

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Civil Appeal No.S-37 of 2017

Appellant : Imdad Ali son of Muhammad Haroon,
Through Mr. Nusrat Hussain Memon,
Advocate

Respondent : Najeebullah son of Haji Abdul Wahid,
Through Mr. Liaquat Ali Jatoi, Advocate

Province of Sindh : Through Mr. Ahmed Ali Shahani, Assistant
Advocate General

Date of hearing : 22.04.2024

Date of Decision : 03.05.2024

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Appeal under Section 96 of the Code of Civil Procedure, 1908 (“C.P.C”), the defendant (“appellant” herein) has impugned Order dated 11.11.2017 and Decree dated 11.11.2017, passed by Additional District Judge Gambat (“the trial Court”), in Summary Suit No.01 of 2017, whereby the leave to defend application was dismissed by the trial Court and Summary Suit filed by the plaintiff (“respondent” herein) was decreed.

2. The brief facts of the case are that the respondent filed a Summary Suit based upon a negotiable instrument, i.e. cheques allegedly issued by the appellant towards the fuel payment. The appellant purchased this fuel from the respondent, who operates a petrol pump under the name and style of M/s Najeeb Jatoi Petroleum Services, Rasoolabad. The appellant also owns Imdad Petroleum Service, located on the main National Highway in Sakrand District, Nawabshah. It is averred that the cheques amounting to Rs.300,000/- were dishonoured upon presentation to the bank. The respondent also lodged the FIR against the appellant. Upon being summoned, the

appellant filed an application under Order XXXVII Rule 3 C.P.C, seeking leave to defend the suit. However, this application was dismissed by the trial Court. Consequently, the suit was decreed through the impugned Order and Decree, leading to the instant appeal.

3. Having heard the arguments advanced by learned counsel for the parties and minutely perused the material available on record.

4. Summary Suits under Order XXXVII Rules 1 and 2 C.P.C. provide a special procedure for the parties involved. The defendant has no right to contest the suit unless he seeks permission to defend it and the Court awards him leave through a speaking order. The scheme introduced in Order XXXVII requires that the plaint disclose a clear case for the plaintiff to prove and for the defendant to defend, particularly regarding the negotiable instrument relied upon in the plaint.

5. The defendant/appellant's primary defence, as spoken in the affidavit accompanied with the application for leave to defend, is that the amount of Rs.300,000/- as claimed by the respondent has already been paid by him in three installments from his account. These payments were made as follows:

- i. Rs.120,000/- transferred from his account to the respondent's account on 25.3.2015 through an ATM;
- ii. Rs.80,000/- transferred online to the respondent's account on 02.4.2015 and
- iii. Rs.100,000/- transferred to the respondent's account in April 2015.

6. As proof, the appellant has submitted a bank statement of account showing these transactions. Therefore, the appellant claims that he has cleared his liability. Order XXXVII Rule 3 C.P.C is a provision that deals with the procedure for defendants in a summary suit. Here's a detailed interpretation:

1. **Defendant showing defence on merits to have leave to appear:** If a defendant can show a valid defence against the plaintiff's claim, they can apply to the Court for permission to

appear and defend the suit. The defence must be based on merits, meaning it must be substantive, not frivolous or irrelevant.

2. **The Court shall, upon application by the defendant, give leave to appear and to Defend the suit.** If the defendant applies to the Court showing a defence on merits, the Court has the discretion to allow the defendant to appear and defend the suit. This is not an automatic right, but it is granted by the Court based on the merits of the defence presented.

3. **Upon affidavits that disclose such facts as would make it incumbent on the holder to prove consideration:** The defendant must present affidavits (sworn statements) that require the plaintiff (the holder of the negotiable instrument) to prove that there was a consideration. The consideration here refers to something of value promised to the other party to convince them to enter into a contract.

4. **Or such other facts as the Court may deem sufficient to support the application:** The Court may also consider other facts presented by the defendant in their affidavits that it deems sufficient to support the defendant's application for leave to defend.

7. Order XXXVII Rule 3 C.P.C provides a mechanism for a defendant in a summary suit to present a defence and seek the Court's permission to defend the suit. The defence must be substantive, and the defendant must provide facts that challenge the plaintiff's claim or require the plaintiff to prove their claim. In the present case, the appellant/defendant has put forth a defence that is neither illusory nor deceptive. The appellant/defendant maintains that he has discharged his entire liability through online payments from his account. This assertion is corroborated by the presentation of his bank statement, which proves that the amount was indeed debited from his account. Such a defence necessitates evidence for its

validation or refutation, which can only be accomplished with a thorough inquiry. A pivotal point that remains to be determined is whether the amount transferred by the appellant/defendant was indeed credited to the respondent's account. This is a significant factor that could potentially influence the outcome of the case. The appellant/defendant's application for leave to defend the suit is further bolstered by an affidavit, which lends additional credibility to his defence. This situation underscores the importance of comprehensively examining the evidence to ensure a fair and just dispute resolution. It highlights the necessity for the Court to meticulously scrutinize all the evidence presented, including the bank statement and the affidavit, to arrive at a verdict that is both fair and just. The Court's decision will ultimately hinge on the veracity of the appellant/defendant's claims and the validity of the evidence presented. Therefore, the findings of the trial Court that two receipts of ATM of UBL showing the amount of Rs.100,000/- and Rs.80,000/- are neither legible/readable nor show any transaction of above amount transferred in the account of respondent/plaintiff are in a summary manner which requires proper inquiry, which has not been done by the trial Court. In light of these considerations, it is clear that a thorough investigation is necessary to ascertain the truth of the matter and ensure a fair and just resolution of the dispute.

8. In light of the above discussion, it is clear that the appellant/defendant has successfully disclosed a plausible defence while raising a substantial question of fact that warrants investigation and trial. As such, he is entitled to leave to appear and defend the suit. However, the learned trial court failed to exercise its jurisdiction judiciously and appropriately, passing the impugned Order and Decree hurriedly. Despite this, the appellant/defendant has not denied the issuance of cheques. Thus, he is liable to be burdened with the condition to satisfy the Decree if it is ultimately passed against him after the trial process.

9. For the preceding reasons, the instant appeal is allowed, and the impugned Order and Decree dated 11.11.2017, passed by the trial Court, are set aside. The application for leave to defend the suit filed by the appellant/defendant is accepted subject to furnishing security to Rs.300,000/- before the learned trial Court. The record indicates that the suit had been filed before the trial Court in 2017. Therefore, I direct the trial Court to dispose of the appeal within one month from the receipt of a copy of this Order and report compliance to this Court.

JUDGE

Faisal Mumtaz/PS