

IN THE HIGH COURT OF SINDH AT KARACHI

1st A.No.50 of 2021

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

[Shahnaz Aijaz V. Nazli Nadeem & others]

Date of hearing : 07.03.2025
Date of decision : 07.03.2025
Appellant : Through Mr. Afaq Ahmed, Advocate.
Respondent No.1 : Through Mr. Asif Ibrahim Memon, Advocate.

JUDGMENT

Muhammad Osman Ali Hadi, J:- The instant appeal has been filed against judgment and decree dated 26.03.2021, passed by the learned IXth Additional District Judge South Karachi, in Summary Suit No.94 of 2019 filed by respondent no.1 (“**impugned judgement / decree**”).

2. The said Summary Suit was decreed against the appellant, against which the instant appeal has been filed.

3. The appellant states the said Summary Suit (available at page 29 of the file) was filed under Order 37 Rules 1 & 2 Civil Procedure Code 1908 (“**CPC**”) whereby, certain cheques had been issued to respondent no.1 and were dishonoured. Accordingly, respondent no.1 filed the summary suit against the appellant which was accordingly decreed in her (i.e. respondent no. 1’s) favour vide the impugned judgement / decree.

4. Learned counsel for the appellant contended that the cheques were neither in the name of the appellant, nor were they signed by her, and as such the summary suit against the appellant was wrong in law. Learned counsel for the appellant has provided details for all the cheques (at pages 11-17) in her Memo of Appeal, alongwith photocopies which are available on file (at pages 45-111). A simple perusal of the said cheques corroborates the appellant’s assertions, as none of the cheques show the name of the appellant.

5. Learned counsel for respondent No.1, countered the assertions of the appellant by stating that the appellant had entered into a sale agreement (available at page 39 of the file) and in light of the same, the cheques were handed over to respondent No.1 by the appellant. Learned counsel, when confronted as to whether the cheques were signed from the account of appellant, very fairly conceded that they were not, but stated that the same cheques were issued regarding financial settlement from the purchase of property deal (*supra*).

6. We have heard the learned counsels and find that the impugned judgment/decree was passed without framing of issues or recording evidence. We find the plea raised by respondent no.1 that the matter pertains to a property transaction (which is also disputed by the appellant), and hence liability remains with the appellant, we find to be without merits in the given circumstances. It is established law that a summary suit must be filed purely on the particular negotiable instrument involved, in this case the cheques issued. If there are any further allegations, the same can be dealt with in a regular civil suit after recording of evidence, and not by way of a summary suit. The court's jurisdiction under summary proceedings is limited, which has been extensively discussed by a learned Division Bench of this Court in *Mubd. Abdul Siddiqui v Abdul Abid*,¹ which held that the summary suit is only available as a quick remedy against a negotiable instrument², and not for any other matter, regardless whether ancillary thereto. The burden of proof in summary jurisdiction is also separate from the burden required in a regular civil suit.

7. In the instant case the learned Trial Court ought to have looked into all these factors before passing the impugned judgement / decree. The impugned judgement / decree itself makes mention of the (disputed) property transactions, which cannot be decided summarily. Moreover, the fact the cheques were neither issued from the appellant's account nor were signed by her, cannot be ignored. We fail to understand in the given circumstances how the impugned judgement / decree could have overlooked this crucial aspect. The law invoking summary jurisdiction, is applied when a matter does not require investigation; whereas the regular civil jurisdiction is available for other such matters. In the instant case, we are stunned as to how the learned Trial Court did not deem it essential to investigate the allegations further, through

¹ PLD 2021 Sindh 1

² As defined under the Negotiable Instruments Act 1881

recording of evidence (which would automatically disqualify its summary jurisdiction). Even regardless of pleadings, the Trial Court ought to have known the same, as it is incumbent upon the courts themselves to apply the law (*Muhammad Yousuf v KPT & Ors*³).

8. Admittedly, the cheques were not signed by the appellant nor were the same from the appellant's bank account. Even the alleged property transaction upon which respondent no. 1 appears to have based her suit is disputed, and as such we hold that the Summary Suit could not have been invoked and decided in such manner. We find the impugned judgment/decree to be without lawful authority. Accordingly, the judgment/decree passed in Summary Suit No.94 of 2019 is hereby set aside and the instant appeal is allowed. The parties may seek other appropriate remedy, if the same is available to them under law.

JUDGE

JUDGE

³ 2020 YLR 578