

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1475 of 2020

Date	Order with Signature of Judge
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M/s. Almoiz Industries Ltd.....Plaintiff

Versus

Amir Riffat SiddiquiDefendants

Date of hearing : 10.02.2025

Date of announcement of judgment : 11.02.2025

Mr. Taimoor Ahmed Qureshi, advocate for the plaintiff.

JUDGMENT

MUHAMMAD JAFFER RAZA, J;- This is a summary suit filed under Order XXXVII CPC, the brief facts of the same are elucidated in paragraphs below:-

1. The plaintiff is a non-listed public limited company incorporated under the Companies Act 2017. The Plaintiff is in the business of manufacturing steel pipes of different grades and sizes. The defendant on the other hand is engaged in the business of buying and selling of iron rods. The transactions and the relationship between the parties is reflected in the following purchase orders against which the resulting invoices were issued by the plaintiff: -

Purchase Orders

- a. Purchase order No.AA/MS/PO/7395/07/17 dated 19.07.2017;
- b. Purchase order No.AA/MS/PO/7396/08/17 dated 03.08.2017;
- c. Purchase order No.AA/MS/PO/7397/09/17 dated 15.08.2017;

Invoices

- (a) Invoice No.AIL-011482 dated 21.07.2017;
- (b) Invoice No.AIL-011643 dated 04.08.2017;
- (c) Invoice No.AIL-011644 dated 04.08.2017;
- (d) Invoice No.AIL-011752 dated 16.08.2017;
- (e) Invoice No.AIL-011753 dated 16.08.2017;

It is evident from perusal of the purchase orders that the defendant opted to purchase steel bars from the plaintiff against which the above mentioned invoices were issued to the defendant.

2. The cumulative sum of all the invoices mentioned above is Rs.25,158,320/-. It is further contended by the learned counsel for the plaintiff that the payment in respect of the purchase orders listed above was to be made within 30 to 45 days from the date of purchase order, however, the same was extended on the request of the defendant and complete payment in the extended time was to be made between December 2017 and before the end of June 2018. It is contended that the defendant failed to make the requisite payment and the same was contractually due even within the extended time. My attention is also drawn by the learned counsel for plaintiff to email sent by the defendant to the plaintiff seeking the extended time as referred to above. The email correspondence further reflects that the plaintiff repeatedly sought the payment due from the defendant, however, on one pretext or the other the same was being delayed. Thereafter, the defendant finally issued three cheques as under:

S. No.	Drawn on	Cheque No. & date	Amount
01.	Habib Metropolitan Bank, Khayaban-e-Sehar Branch, Karachi.	107697833 dated 25.02.2018	19,800,000/-
02.	Habib Metropolitan Bank, Khayaban-e-Sehar Branch, Karachi.	114409408 dated 07.09.2018	2,500,000/-
03.	Habib Metropolitan Bank, Khayaban-e-Sehar Branch, Karachi.	114409409 Dated 14.09.2018	2,500,000/-

3. It is pertinent to mention that all the three cheques were not encashed due to the funds being insufficient, however, it has been categorically stated by the counsel for the plaintiff that two online payments in respect of outstanding sum were made in the amounts of Rs.1,001,160 and Rs.1,200,000 million on 02.05.2018 and 11.05.2018 respectively. Further the defendant also agreed in writing against signed receipt dated 19.07.2018 to pay Rs.5 million by the end of August, 2018 and remaining amount of Rs.18 million by September, 2018. The last online payment of Rs.1 million was made on behalf of the defendant on 08.12.2018. The outstanding amount of the plaintiff is reflected in the chart below: -

S.No.	Total amount outstanding	Received Payment	Dated
1.	25,158,320/-	1,001,160/-	02.05.2018
2.		12,00,000/-	11.05.2018
3.		1,000,000/-	08.12.2018
Total amount outstanding Rs.21,957,160/-			

The learned counsel for the plaintiff has also invited my attention to the legal notices issued to the defendant, however, the same were not replied to.

4. The plaintiff also chose to avail the remedy under criminal law and for the said purpose lodged the FIR No.1018/2019 dated 13.12.2019 under Section 489-F PPC. It has been further submitted by the learned counsel for the plaintiff that the defendant is an absconder in the above proceedings and proclamation under Section 87 Cr. P.C. was issued against the defendant. It has also been pointed out by the learned counsel by reference to various documents annexed from Page 85 to 115 that various attempts were made to arrest the defendant, however, the said attempts have miserably failed.

5. Instant summary suit under Order XXXVII CPC was filed on 26.09.2020, upon filing of the same notices issued to the defendant through all modes except publication on 28.09.2020. The record of the Additional Registrar shows that the defendant was repeatedly served through all modes including publication and service was held good upon the defendant on 16.02.2021 (incorrectly noted as 16.02.2020). Subsequently, the defendant was declared ex-parte as the same is reflected in the diary of Additional Registrar dated 11.01.2024. Upon examination of the file, it has been noted that one vakalatnama was filed on behalf of the defendant, however, no leave was filed within the statutory time for obtaining the leave under sub rule (2) of Rule 2 of Order XXXVII. The record also does not reflect any application for extension of time and/or condonation of delay was ever filed by the defendant.

6. I have perused the documents relied upon by the learned counsel for the plaintiff and have also examined the returned cheques in original. It is evident that the parties had a contractual relationship and the same cannot be denied as the defendant admittedly made various payments to the plaintiff, which have been duly acknowledged and also rightly adjusted as reflected in the chart in paragraph No. 3 above. It is also evident that no leave was obtained, or even filed by the defendant and therefore it is only the contents of the plaint and documents annexed with the same before this Court for adjudication. Before adjudicating the merits of the claim advanced by the Plaintiff it will be advantageous to reproduce sub-rule (2) of Rule 2 of Order 37 CPC.

“(2) In any case in which the plaint and summons are in such forms respectively the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree –”
(emphasis added)

The Honourable Supreme Court of Pakistan in the case of *Haji Ali Khan & Company, Abbottabad and 8 others vs. M/s. Allied Bank of Pakistan Limited, Abbottabad*¹ dilated upon the issue extensively and laid down the parameters for adjudicating Summary Suits in which the leave of the Defendant was either not filed or dismissed. After a detailed deliberation and examination of the case law on the subject, Ajmal Mian J. (as he then was) in Paragraph No.10 of the judgment opined as follows: -

“10. The ratio decidendi of the above-referred cases seems to be that if a Defendant fails to appear or fails to obtain leave to defend in response to a summon served in Form No.4 provided in Appendix B to the CPC or fails to fulfil the condition on which leave was granted or where the court refuses to grant leave, the Court is to pass decree. It may further be observed that in sub-rule (2) of Rule 2, CPC, it has been provided that if a defendant fails to appear or defaults in obtaining leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree, but no such consequences are provided for in Rule 3 of the above Order in a case where the Court refuses to grant leave or the defendant fails to fulfil the condition on which leave was granted. In our view, notwithstanding the above omission in Rule 3, the effect of refusal of the Court to grant leave or failure on the part of the defendant to comply with the condition of the leave, will be the same i.e. the defendant shall not be entitled to defend the suit on any ground and the Court would pass a decree in favour of the plaintiff. However, this does not necessarily mean that the court is not required to apply its mind to the facts and documents before it. Every Court is required to apply its mind before passing any order of judgment notwithstanding the factum that no person has appeared before it to oppose such an order or that the person who wanted to oppose was not allowed to oppose because he failed to fulfil the requirements of law.” (Emphasis added)

Concurring with the above, Fazal Karim J. in Paragraph No.3 of his additional note made the following deduction: -

“3. The consequence of the absence of leave is that “the allegations in the plaint shall be deemed to be admitted” and the party shall be entitled to a decree in terms of clauses (a), (b) and (c) of sub-rule (2) of rule 2. Does it mean that the Court must pass a decree although the allegations of fact in the plaint do not entitle him to it. Suppose,

¹ (PLD 1995 Supreme Court 362)¹

that the allegations of fact in the plaint show that the Plaintiff has no cause of action for the suit, or that the suit has not been instituted timeously and is barred by time. In neither of these cases, will the Plaintiff be entitled to a decree, nor will the Court be bound to pass one...

4. I would hold, therefore, that sub-rule (2) of Rule 2 applies also to cases in which leave to appear and defend is applied for but is refused with the result that the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree in terms of (a), (b) and (c) of Sub-rule (2) of Rule 2 if there is nothing in the allegations of fact in the plaint themselves to disentitle him to it." (emphasis added)

Without reproducing the excerpts, the following judgements also lay down the principle as laid down in *Haji Ali Khan* (supra): -

- (2) Naeem Iqbal vs. Mst. Zarina²
- (3) Col. ® Ashfaq Ahmed and others vs. Sh. Muhammad Wasim³
- (4) Mst. Nusrat Mufti vs. Muhammad Hanif⁴

A detailed perusal of *Haji Ali Khan* (supra) makes it abundantly clear that the burden of proof in a summary suit is (at least comparatively) lighter than it is on a plaintiff in a regular suit. However, the court while adjudicating a summary suit has to see facts narrated by the plaintiff and adjudge whether the plaintiff is entitled to the relief sought. The said exercise cannot be done in a mechanical or arbitrary manner and requires judicial deliberation.

7. The negotiable instrument in the present case are the cheques, details of which have already been given in paragraph No. 3. It is by now well settled that a cheque falls under the category of negotiable instrument and therefore, has to be governed by the Negotiable Instrument Act, 1881 ("**Act**"). The same has been defined under Section 6 of the Act as: -

"6. "Cheque". A "cheque" is a bill of exchange drawn on a specified banker and not expressed payable otherwise than on demand."

² (1996 SCMR 1530)

³ (1999 SCMR 2832)

⁴ (2012 CLD 2027 Karachi High Court)

Under the said Act the scheme of evidence in relation to cheques is quite inimitable. Section 118 of the said Act is reproduced for the sake of convenience: -

“118. Presumptions as to negotiable instruments---(a) of consideration; (b) as to date; (c). as to time of acceptance; (d) as to time of transfer; (e) as to order of endorsements (1) as to stamp; (g) that holder is a holder in due course. - --Until the contrary is proved, the following presumptions shall be made,

(a) that every negotiable instrument was made or drawn of consideration, and that every such instrument, when it has been accepted, endorsed negotiated or transferred, was accepted, endorsed negotiated or transferred for consideration:

(b) that every negotiable instrument bearing a date was made or drawn on such date;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) that every transfer of a negotiable instrument was made before its maturity; that endorsements appearing upon a negotiable.

(e) that endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;”

It is this presumption in favour of the holder of the negotiable instruments that lightens the burden of proof on the plaintiff and in fact shifts the said burden on the Defendant to rebut the presumption so made. The Honourable Supreme Court in the case of *Rab Nawaz Khan versus Javed Khan Swati*⁵ held in Paragraph No.7 that: -

“Although the presumption stated above, that every negotiable instruments is made/drawn for consideration, is rebuttable, it is trite law that the burden to rebut this presumption lies upon the party arguing that the negotiable instrument has not been made/drawn for consideration.”

⁵ (2021 CLC 1261)

The said principle was also expounded in the case of *Muhammad Muzammil versus Khurram Saeed*⁶.

To further elaborate the scheme under Section 118 of the Act, (although not relevant for the purposes of the present suit) it is also held that even if the Defendant affected appearance in the present suit and filed his leave application, a bare denial that a negotiable instrument has been made/drawn for consideration does not rebut the presumption in Section 118 of the Act.

8. A specific question was put to the counsel for the plaintiff regarding limitation. The learned counsel for the plaintiff has correctly replied by stating that Article 64A of the Limitation Act is applicable and the instant suit was filed within two years (approximately) of the cheques being bounced due to insufficient funds.

9. What is evident in the present case is that no rebuttal has been given by the defendant and hence the presumption under Section 118 may be deemed to be true and correct. I have had the opportunity to peruse the plaint and the annexures filed by the Plaintiff and hold that the Plaintiff is entitled for the relief sought.

10. Accordingly, I decree the suit in terms of clause (a) of Order XXXVII, Rule 2 of C.P.C., for an amount of Rs.21,957,160 (Rupees Twenty One Million Nine Hundred Fifty Seven Thousand One Hundred and Sixty only) against the Defendant in addition to interest at the rate of 15% from the date of this judgment till realization.

Office is directed to prepare the decree in favour of the plaintiff in the above terms.

Judge

Nadeem

⁶ (2024 CLC 610)