

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

**Revision Application No. 188 of 2024**

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
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1. For orders on office objection as at 'A'.
2. For hearing of CMA No.10416/2024.
3. For hearing of main case.

**03.03.2025**

Mr. Saifullah Abbasi, Advocate for the Applicant.  
Ms. Gulqadam Malik, Advocate for Respondent.  
Mr. Ahmed Khan Khaskheli, A.A.G.

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Brief facts of the case are that the Applicant filed a Summary Suit against the Respondent for dishonor of cheque issued to him. The Applicant pursued his remedies by filing summary suit for recovery of money and also lodged FIR against the Respondent. The learned counsel thereafter filed an application under Article 76 of Qanoon-e-Shahadat Order 1984 ("**Order**") available at page 79 of the case file, for adducing secondary evidence as provided under Article 76(c) of the Qanoon-e-Shahadat Order on the ground that the alleged cheque has been lost. The said application was dismissed vide impugned order dated 26.10.2024. Learned counsel has stated that the cheque was also exhibited (in secondary form) in the criminal case and the conviction has been awarded thereof to the Respondent. The said conviction has not been challenged by the Respondent and the judgment has attained finality. According to the learned counsel bank memo is very much available in its primary form and the details therein correspond with the details of the cheque. Further, the learned counsel stated that the witness who appeared on behalf of the bank (in the criminal case) has also verified that the said cheque has been lost, which according to learned counsel is covered under Article 76(c) of the Order.

2. On the other hand, learned counsel for the Respondent has stated that the impugned order has been passed on merits and there is no illegality in the said order. She has further stated that the Applicant may not be allowed to adduce secondary evidence.

3. I have heard both the counsel. It is clear that secondary evidence (as defined in Article 74) can only be adduced in the proceedings in the absence of primary evidence. Article 75 of the Ordinance is very clear that secondary evidence may be given in circumstances and conditions provided under Article 76. With regard to Article 76(c) learned counsel specifically alleged that the cheque was lost. Bank memo which is available on record, in its primary form under Article 73 reflects the details of the lost cheque.

4. I believe that learned counsel for the Applicant correctly stated that the application of the Applicant ought to have been accepted by the Trial Court. For the court to allow secondary evidence under Article 76 (c) the court has to be satisfied that there is sufficient reason for non-production of the original and the individual from who's custody the document was lost, has made efforts to locate the same. I have examined the application filed by the Applicant and the same categorically states that the cheque has been lost. Further, the Applicant has also filed a report with the concerned police station which reflects his efforts to locate the original. It is also well settled law that the adjudication of cases should preferably be done on merits and not technicalities. In the light of above, Impugned order is set-aside and the instant revision application of the Applicant is allowed with no order as to cost.

The Revision Application stands allowed in the above terms.

JUDGE

Nadeem Qureshi "PA"