

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Ist Appeal No. S – 46 of 2023

*(Kamran Aslam Mughal v. Nawab Khan Malik)*

Date of hearing : 18.10.2024

Date of decision : 18.10.2024

Mr. Mashooque Ali Ghanghro, Advocate for appellant.

Mr. Shabbir Ali Bozdar, Advocate for respondent.

## J U D G M E N T

**Zulfiqar Ahmad Khan, J.** – Through this appeal, the appellant has impugned the judgment and decree dated 08.09.2023, passed by learned Additional District Judge, Kandiaro in Summary Suit No.67 of 2021, by means of which the Summary Suit filed by the respondent has been decreed.

2. Facts of the case are that the respondent (plaintiff) has a shop of refrigerators and solar system at Thari Road, Mehrabpur. On 19.11.2019 at 01:00 pm, the appellant (defendant) arrived at his shop and purchased solar system articles amounting to Rs.12,35,000/-, against which, he paid him Rs.2,50,000/- through cash and for the amount left i.e. Rs.9,85,000/- issued him a cheque bearing No. D-78872686 dated 19.12.2019 (Account No.98730103585473 of Meezan Bank, Mehrabpur Branch) in presence of witnesses, namely Sarfaraz and Muhammad Naeem. On the due date, upon approach of the respondent to the concerned bank, the said cheque was not cleared, and when he enquired from the appellant, he informed him that it would be encashed within 3-4 days. On 24.12.2019, the respondent again approached the bank, from where he discovered that the cheque was dishoured, and he received the same along with a memo. The respondent continuously approached the appellant, but he kept him on hollow hopes, and finally on 22.05.2020, he flatly refused to

pay the same. Consequently, the respondent lodged an FIR (Crime No.59 of 2020 under Sections 489-F and 420, PPC at Police Station Mehrabpur) against the appellant, but the concerned Court acquitted him in that case. Hence, the respondent filed the aforesaid Summary Suit against the appellant.

3. The appellant (defendant), filing an application under Order XXXVII Rule 3, CPC, for granting leave to defend the Suit, presented his case in contrast that no amount of the respondent (plaintiff) is outstanding against him. In fact, his cheque was lost, and he had informed the concerned bank to stop payment against the said cheque, for which the bank has also issued such confirmation. Regarding the FIR under Section 489-F, he submitted that the learned Judicial Magistrate, Kandiaro has acquitted him through judgment dated 31.08.2020. The application for leave to defend the Suit was granted unconditionally by the learned trial Court through order dated 11.02.2022.

4. The learned trial Court then framed the following issues:

1. *Whether the suit is not maintainable under law?*
2. *Whether the plaintiff is entitled for the decree of an amount of Rs.9,85,000/- (Nine lac eighty five thousand rupees only) outstanding against defendant in respect of Articles of Solar system purchased by him, for which defendant issued cheque-in-question, which was subsequently dishonoured by the concerned Bank on its presentation for encashment?*
3. *Whether the alleged cheque of defendant was misplaced and later on, the plaintiff has misused the said cheque after writing the amount and signing the same by himself?*
4. *Whether the plaintiff is entitled for relief claimed?*
5. *What should the decree be?*

5. To substantiate his claim, the plaintiff (respondent) examined himself and a witness, namely Sarfaraz Ahmed Memon. The plaintiff produced original cheque and the memo of the bank. In defence, evidence of the

defendant (appellant) and his witnesses, namely Muhammad Nadeem Mughal, Muhammad Arif Arain (Manager of the Bank) and SIP Ghulam Sarwar Channa was recorded. The Manager produced defendant's application and letter issued by the bank, while the SIP produced photo stat copy of online complaint and application of the defendant. On the basis of that evidence, the learned trial Court decreed the respondent's Suit by aforesaid judgment and decree, and against the same, this appeal has been preferred by the appellant.

6. Hard arguments of the parties and perused material available on record with their able assistance.

7. While deposing before the learned trial Court, the respondent (plaintiff) has claimed that on 19.11.2019 at 01:00 pm, the appellant (defendant), who is his neighbour, came at his shop, where allegedly witnesses Sarfaraz Memon and Naeem Rajput were already available. He purchased solar plates and fridge against an amount of Rs.12,35,000/-. Out of that amount, Rs.2,50,000/- were paid by him in cash, while for remaining amount a cheque of Rs.9,85,000/- dated 19.12.2019 was handed over to the respondent. He further added that the appellant promised him for paying remaining amount in cash, and on his approach to him, he kept the respondent on hollow hopes. Then on 24.12.2019, he produced the cheque before the concerned bank, where it was dishonoured through a memo due to non-availability of balance. The respondent again approached the appellant and finding no response, he registered an FIR at Police Station Mehrabpur. His witness Sarfaraz Ahmed presented a story that was also consistent with his own.

8. The appellant (defendant)'s version before the learned trial Court was that the alleged cheque was misplaced on 14.12.2019, and he made an online complaint to Police Station Mehrabpur. Bank authorities were also informed by him. Witness Muhammad Nadeem also supported him.

However, the evidence provided by the Bank Manager and the SIP pertained to the appellant's application for the missing cheque, a letter issued by the bank in response, an online complaint and an application submitted to the police by the appellant.

9. Admittedly, the alleged transaction took place on 19.11.2019, with the cheque dated 19.12.2019, which was allegedly dishonored on 24.12.2019. The FIR under Section 489-F, PPC, was lodged in 2020, leading to the appellant's acquittal on 31.08.2020. However, the Summary Suit was filed in the year 2021 and admitted on 25.10.2021. This timeline indicates that the respondent remained silent for a considerable period.

10. It appears that the respondent has not demonstrated that the appellant is his neighbour, which could affect his credibility. The inclusion of fridge in the evidence by the respondent, which was not mentioned in the memo of the Suit as well as the alleged FIR, indicates inconsistency in his claim. The assertion that the appellant promised to pay the remaining amount in cash is not documented in the memo, as it only points out that for the remaining sum a cheque of same amount was issued, which also raises questions about the validity of the claim.

11. During cross-examination, the respondent's inability to recall specific details about the sale, such as the companies involved for each solar plate, undermines the reliability of his testimony. The absence of receipts for a significant bulk purchase amounting to Rs.12,35,000/- suggests a lack of proper business practices and could indicate that the sale may not have occurred as claimed.

12. The appellant's position is strengthened by the fact that he reported the cheque as lost and requested to stop payment against the same, which the bank has also confirmed. Furthermore, the memo concerning the cheque shows "payment stopped by drawer" rather than "dishonoured",

suggesting that the cheque was not validly issued in the first place. Finally, the appellant's acquittal in the FIR registered under Section 489-F, PPC, reinforces his defense, as it demonstrates that the concerned Court found no evidence of fraudulent intent.

13. In these circumstances, when the aforesaid discussed points suggest that the respondent has not provided sufficient evidence to support his claims, while the appellant's explanations and defenses appear to be more credible and consistent, instant appeal is **allowed**. Consequently, the judgment and decree of the learned trial Court dated 08.09.2023 is **set aside** and the Summary Suit filed by the respondent is **dismissed**.

J U D G E

Abdul Basit