

IN THE HIGH COURT OF SINDH, KARACHI
First Appeal No.47 of 2020
[Muzzamil Ashraf v. Muhammad Naeem & another]

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

25.03.2025.

Mr. Ajab Khan Khattak, advocate for Appellant.
Mr. Zahooruddin Mehsood, advocate for respondent No.1.
Ms. Saima Imdad, Assistant Advocate General, Sindh.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: Respondent filed a Summary Suit No.28/2019 for recovery of an amount of Rs.98,35,000/- on the basis of four postdated cheques, issued by appellant in his favour on account of business transaction. Statedly appellant is running business of wool and leather in the name and style of “Noor Amin Traders”. The respondent/defendant had purchased wool from the appellant on credit basis to the tune of Rs.1,20,35,000/-. When the credit was demanded by the respondent, he gave him a plot worth Rs.13,50,000/- and for remaining amount, he issued him postdated cheques. The said cheques were presented in the bank but dishonored; hence, he lodged an FIR No.303/2019, under section 489-F PPC at P.S. KIA Karachi. At the same time, he filed the aforesaid suit with following prayers:-

- a) To pass the judgment and decree for recovery of Rs.98,35,000/- (Rupees Ninety Eight Lacs and Thirty Five Thousand only) on the basis of (04) postdated cheques (1) 97094006, (2) 97094007, (3) 97094008 each cheque amount Rs25,00,000/- and Cheque No.97094009 amounting Rs.23,35,000/- along with interest @ bank rate till recovery of decretal amount.
- b) Cost of the suit and/or any other relief, which this Hon’ble Court may deem fit and proper in the circumstances of the case may be granted.

2. After service, appellant's advocate filed power on 03.09.2019 and the matter was adjourned. Thereafter, he filed an application for leave to defend the suit on 23.09.2019 against the requirement of law enjoining that an application for leave to defend the suit has to be filed within ten days of service. Since the application was filed with a delay, it was dismissed and as a result of which, the suit was decreed vide judgment and decree dated 19.08.2020.

3. Learned counsel for appellant has argued that appellant has no connection with the respondent, who came into possession of blank cheques accidentally; the respondent has failed to produce any evidence to establish the business transaction or the loan outstanding against him.

4. On the contrary, learned counsel for respondent has supported the impugned judgment.

5. We have heard the parties and perused the material available on record. We find no error or illegality in the order dated 13.01.2020, whereby application for leave to defend the suit filed by appellant was dismissed on the ground that it was filed after a statutory period of ten days. In para. 7 of the said order, learned trial Court has properly explained the circumstances under which appellant's counsel failed to file application within the stipulated period of ten days. No exception can be taken to those findings of the trial Court as the same have a genesis in the law and not in the discretion. The possession of the impugned cheques with the respondent is not denied by the appellant. His claim is that the respondent came in possession of blank cheques accidentally but he has not explained the circumstances as to how that happened. After the application seeking leave to defend the suit was dismissed, nothing was left to be taken into consideration in defence of the appellant except to decree the suit, yet the trial Court has considered *prima facie* evidence and on its basis passed the impugned judgment viz. postdated cheques issued by the appellant in favour of the

respondent. There is no material on the record to justify reversal of the said findings. We, therefore, find no merits in this appeal, and accordingly dismiss it along with pending application.

JUDGE

JUDGE

HANIF