

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**1<sup>st</sup>. Civil Appeal No. S – 49 of 2023**  
(*Shahid Umar Rajput vs. Misri Khan Jatoi*)

Date of hearing : **20.09.2024**

Date of decision : **20.09.2024**

Mr. Farman Ali Rajput, Advocate for the Appellant

**J U D G M E N T**

**Zulfiqar Ahmad Khan, J.** – Despite service none has effected appearance on behalf of the respondent. Counsel for the appellant assisted the Court by narrating illegalities committed by the trial Court in dismissing the Summary Suit filed by the appellant, where, per learned counsel at one hand the trial Court has admitted that the cheques were duly issued in favour of the appellant through Issue No.3 and in the circumstances, where no evidence was led by the respondent, still the Suit was dismissed. Counsel also states that the observations made by the concerned trial Court are in contravention of Article 17 and 79 of the Qanoon-e-Shahadat Order, 1984, as the Iqarnama was duly established. Learned counsel eventually has relied upon the last paragraph of the judgment where it has been held that appropriate remedy of filing an ordinary Suit before a competent Court was available with the appellant, but instead of returning the plaint, the Court went on to dismiss the Suit notwithstanding as it was responsibility of the Court to first decide about its jurisdiction and if no jurisdiction was existing then to return the plaint to the competent Court. Reliance is placed on the *case of Muhammad Ahmed Siddiqui and another vs. Abdul Abid and another (PLD 2021 Sindh 1)*, wherein it has been held that in

such circumstances courts are not to prejudice anyone and it was incumbent upon the courts to return the plaint with direction to have a suit instituted before the Court of competent jurisdiction rather. A bare perusal of the judgment reflects that the judgment is self-contradictory as to cheques having been issued favouring the appellant, issue No.3, was answered in affirmative, giving benefit of such finding to the appellant but the most puzzling finding is given in the last paragraph where the trial Court has held that the appellant should have filed an ordinary suit in the same jurisdiction and dismissed the suit while appropriate remedy could have been given by returning the plaint to the court having competent jurisdiction.

2. In the circumstances, this Appeal is allowed and the impugned judgment/decreed is set-aside and matter is remanded back to the competent Court for determination through ordinary jurisdiction of the Court, by remanding the matter to the District and Sessions Judge, Sukkur.

Judge