

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

High Court Appeal No. 355 of 2017**Ghazanfar Ali & another**..... **Appellants**

through Mr. Muhammad Umer Lakhani, Advocate

vs.

Cherat Cement Limited & others..... **Respondents**Mr. Khalid Mehmood Siddiqui, Advocate for
respondent No.1

Date of hearing: 19.02.2024

Date of short order: 19.02.2024

Date of reasons: 11.03.2024

JUDGMENT

OMAR SIAL, J: Ghazanfar Ali and Afsari Begum (the two appellants in this appeal) are husband and wife. Ghazanfar, an accountant, started working for Cherat Cement Limited (respondent no. 1) in February 1982. He was accused of misappropriating company money and other valuables. Suit No. 752 of 1984 was filed by Cherat Cement against the couple and one Tasneem Zaki seeking a declaration that the company was the owner of the assets that Ghazanfar had purchased from the ill-gotten wealth. This included savings certificates, amounts invested with certain banks, two apartments, one plot of land, a vehicle, gold, electronics and prize bonds. A decree of Rs. 2.3 million was sought against the couple.

2. After Cherat Cement had filed the above mentioned Suit, the couple also filed Suit No. 358 of 1985, primarily seeking a declaration against Cherat Cement and its management that they had conspired against

Ghazanfar and had forced and coerced him to sign documents. He also claimed damages, recovery of certain amounts and a permanent injunction.

3. Ghazanfar and his wife seem to have lost interest in the proceedings in Suit No. 752 of 1984 and due to their continuous absence at trial, on 13.08.2015 their side was closed. Both suits were heard together and a common judgment announced on 28.07.2017.

4. We have heard the learned counsels and perused the record. Our observations and findings are as follows.

5. It has been admitted position of Ghazanfar that the money was diverted by him to the bank account operated and maintained by Afsari Begum (Ghazanfar's wife) and Abdul Jalil Bintori (her brother). He however alleges that he was depositing the money in the said account on the instructions of the senior management of Cherat Cement.

6. Ghazanfar's learned counsel was asked to put on record the details of the cheques, the amounts of which were allegedly embezzled. In all 31 cheques were issued. Out of these 14 were cross cheques in the name of Abdul Jalil Bintori and were for an aggregate of Rs. 2,002,263.19. The remaining 17 were cash cheques for an aggregate amount of Rs. 279,854. He claimed though that one of the cheques was given to him to get a pay order made from Cherat's bank in favour of the Collector Customs and that cheque was signed by the Finance Manager and the Finance Director. Another cheque in the name of Bintori was also signed by the two senior executives of the company. He alleged that this amount was to be withdrawn by him and given to the Manager and Director. In particular he accused the Manager.

7. The record reflects that:

- (i) The amounts that were deposited in Afsari's account were encashed by Afsari Begum through cheques.
- (ii) Ghazanfar was responsible for preparing bank vouchers and it seems taking advantage of the voluminous cheques to be

signed by the author signatories, he would slip in fake vouchers.

- (iii) It was shown at trial that an amount of Rs. 694,182 was withdrawn from Bintori/Afsari account by Ghazanfar himself and the bank was instructed to purchase term deposit certificates in the names of certain individuals which included him and his wife. None of the company management he blamed for being masterminds of the fraud were the beneficiary. The purchases of immovable properties and other valuables were all made in the same time frame when embezzlement was alleged.
- (iv) No evidence was produced at trial to show that Finance manager or the Finance Director were beneficiaries of the embezzled amount. On the contrary not only the money trail was proved against Ghazanfar and his wife, but that the funds being diverted for purchasing assets was also established.

8. The learned Single Judge has laboriously and comprehensively evaluated the documentary evidence and we see no reason to interfere with his findings.

9. Above are the reasons for dismissing the appeal through our short order dated 19.02.2024.

JUDGE

JUDGE