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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st Civil Appeal No.S-01 of 2017

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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30.01.2020.

1. For orders on office objections.
2. For hearing of Main Case.

Mr. Habibullah G. Ghouri, advocate for the appellant.
Mr. Atta Hussain A. Chandio, advocate for the respondent.

This first civil appeal is directed against the judgment and decree dated 22.04.2017, whereby the learned III-Additional District Judge, Larkana dismissed the Summary suit No.03/2016 filed by appellant Abdul Hameed Kandhro.

2. Briefly stated facts of the case are that the appellant herein filed aforementioned summary suit under Order 37, Rules 1 & 2, CPC for the recovery of Rs.1035,000/-, alleging therein that he used to run Rice Mill in the name and style of "Al-Noor Rice Mills" and also provided Urea Fertilizer to landlords and purchased the paddy and wheat commodities. It was further alleged that the defendant was a *zamindar*, who used to purchase Urea Fertilizer from him and in the years 2012-13 he purchased on credit Urea Fertilizer from the plaintiff, for that he paid some amount in cash and issued a cheque bearing No.7392581 to plaintiff amounting to Rs.10,35,000/- on 10.01.2013, which on presentation was dishonoured.

3. The respondent contested the suit by filing an application for leave to appear and defend the suit, which was dismissed vide order dated 30.09.2016 and the appellant was directed to lead *ex parte* evidence.

4. Thereafter, on 19.11.2016 the appellant filed is affidavit-in-evidence (Ex.16) and produced original cheque (Ex.16-A) and



memorandum of said cheque issued by the bank dated 22.01.2016 (Ex.16-B). The learned trial Court after hearing the learned Counsel for the appellant dismissed the suit, *inter alia*, observing as under:-

"There is another aspect of the plaintiff's allegation of dishonouring of the instant cheque by the defendant's bank i.e. under section 30 and 94 of Negotiable Instruments Act, 1881, the plaintiff was required to issue notice of dishonouring of this cheque to the defendant, requiring him to make good the defaulted payment to the plaintiff, but the plaintiff abstained from compliance of legal requirement of this provision of Negotiable Instruments Act, 1881, and after dishonouring of this cheque the plaintiff without holding the defendant liable for the payment of dishonoured cheque filed the instant suit, whereby the plaintiff has brought cloud upon his claim that the instant cheque was issued to him by the defendant for lawful consideration. Hence the same cheque is presumed to be acquired by without consideration.

The instant case of plaintiff is also suffering from the provisions of Limitation Act and other limitation which are prescribed for presentment of the cheques under the provision of Negotiable Instruments Act, 1881, and the standard practice of the banks. Cheque presented after more than six months of its ostensible date of issuance is considered to be stale. Period of six months is allowed for presentation of cheque according to practice of banks. In the present case the plaintiff's cheque bears the issuance date 10.01.2013, whereas it was presented to the bank for encashment on 22.01.2016 after passing of more than three years. It is required under section 61 of Negotiable Instrument Act, 1881 that the cheque or bill of exchange is to be presented within reasonable time, in case no time or place is specified therein for presentment, and in default of such presentment no party thereto is liable thereon to the person making such default. In the instant case the cheque was not only out dated but the same was presented for encashment after an outstanding belated time, after its alleged issuance by the defendant. In determining what is reasonable time for presentment for acceptance, it is settled law that regard shall be had to the nature of instrument and the usual course of dealing with respect to similar instrument. In the instant case the reasonable time has elapsed and the cheque was presented for encashment after inordinate delay of more than three years and plaintiff has mentioned no reason of such delay, neither in his plaint nor in his affidavit in evidence of his ex-parte proof, therefore, this cheque in question is severely time barred in view of provisions contained under Article 58 of Limitation Act, 1908."

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5. Learned Counsel for the appellant though has argued the matter at length, but has failed to establish as to how a summary suit was maintainable without issuing notice of dishonouring of the cheque to the defendant in terms of Sections 30 and 94 of the Negotiable Instruments Act, 1881. So also, it appears ~~that~~^{of} from the perusal of the memo issued by the bank (Ex.16-B) that the alleged cheque was presented by the plaintiff after 03 years of its alleged issuance. Needless to mention here that six months' period is provided under the Banking Rules for presentation of a cheque for encashment and the alleged cheque as per the endorsement of aforesaid memo has not been dishonoured by the bank **on account of insufficient funds**, but for the reason that **the cheque was out of date**. Section 61 *ibid* provides that a bill of exchange is to be presented within reasonable time in case no time of place is specified therein for presentation, and in default of such presentation no party thereto is liable thereon to the person making such default. It may also be observed that under Article 16-A of the Limitation Act, 1908 the limitation provided for maintaining a summary suit under Order 37, CPC is 03 years when the debt becomes payable. In the instant case, admittedly the debt became payable on 10.01.2013, but the suit was maintained by the appellant on 15.03.2016 i.e. after expiry of 03 years, 02 months and 05 days, which was also barred under the Limitation Act.

6. For the foregoing facts and reasons, the impugned judgment and decree do not appear to be suffering from any illegality or irregularity requiring any interference of this Court in its appellate jurisdiction. Hence, this first civil appeal is dismissed accordingly.


JUDGE