# IN THE HIGH COURT OF SINDH AT KARACHI

**HCA No. 205 of 2018**

[Syed Mehmood Ali .....v..... Amjad Yousuf]

&

**HCA No. 293 of 2018**

[Amjad Yousuf .....v..... Syed Mehmood Ali]

**Present:** **Mr. Justice Yousuf Ali Sayeed**
**Mr. Justice Arbab Ali Hakro**

| | | |
|---|---|---|
| Appellant through | : | Mr. Shahenshah Hussain, Advocate. |
| Respondent through | : | Ch. Abdul Rasheed, Advocate. |
| Dates of Hearing | : | 21.08.2024 & 19.09.2024 |
| Date of Decision | : | 11.10.2024 |

## J U D G M E N T

**ARBAB ALI HAKRO, J:-** These two appeals were instituted to impugn the Judgment dated 28.05.2018 ("**Impugned Judgment**"), and the Decree formulated in consequence thereof dated 12.06.2018, rendered by a learned Single Judge of this Court in Suit No. 963 of 2013 ("**Suit**"). Given that the crux of the controversy in all these appeals is contingent upon the Impugned Judgment, the said appeals shall be adjudicated upon through this consolidated Judgment.

2. A succinct exposition of the factual matrix pertaining to the extant appeals is delineated in chronological sequence herein below: -

i. The appellant of HCA 205/2018 instituted a suit for the recovery of PKR 53,000,000/- against the respondent, alleging therein that the respondent, being his confidant, solicited financial assistance for constructing a multi-storeyed edifice on Plot No. B-29, situated on the main Shahrah-e-Faisal, Sindhi Muslim Cooperative Housing Society, Karachi. The respondent requested the provision of funds by agreeing to sell two premises, admeasuring 1670 Square Feet and 1667 Square Feet, on the second floor of the proposed building for a total sale consideration of PKR 10,000,000/- (Rupees One Crore) each. The appellant in the suit averred that the respondent assured him of repurchasing both premises at an enhanced price of PKR 8000 per square feet within one year. Consequently, two separate agreements dated 11.05.2012 with the appellant and 24.10.2012 with his son, Syed Faisal Ali, were executed, and PKR 20,000,000/- (Rupees Two Crore) were disbursed. It was further contended that the respondent, also being a money changer, offered to sell

USD 300,000/- in the fourth week of December 2012 at PKR 95 per USD, equivalent to PKR 28,500,000/- (Rupees Two Crore Eighty-Five Lac), and as an inducement, asked the appellant to pay a discounted price of PKR 27,900,000/- (Rupees Two Crore Seventy-Nine Lac), which was paid on 25.12.2012. Three receipts were issued in the names of the appellant, his son Syed Faisal Ali, and his wife Mst. Zahida Begum for an amount of PKR 9,500,000/- (Rupees Ninety-Five Lac) each. However, despite the payment, the dollars were neither issued nor delivered, and the respondent continued to seek further time but never repaid the amount. Subsequently, upon persistent demands, the respondent issued a cheque dated 30.06.2013, drawn on Meezan Bank for PKR 37,900,000/- (Rupees Three Crore Seventy-Nine Lac), which was dishonoured upon presentation due to insufficient funds.

ii. The appellant of HCA No. 293/2018, who is also the respondent in the lead HCA, impugned the Judgment and alleged in his appeal that he is engaged in the construction business under the name and style of Zam Zam Builders & Developers. One Zulfiqar Ali Abbasi, being the owner of Plot No. B-29, situated on the main Shahrah-e-Faisal, Sindhi Muslim Cooperative Housing Society, Karachi, engaged his services in the construction of a project on the aforementioned plot. The respondent approached the appellant in April 2012, expressing his willingness to invest in the project and purchase a certain portion of the project. Consequently, agreements (details of which are delineated in the preceding HCA) were executed. The appellant claims that the respondent insisted on being provided with a post-dated cheque as security, to which Cheque No. A-9944601 was handed over to the respondent by the appellant. According to the appellant, he had returned an amount of PKR 10,000,000/- to the respondent, and the portion of the second floor was also retained by the respondent. Hence, no claim whatsoever arises against the appellant. However, the respondent, having concocted a false and fictitious story regarding money exchange, obtained the impugned Judgment and Decree.

3. The evidence was adduced solely by the plaintiff, and upon the culmination of the final arguments in the suit, the Impugned Judgment and Decree was rendered.

4. The learned Single Judge of this Court, vide the Impugned Judgment, was pleased to partially decree the suit for the recovery of PKR 13,336,000/- (Rupees One Crore Thirty-Three Lacs and Thirty-Six Thousand Only) with simple profit at the rate of 6% per annum (not on a compound basis), from 23.10.2013 (i.e., after one year) until its realization. However, for the remainder of the claim, the suit was dismissed.

5. The appellant of HCA No. 205/2018, being the plaintiff, impugned the Judgment and Decree based on which the suit was partially decreed, and he

beseeched the setting aside of the Impugned Judgment and Decree and prayed for the Decree of the suit as originally prayed. Conversely, the appellant of HCA No. 293/2018 beseeched the setting aside of the impugned Judgment and Decree.

6. It is against this backdrop that detailed arguments were advanced by the respective learned counsel on the issue of whether the Impugned Judgment and Decree were rendered in consonance with the law.

7. It is deemed prudent to elucidate here that the appellant Syed Mehmood Ali in HCA No. 205/2018 is the respondent in HCA No. 293/2018, whereas the appellant Amjad Yousuf in HCA No. 293/2018 is the respondent in HCA No. 205/2018. Given that the subject matter of these HCAs, as well as the parties involved, are identical, and to obviate any potential confusion, Syed Mehmood Ali (appellant) shall be referred to as the "**plaintiff**" in this edict, whereas Amjad Yousuf (respondent) shall be referred to as the "**defendant**".

8. Learned counsel for the plaintiff has contended that ample grounds, supported by the ratio decidendi of sound judgments of the Superior Courts, were present to demonstrate that the plaintiff was entitled to the Decree as prayed in the suit. He has argued that the learned Single Judge misinterpreted the prescriptions of Order XXXVII Rule 1 & 2 C.P.C in the Impugned Judgment and Decree, as the opportunity and remedy for resolving grievances lie at the discretion of the litigating parties. He has further submitted that the burden of proof rested on the defendant and not on the plaintiff, as the plaintiff had introduced documentary evidence corroborated by oral evidence through the production of witnesses. However, the defendant neither ventured into the witness box nor led any evidence in his defence, yet the learned Single Judge partially decreed the appellant's claim instead of decreeing it in its entirety. He also submitted that although the defendant introduced his written statement on record, he failed to adduce evidence. It is a trite law that written statements or pleadings of the parties cannot be treated as evidence unless a party enters the witness box and leads evidence in support of his claim. Furthermore, the defendant admitted the appellant's claim (particularly the signing of agreements and issuance of receipts regarding the US$ exchange) in his written statement filed in the suit. Once a fact is admitted in a written statement does not require further proof. He has also added that the learned Single Judge framed the additional issue and the burden upon the defendant, but he did not discharge. Therefore, the learned Single Judge didn't need to give findings on that additional issue. However, the learned Single Judge erred in rendering the Impugned Order, whereby the claim of the plaintiff was partially decreed rather than as prayed. In support of his contentions, he placed reliance on **PLD 1982 Khi 745, 1994 CLC 2103, 2007 SCMR 1820, 1999 SCMR 283, PLD 2010 S.C. 604, and 2024 SCMR 771.**

9. In contra, it was contended by the learned counsel for the defendant that the HCA filed by the appellant is liable to be dismissed, and the HCA filed by him challenging the legality of the impugned Judgment and Decree be allowed. He contended that it was demonstrated by the record that the plaintiff neither proved the stance of issuing receipts for money exchange nor introduced on record through evidence that the defendant had issued such money exchange receipts. He further contended that the affidavit-in-evidence filed by the plaintiff in the suit was beyond his pleadings, and several improvements were made by the plaintiff in his affidavit-in-evidence, which improvements per se are not admissible. He also contended that the plaintiff sought to implead Meza Currency Exchange as a party being defendant No. 2 through a CMA in the suit, which was allowed, but the said impleading order was set aside in HCA 95/2014. Therefore, the claim of the plaintiff whatsoever is not sustainable, and the impugned Judgment and Decree ought not to be sustained. He further submitted that the plaintiff admitted to having received an amount of PKR 10,000,000/- on behalf of the defendant, which was the actual invested amount of the plaintiff, and that the plaintiff acquired a portion of the second floor in the project as its profit. Therefore, no claim whatsoever arises against the defendant, and the impugned Judgment and Decree are liable to be set aside. He relied upon the case laws reported as 2019 SCMR 1726 and 1982 SCMR 816.

10. We have scrupulously considered the submissions advanced by the learned counsel for the plaintiff and defendant and have meticulously examined the impugned Judgment rendered by the learned Single Judge, including material available on record.

11. Upon meticulous scrutiny of the record, it is manifest that the initially by virtue of an Order dated 22.10.2014, predicated upon the pleadings of the parties, delineated the ensuing issues:-

i. *Whether the amount as claimed in the suit is due and outstanding against the defendants?*
ii. *Whether the defendant No.2 is liable to pay the amount as claimed or any other amount to the plaintiff?*
iii. *What should the Decree be?*

12. The record further elucidates that an application under Order 14 Rule 5 C.P.C. was submitted, which was allowed with the concurrence of the parties by virtue of an Order dated 04.12.2014. Consequently, in addition to the aforementioned issues, the following additional issues were delineated:

i. *Whether the suit is maintainable or not? If so, its effect?*
ii. *Whether Defendant No.1 had issued/delivered post-dated cheque No.A-9944601 dated 30.6.2013 for Rs.37,900,000/- in favour of the plaintiff as security or not? If so, its effect.*

13. However, a meticulous perusal of the impugned Judgment reveals that it is cited and deliberated upon the former issues framed on 22.10.2014 in the impugned Judgment, while no findings or discussion were rendered on the additional issues framed on 04.12.2014, and same remained unadjudicated. These are material issues in this case. The provisions of Order XX Rule 5 C.P.C. stipulate that "*in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.*" In these circumstances, the learned Single Judge was to provide reasons for his decision on the aforementioned additional issues.

14. Order XX Rule 5 C.P.C, mandates that in suits where issues have been framed, the court must state its findings or decisions and the reasons for each separate issue. This provision ensures that the court addresses all the issues raised or framed during the trial comprehensively and transparently. The rationale behind this rule is to provide clarity and justification for the court's decisions, thereby upholding the principles of natural justice and fairness. In the present case, additional issues were crucial to the case, and their exclusion from the Judgment undermines the comprehensiveness and fairness of the judicial process. It was obligated to provide findings and reasons for each issue, including the additional ones, to ensure a just and equitable resolution of the case. The failure to do so contravenes the provisions of Order XX Rule 5 C.P.C.

15. For the foregoing reasons, we ascertain that the impugned Judgment contravened the imperative stipulations of Order XX Rule 5 C.P.C. Consequently, we deem it judicious and equitable that the matter be remitted for a *de novo* adjudication on merits and in strict conformity with the law. With these pronouncements, both the instant appeals stand conclusively **disposed of**.

JUDGE

JUDGE