unless the judgments of the lower courts are due to misinterpretation or neglect of evidence, or if the case's decision breaches the guidelines set by superior Courts.

12. Addressing the issue of comparing the applicant's signature on the receipts through a handwriting expert, it was incumbent upon the applicant to request the trial court to compare his signature through a handwriting expert. However, he did not seize this opportunity. Regardless, the courts are fully capable of comparing signatures, and it is not a legal requirement to have the signature examined by a handwriting expert. Furthermore, both the lower courts have already compared the applicant's signatures on the receipts with the admitted signatures of the applicant that are available in the court records. This demonstrates that the courts have the ability and authority to conduct such comparisons without the need for a handwriting expert. This process is legally sound and provides a fair opportunity for the

applicant to validate his claims. Therefore, the objection regarding comparing signatures does not hold substantial ground in this context. In this context, I refer to the case of Khudadad vs Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others **(2022 SCMR 933)**, where it has been ruled as follows: -

> *"11. Article 84 of the Qanun-e-Shahadat Order, 1984 is an enabling stipulation entrusting the Court to reassure itself as to the proof of handwriting or signature. The Court has all the essential powers to conduct an exercise of comparing the handwriting or signature to get hold of a proper conclusion as to the genuineness of handwriting or signature to effectively resolve the bone of contention between the parties. The real analysis is to ruminate the general character of the inscriptions/signatures for comparison and not to scrutinize the configuration of each individual letter. It is an unadorned duty of the Court to compare the writings in order to reach at precise conclusion but this should be done with extreme care and caution and from dissimilarity and discrepancy of two signatures, Court may legitimately draw inference that one of these signatures is not genuine and when the Court is satisfied that the signature is forged and feigned then nothing prevents the Court from pronouncing decisions against the said documents. In the case of Ghulam Rasool v. Sardar-ul-Hassan (1997 SCMR 976), the petitioner contended that the Trial Court was not justified recording its finding on the question of signature by comparing the signature in dispute with the admitted signature as it was required to refer the matter to the handwriting experts which contention was found untenable by this Court and it was held that it is within the power of Court to compare the disputed signature with the admitted signature and to form its view though it is advisable to refer the matter to the handwriting expert. However, the fact that the same was not referred would not render the order/judgment legally infirm as to warrant interference. While in the case of Messrs Waqas Enterprises v. Allied Bank of Pakistan and 2 others (1999 SCMR 85), the Court held that it is settled principle that in certain eventualities the Court enjoins plenary powers to itself to compare the signature along with other relevant material to effectively resolve the main controversy. The learned counsel for the appellant referred to the case of Rehmat Ali Ismailia v. Khalid Mehmood (2004 SCMR 361), in which, while recording the contention of the counsel for the petitioner that the Court was not competent to compare the signature of the petitioner on the agreement of sale under Article 84 of Qanun-e-Shahadat, the Court held that the above provisions do empower the Courts to make the comparison of the words or figures so written over a disputed document to that of admitted writing/ signature and the Court could exercise its judgments on resemblance of admitted writing on record. It is true that it is undesirable that a Presiding Officer of the Court should take upon himself the task of comparing signature in order to find out whether the signature/writing in the disputed document*

> *resembled that of the admitted signature/writing but the said provision does empower the Court to compare the disputed signature/writing with the admitted or proved writing. Reference may be made to (i) Ghulam Rasool and others v. Sardar-ul-Hassan and another 1997 SCMR 976; (ii) Mst. Ummatul Waheed and others v. Mst. Nasira Kausar and others 1985 SCMR 214 and (iii) Messrs Waqas Enterprises and others v. Allied Bank of Pakistan and others 1999 SCMR 85."*

13. In the above-given circumstances, the concurrent findings of the facts recorded by the Courts below do not appear to suffer from jurisdictional defect. In the case of **Haji Wajdad v. Provincial Government Through Secretary Board of Revenue Government of Balochistan, Quetta and others (2020 SCMR 2046)**, it was held by the Supreme Court of Pakistan that: -

> *"There is no cavil to the principle that the Revisional Court while exercising its jurisdiction under section 115 of the Civil Procedure Code, 1908 ("C.P.C."), as a rule is not to upset the concurrent findings of fact recorded by the two courts below. This principle is essentially premised on the touchstone that the appellate Court is the last Court of deciding disputed questions of facts. However, the above principle is not absolute, and there may be circumstances warranting exception to the above rule, as provided under section 115, C.P.C. gross misreading or non-reading of evidence on the record; or when the courts below had acted in exercise of its jurisdiction illegally or with material irregularity".*

14. The above discussion leads me to the irresistible conclusion that the lower courts have properly appreciated the evidence and the law applicable to the case. Neither any misinterpretation or neglect of evidence nor any significant irregularity or jurisdictional defect could be identified to justify interference. The Civil Revision, having been found devoid of substance, is **dismissed** with no order as to costs.

J U D G E

Faisal Mumtaz/PS