

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 64 of 2024

Present

Mr. Justice Muhammad Jaffer Raza

Spirit Business Enterprises

Versus

Mr. Inam Akbar

Plaintiff : Spirit Business Enterprises, through
Mr. Abdul Ahad Nadeem Advocate.

Defendant : Mr. Inam Akbar, through
Mr. Kalim Ali Advocate.

Date of Hearing: 21.02.2025

Date of announcement: 21.02.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: This is a summary suit under Order XXXVII CPC filed on 19.01.2024 by the Plaintiff seeking recovery of amount of Rs.201,738,952/- from the Defendant.

2. Learned counsel for the Plaintiff states that the Plaintiff is a sole proprietor of Spirit Business Enterprises established in 2001 with a wide-ranging portfolio inside and outside Pakistan. It is further contended by learned counsel for the Plaintiff that at the request of the Defendant, the Plaintiff agreed to invest certain sums of money in the business of the Defendant. Defendant on the other hand, as contended by learned counsel for the Plaintiff, is a businessman actively involved in the advertising and media sector and he operates a thriving advertising and marketing agency. Learned counsel for the Plaintiff referred the arrangement between the parties was codified through various investment agreements details of which are given in the table below: -

“INVESTMENT AGREEMENTS:

1.	The First Investment through cheque number 0168023.	Rs.15,000,000/-	Exhibit P-20
2.	The Second Investment through cheque number 25011043.	Rs. 3,000,000/-	Exhibit P-21
3.	The Third Investment through cheque number 0168018.	Rs. 18,500,000/-	Exhibit P-22
4.	The Fourth Investment through cheque 0168017.	Rs. 20,000,000/-	Exhibit P-23
5.	The Fifth Investment through cheque number 25011042.	Rs. 60,000,000/-	Exhibit P-24
6.	Profit/ Service Fee under the First, Second, Third and Fourth agreement through cheque number 25011041.	Rs. 82,238,952/-	Exhibit P-25
7.	Profit/Service Fee under the Fifth Agreement through cheque number 00000448.	Rs. 3,000,000/-	Exhibit P-26
	TOTAL OUTSTANDING AMOUNT	Rs.201,738,952/-	

3. For the purposes of clarification, it is stated that the first five columns in the above chart are the investments made by the Plaintiff pursuant to Investment Agreements. The last two columns (6 and 7) is the profit owed to the Plaintiff in accordance with the said agreements. It is further stated by the learned counsel for the Plaintiff that the said cheques were not encashed and returned by the concerned Bank due to insufficiency of funds. Lastly learned counsel for the Plaintiff has referred to electronic correspondences between the parties showing that Defendant gave repeated assurances to repay the Plaintiff.

4. Thereafter it is contended by the learned counsel for the Plaintiff that the Plaintiff also lodged an FIR under Section 489-F PPC bearing No.350/2023 at P.S. New Town. However, it was pointed out by learned counsel for the Plaintiff that the said FIR may proceed on its own merits and has no bearing in the instant summary suit.

5. It has been noted above that the suit has been filed on 19.01.2024 and summons were issued to the Defendants. The record reflects that summons were received by the Defendant on 31.01.2024 and on 29.02.2024 the Defendant was directed to file his leave to defend application by 02.04.2024. The Defendant failed to file the leave application on the said date and the case came up for hearing on 07.05.2024 when learned counsel for the Defendant appeared and sought time to seek instructions from his client and at his request the matter was adjourned to 13.08.2024.

The Defendant filed an application seeking condonation of delay on 15.10.2024. This Court vide order dated 14.11.2024 observed that the leave to defend application filed by the Defendant was hopelessly time barred and the said application was dismissed vide order dated 14.11.2024. In the same order the Plaintiff was directed to file his affidavit-in-ex-parte proof and learned Commissioner was appointed for recording of evidence. Subsequently the needful was done by the Plaintiff and the relevant cheques and investment agreement along with other documents were exhibited before the learned Commissioner.

6. The instant suit has noted above has been filed under Order XXXVII C.P.C. The same is reproduced below for convenience: -

“1. This order shall apply only to the High Court [to the District Court and to any other Civil Court notified in this behalf by the High Court.]

*2. – (1) All suits upon bills of exchange hundies or promissory notes, may, in case the plaintiff desires to proceed hereunder be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No.4 in Appendix B or in such other form as may be from time to time prescribed. (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)*

7. It is by now a settled principle of law that in cases where the leave to defend has been dismissed in a summary suit the contents of the plaint are deemed to be admitted. In the case of **Syed Itrat Hussain Rizvi v Messers Tameer Micro Finance Bank Limited through attorney and another**¹, it has been held as under: -

“It is now a well settled that in a summary suit under Order XXXVII of C.P.C., in which summons have been issued in Form No.4 Appendix B, the defendant is not entitled to appear or defend the suit as a matter of course unless he obtains leave from the Court so to appear and defend. In default of his obtaining such leave for 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. Till such time as leave to defend is granted the defendants cannot

¹ 2018 CLD 116

even file interlocutory application in order to agitate the point of jurisdiction or to question the transactions between the parties or to challenge validity, and legal effect of the promissory note and crossed cheque issued by them in favour of the plaintiffs.”

In the case of **Naeem Iqbal versus Mst. Zarina**², in which it has been held as under: -

“As per sub-rule (2) of Rule 2 of Order XXXVII, C.P.C., if a defendant after being served with summons of a summary suit, does not obtain leave to appear and defend the suit, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree.”

8. The negotiable instrument in the present case is a cheque and therefore a presumption that it was drawn for consideration is attached to the same under Section 118 of the Negotiable Instruments Act 1855 (“Act”). It was held in the case of **M/s. Almoiz Industries Ltd versus Amir Riffat Siddiqui**³ (authored by me) that the burden of rebutting that presumption is on the defendant. There is nothing on record to rebut the presumption which is drawn in favour of the plaintiff. Moreover, I have examined the documents exhibited by the plaintiff and hold that the Plaintiff is entitled for the relief sought. Accordingly, I decree the suit in terms of clause (a) of Order XXXVII, Rule 2 of C.P.C., for an amount of Rs. **Rs.201,738,952** (Rupees Two hundred and One Million Seven Hundred and Thirty Eight Thousand Nine Hundred and Fifty Two only) against the Defendant in addition to interest at the rate of 15% from the date of this judgment till realization.

Above are the reasons of the short order dated 21.02.2025. Office is directed to prepare the decree in favour of the plaintiff in the above terms.

JUDGE

Nadeem Qureshi “PA”

² 1996 SCMR 1530

³ Suit 1475 of 2020