

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Second Appeal No. S-12 of 2023

Present:

Mr. Justice Dr. Syed Fiaz ul Hasan Shah

Muhammad Iqbal

....Appellant.

Versus

Muhammad Shakir

.... Respondent.

Date of Hearing:

Date of Decision:

Mr. Muhammad Asif Zai, Advocate for Appellant in 2nd Appeal No.S-12/2023 and for respondent in 2nd Appeal No.S-14/2024.

Mr. Muhammad Noordin Bhatti, advocate for Appellant in 2nd Appeal No.S-14/2024 and for Respondent in 2nd Appeal No.S-12/2023.

Mr. Ayaz Ali Rajpar, Assistant A.A.G Sindh.

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J:

1. The Appellant has filed Second Appeal under section 100 of Civil Procedure Code, 1908 against the Judgment dated 15.11.2023

passed by the learned District Judge, Mirpur khas whereby the Civil Appeal No.52 of 2023 (Re: Muhammad Shakir v. Muhammad Iqbal) has been maintained with modification that Appellant/Plaintiff is entitled for amount of Rs.10,50,000/- while dismissing his claim for remaining amount of Rs.5,00,000/-.

2. The concise facts of the case are that the Appellant Muhammad Iqbal has filed suit No.98/2022 for Recovery of amount of Rs.15,50,000/- before the learned Senior Civil Judge-I, Mirpurkhas and after recording of evidence, the trial Court has passed Judgment dated 28.02.2023 and Decree in favor of Applicant for the amount Rs.10,50,000/-. The Respondent Muhammad Shakir has filed Civil Appeal No.52/2023 before learned District Judge, Mirpurkhas who has maintained the Judgment and decree of trial Court with modification that the Appellant/Plaintiff is entitled for amount of Rs.10,50,000/- while dismissing his claim for remaining amount of Rs.5,00,000/-.
3. On the other hand, Respondent has filed 2nd Appeal against the judgment dated 15.11.2023 and decree dated 16.11.2023 passed by learned District Judge, Mirpurkhas against the amount of Rs.10,50,000/-. The parties, subject matter and judgments of both 2nd appeals are same; therefore, I decide to dispose of both the appeals through this common judgment.
4. The Appellant had filed suit before the trial Court against the Respondent Muhammad Shakir asserting that Appellant/Plaintiff Muhammad Iqbal was a close friend of Respondent/Defendant and on account of close friendship and trust developed between the parties, the Appellant frequently visited to the business place of the Respondent and the Respondent had also have visiting terms with the Appellant. Hence the Appellant always give respect and honour

to Respondent. The Appellant used to deal in the business of garment and previously he was area Manager in Medicine Company. Thereafter, the Appellant served as Dealer of M/s Uni Lever Pvt. Ltd and earned handsome amount. It has stated that it was well in the knowledge of the Respondent due to the trust as old friend. The Respondent also deals in the business of garments at Khisakpura Mirpurkhas in the name and style "Dubai Garments". In the year 2012 there was sale of 6 shops in Katchra market / Tharee Market bearing shops No.6,7, 8, 23, 24 and 25 in cheap rates. The Respondent placed a business plan and request the Appellant to invest the amount for one year against lucrative profit. The Appellant accepted the proposal of Respondent and the Respondent has paid an amount of Rs.10,50,000/- in presence of witness namely Zubair Ahmed, Jay Kumar and Waheed Khan and two other persons namely Zubair Ahmed and Jay Kumar and also invested some of the amount in the same shops but with clear understanding that the shops will be purchased in the name of all three persons including Appellant. Later, the Respondent became dishonest and got registered the same shops mentioned above in his name instead of Appellant and two other investor and when Appellant and other asked regarding transfer of shop as agreed and settled the Respondent kept on false hopes stating that there was urgent sale hence he could not called to all investor and asked to wait till 2017 as Appellant always trusted and had blind faith upon Respondent due to friendly close relation hence did not insisted to transfer the same in his name but Respondent became dishonest and did not transfer the same and committed fraud with Appellant and two other investors. Prior to investment the amount in shops of Katchra Market / Tharee Market there was business crises and Respondent

sustained heavy loss in the business hence obtained loan of Rs.500,000/- from Appellant in presence of witnesses and since there were close relation hence no any written document was executed by Respondent he fully assured to return the him in the month of January 2018 but when Appellant approached to Respondent and demand agreed loan amount and shops mentioned above, Respondent firstly asked for extension of time but later on became dishonest refused to return the same even extended threats and used filthy language, which is an act / offence and liable to be prosecuted but he Appellant due to friendly relation did not take any strict against Respondent and Respondent usurped all the amount of loan Rs.500,000/- and Rs.10,50,000/- in the shops.

5. Therefore, the Appellant filed such suit with the following prayers:
 - i. Direct the defendant to return Rs.1550000/- forthwith without fail to plaintiff and in case of failure Nazir of this Honorable court be directed to attached the properties of defendant moveable and immovable and recover the due amount of Rs.15,50,000/- of plaintiff and in case of having no property defendant be put in civil prison till the payment amount of Rs.15,50,000/-
 - ii. Further direct the defendant to pay the sale profit amount as this Honorable court may deem fit and proper under the circumstances of the case.
 - iii. Cost of the suit be borne by defendants.
 - iv. Any other relief which this Honorable court may deem fit and proper under the circumstances of the case.

6. The Respondent/Defendant Muhammad Shakir filed Written Statement wherein stated that the Respondent never asked Appellant to invest the amount and the Ameen and Mohammad Saleem were business partners of Respondent and he took an

amount of Rs.1050000/- from Appellant on credit basis and Respondent was in business crises therefore he could not pay amount of Rs.1050000/- to Appellant therefore, Appellant was annoyed and he did not talk with Respondent and as soon as he arranged amount of Rs.1050000/- he paid the amount to the Appellant in the year 2018 through his partner Muhammad Saleem. He further stated that no any amount is due against him. The Respondent never asked the Appellant to purchase the shops nor any amount is due against the Respondent and Appellant has not joined third partner as party in the suit. He never promised to purchase shops in the name of Appellant hence no question arises to become dishonest and got registered the shops in the name of Appellant. It is further stated that it is all cooked up and false story managed by Appellant in order to get undue advantages. He further submits that the Respondent never obtained the loan of Rs. 500,000/- from the Appellant as loan at all and he obtained loan Rs.10,50,000/- which has been returned to Appellant through his business partner Muhammad Saleem and there is no any amount due against Respondent. It is further stated that he never extended threats or used filthy language to Appellant and never committed fraud with Appellant and there is no amount due against him.

7. From the pleadings of the parties, the trial court framed following issues: -
1. Whether suit of plaintiff is not maintainable?
 2. Whether defendant has obtained Rs.10,50,000/- from plaintiff for the investment in shop No.6 Katchra Market / Tharee Market shops No.6, 7, 8, 23, 24 and 25 and further defendant obtained as loan Rs.500,000/- from plaintiff? If yes what is its effect?
 3. Whether plaintiffs are entitled for the relief claimed?
 4. What should the decree be?

- 8.** The Appellant examined himself at Ex.11. PW-2 Abdul Wahid examined at Ex.12 and during evidence they produced several documents. In rebuttal the Respondent examined himself at Ex.28. DW-2 Muhammad Saleem examined at Ex.29 and DW-3 Muhammad Zubair examined at Ex.30. The trial court after hearing arguments of both sides, decreed the suit of the Appellant with profit at the bank rate. The Respondent Muhammad Shakir had filed Civil Appeal No.52/2003 against the aforementioned partial Decree before the learned District Judge, Mirpurkhas who after hearing the parties, maintained the judgment and decree of learned Senior Civil Judge-I, Mirpurkhas with modification that Appellant/Plaintiff is entitled for amount of Rs.10,50,000/- while dismissing his claim for remaining amount of Rs.5,00,000/-. Consequently, the Appellant has challenged the said judgment in this Second Appeal.
- 9.** Heard the learned counsel for the Appellant, Respondent and learned Assistant A.G and perused the record with their assistance. This Second Appeal is filed against the conflicting Judgments. The Trial Court has passed Judgment and Decree in favor of the Appellant while the lower Appellate Court modified the Judgment and Decree of Trial Court in a way that it has maintained the Decree for payment of Rs.10,50,000/- and dismissing the payment of Rs.5,00,000/-.
- 10.** Before delving into the substantive question of law, it may be observed that while assuming jurisdiction under section 96 CPC, the Appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing and re-appraisal of evidence both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its

strenuous application of mind and record findings supported by reasons, on all the issues arising thereto together with the contentions put-forth and pressed by the parties for a fair decision of the appellate Court after careful consideration of issues, evidence adduced and documents produced by the parties and same must be recorded in its findings. The **right to appeal** is a creation of statute and it cannot be created by acquiescence of the parties or by the order of the court. It should be noted that the jurisdiction cannot be conferred or convey or delegate by mere acquiescence or the consent of parties or by any other means and it is purely essential aspiration of legislation.

11. In stark contrast, a right of Second Appeal is neither natural nor an inherent right attached to the litigation. The second appeal under section 100 CPC is not a statutory right. Being a **substantive statutory right**, it has to be regulated in accordance with the statutory law and ensuring full compliance with the conditions mentioned in the provision that creates it. The court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. In a second appeal, to the High Court, the court's jurisdiction is generally limited to substantive questions of law and the High Court cannot typically re-examine facts or interfere with the findings of facts whatever be given by the trial Court and lower Appellate Courts. A second appeal cannot be decided merely on equitable grounds unless a substantial question of law is involved and not otherwise no matter the judgment contains erroneous findings of fact.
12. In nutshell, the existence of a substantial question of law is a condition precedent for entertaining the second appeal and is a sine qua non for the exercise of jurisdiction under the provisions of

Section 100 CPC. Thus the General rule is, that High Court, in a second appeal, will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. There are judicial well-recognized **exceptions** in Pakistani and Indian jurisdiction which have consistently been developed. The prime illustrations of **exceptions** are as under:

- i. When contrary to law
- ii. When substantial question of law
- iii. When perverse—substantial question of law
- iv. When courts below failed to deal with the question of facts, the High Court can look into while exercising power under section 103 CPC.

13. Contrary to law—the Supreme Court of Pakistan¹ has defined “contrary to law”. The relevant portion is re-produced for the convenience:

“The decision of a court is, therefore, considered “**contrary to law**” when it is made by ignoring the relevant and duly proved facts, or by considering the irrelevant or not duly proved facts. The expressions “**relevant evidence**” and “**admissible evidence**” are often used interchangeably, in legal parlance, with “**relevant facts**” and “**duly proved facts**” respectively, and a decision is said to be “**contrary to law**” and is open to examination by the High Courts in second appeal when: (i) it is based no evidence, or (ii) it is based on irrelevant or inadmissible evidence, or (iii) it is based on non-reading or misreading of the relevant and admissible evidence. A decision on an issue of fact that is based on correct reading of relevant and admissible evidence cannot be termed to be “contrary to law”; therefore, it is immune from scrutiny in second appeal. A High Court cannot, in such case, enter into the exercise of re-reading and re-

¹ Zafar Iqbal & others v. Naseer Ahmed & Others (2022 SCMR 2006- Civil Appeal No.775 of 2015)

appraisal of evidence, in second appeal, and reverse the findings of facts of the first appellate court, much less the concurrent findings of facts reached by the trial court as well as the first appellate court.

Emphasize supplied

14. **Concept of Substantial question of law**—the Supreme Court of Pakistan in MCB’s case² highlighted the concept substantial question of law while deciding a Second Appeal. The relevant portion is reproduced hereunder:

“It is a well-settled exposition of law that procedural law initiates and guides the process and course of action through which the lawsuit progresses and the way in which court proceedings are undertaken. It also regulates and oversees the procedures employed. Substantive law, on the other hand, comprises statutory obligations relevant to the subject matter, declaring the applicable rights and obligations, and regulating the demeanor of an individual or government. Jeremy Bentham, an English philosopher, jurist, and social reformer, first coined the terms ‘substantive laws’ and ‘adjective laws’ (i.e. procedural laws) in his book *The Works of Jeremy Bentham* (1843), while describing the procedure and course taken for the execution of laws. He argued that in jurisprudence, both procedural and substantive laws must co-exist, as neither can function independently. Similarly, Thomas Holland, the British jurist, in his book, *The Elements of Jurisprudence* defined ‘substantive law’ as laws that determine how the legal system protects rights, while ‘adjective laws’ or ‘procedural laws’ are the laws which provide the methods for enforcing and protecting those rights. According to Salmond, as cited in *Introduction to Jurisprudence* (3rd ed. Reprint, 2011) by Dr. Avtar Singh & Dr. Harpreet Kaur, the law of procedure may be defined as that branch of law which governs the process of litigation. It is the law of actions, *jus quod ad actiones pertinet*, which includes all legal proceedings, whether civil or criminal. Salmond outlines the

² **“Muslim Commercial Bank Limited v. Punjab Labour Appellate Tribunal through its Chairman” (Civil Petition No. 1866-L of 2023)**

following distinctions between substantive law and procedural law: (i) Substantive law determines the conduct and relations C.P.No.1866-L/2023 -7- of the parties inter se in respect of the matter litigated, whereas the procedural law regulates the conduct and relations of Courts and litigants in respect of the litigation; (ii) Substantive law deals with the ends which the administration of justice contemplates while the procedural law deals with the means and instruments by which the ends of administration of justice are to be attained; (iii) **The question as to what facts constitute a wrong is determined by substantive law, while what facts constitute proof of a wrong is a question of procedure;** (iv) **Substantive law defines the rights whereas the law of procedure defines the modes and conditions of the application of one to the other;** and (v) **Substantive law relates to the matter outside the Courts, whereas the procedural law regulates affairs inside the Courts** [Ref: Judgment authored by one of us in the case of Meeru Khan v. Mst. Naheed Aziz Siddiqui and others (PLD 2023 SC 912)].

Emphasized added

15. **Perversity—a question of substantial law-** the Supreme Court of India ³ has held that the question whether the lower court's finding is perverse? it may come within the ambit of ***substantial question of law***. The Supreme Court of India has define the word '***perversity***' in the case⁴ has held as under :

"8. "Perversity" has been the subject-matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of the Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse.

³ “See Kulwant Kaur vs. Gurdial Singh Mann”, [2001 (4) SCC 262]

⁴ Damodar Lal Vs. Sohan Devi and others reported in (2016) 3 SCC 78

- 16. Finding of Fact—non-consideration of evidence-** The general rule is that the High Court shall only entertain matters involving a substantial question of law but Section 103 Civil Procedure Code, 1908 serves a supplementary to this. This particular section talks of two situations when a question of fact can be dealt with by the court in a second appeal. First, where neither the Lower Court nor the Court of First Instance has decided the necessary question. Secondly, where the essential issue has been mistakenly settled by the Courts on a substantial question of law and could reasonably be the focus of a second appeal under Section 100.
- 17.** The *ratio decidende* of various Judgments of Pakistani and Indian jurisdiction held that the provision of section 103 Civil Procedure Code, 1908 rescue in the case where the courts below have *ignored material evidence* or *acted on no evidence* or the courts have drawn *wrong inferences from proved facts* by applying the law erroneously or the courts have *wrongly cast the burden of proof* or that the finding of facts have not considered facts and admissible evidence.
- 18.** A Three-Judge Bench of Supreme Court of India⁵ upheld the judgment of the Madras High Court passed in a second appeal whereby a High Court had reversed the order of the first appellate court granting injunction in favor of the Appellant–plaintiff in a property dispute. The contentions of the appellant regarding propriety of High Court’s exercise of jurisdiction in second appeal under Section 100 CPC was rejected while holding that:

“[M]erely because the High Court refers to certain factual aspects in the case to raise and conclude on the question of law, the same does not mean that the factual aspect and evidence has been re-appreciated.”

⁵ “Balasubramanian v. M. Arockiasamy”, (2021 SCC 655) <https://www.sconline.com/blog/post/2021/09/04/section-100-cpc/>

Summarizing the legal position on the subject, the Supreme Court reasserted the position that in a second appeal under Section 100 CPC there is very limited scope for re-appreciating the evidence or interfering with findings of fact rendered by trial court or the first appellate court, and therefore it was necessary to see whether the High Court in the instant case breached the settled principle. The Supreme Court noted that the findings by the trial court and the first appellate court were divergent. The trial court concluded that the Kist receipts would not establish plaintiff's possession, whereas the first appellate court in fact placed heavy reliance solely on the Kist receipts. The Court observed:

“When such divergent findings on fact were available before the High Court in an appeal under Section 100 CPC though re-appreciation of the evidence was not permissible, except when it is perverse, but it was certainly open for the High Court to take note of the case pleaded, evidence tendered, as also the findings recorded by the two courts which was at variance with each other and one of the views taken by the courts below was required to be approved.”

19. The Court observed that question of law for consideration will not arise in abstract but in all cases will emerge from the facts peculiar to that case and there cannot be a strait jacket formula. Similarly, in the case of Jagdish Singh, the Supreme Court of India⁶ laid down that:

“if the court is satisfied that the finding of fact by the lower court was vitiated due to non-consideration of relevant evidence or consideration of evidence which had no ulterior impact on the findings i.e. the finding of the fact had been rendered perverse, then the appellate court has to jurisdiction to deliberate upon the findings of the facts.”

⁶ *Jagdish Singh v. Natthu Singh* [AIR 1992 SC 1604, 1991 SCR Supl. (2) 567.]

20. The Supreme Court of India⁷ considered that whether the compromise decree was obtained by fraud. The Court held that:

".... though it is purely a question of fact none of the lower courts has dealt with the question whether the decree was obtained by committing a fraud on the Court and hence, this court can look into the question of fact by exercising its power under Section 103."

The Indian Supreme Court⁸ further held that there could not be any blanket rule that the concurrent findings cannot be interfered with in second appeal. It would depend upon the facts of the case, if the courts below record a ***finding in ignorance*** or ***against the evidence on the file***, then the Court in second appeal should not only interfere with such findings, rather, it is the legal duty cast upon such a court to bring the same in consonance with the evidence led on file.

21. In the present case, the Decree of the Trial Court has been partially reversed by the Appellate Court without given any reasons or discarding evidence which has been admitted by the trial Court. The following substantive questions of law are formed:

- a. Whether the Appellate Court has ignored the relevant evidence appreciated by the trial Court?
- b. Whether the Appellate Court has drawn wrong inference of proved facts on record and is it a case of perversity?

22. As held in Babulsuprmanium's case (supra), mere reference to certain facts of pleadings or evidence to arrive at just and proper conclusion on the substantive question of law cannot term it as re-appreciation of evidence while exercising the jurisdiction under section 100 CPC.

⁷ *Jadu Gopal Chakravarty v. Pannalal Bhowmick & Ors*, 1978 AIR SC 1329

⁸ “[HDFC Bank Ltd. v. Sanjiv Kumar Jain”, (2020 SCC 2253) <https://www.scconline.com/blog/post/2020/12/24/p-it-is-more-a-rule-of-caution-and-less-a-rule-of-law-hc-explains/>]

Furthermore, the reference of pleadings or evidence has become more necessary when the Courts below has ignored relevant evidence. In the present case, the Appellate Court has not only ignored the material evidence but reversed the finding of facts of trial Court as such the supplementary provisions of section 103 CPC is fully applicable in order to decide the aforementioned substantive question of laws.

23. The center-point of the main controversy is stated by the Appellant/Plaintiff at paragraph No.6 and 8 of his plaint which is re-produced hereunder:

6. That in the year of 2012 there was sale of 6 shop in katchra market/tharee Market Shop No. 6, 7, 8, 23, 24 and 25 in cheap rates hence defendant asked to Plaintiff to invest the amount for one year and Plaintiff accepted the same proposal of defendant hence paid an amount of Rs.10,50,000/- lying with him in presence of witnesses namely Zubair Ahmed, Jay Kumar and Waheed Khan

“8. That it is submitted that prior to investment the amount in shops of Katchra Market/ Tharee market mentioned above, there was business crises and defendant sustained heavy loss in the Business hence obtained loan of Rs, 500,000/- from Plaintiff in presence of witnesses and since there were closed relation hence no any written documents is executed.....and defendant usurped the all amount Loan of Rs, 5,00,000/- and Rs, 10,50,000/- invested in the shops but the defendant is not ready to pay the same.”

24. The Respondent/Defendant responded against above pleadings at paragraph No.6 of Written Statement which is re-produced hereunder:

6. It is submitted that Ameen and Mohammad Saleem were business partners of the answering defendant. It is submitted that the answering defendant took an amount of Rs.10,50,000/- from the plaintiff on a credit basis. It is submitted that since the answering defendant was in

business crises, therefore he could not pay the amount Rs.10,50,000/- to the plaintiff. Therefore, the plaintiff was annoyed and he did not talk with the answering defendant. It is submitted that as soon as the amount of Rs.10,50,000/- was arranged by the answering defendant he paid the amount to the plaintiff in the year 2018 through his partner Mohammad Saleem.

8. It is submitted that the answering defendant never obtained the loan of Rs.500,000/- from the plaintiff as loan at all. It is submitted that the answering defendant obtained Rs.10,50,000/- only as loan, which has been returned to the plaintiff through his business partner Mohammad Saleem and at present, there is no amount due against the answering defendant at all.

25. The claim of Plaintiff (Muhammad Iqbal) for Rs.10,50,000 have duly admitted by the Respondent/Defendant (Muhammad Shakir) in his pleadings with defence that such amount of Rs.10,50,000/- has been repaid through Mohammad Saleem. Therefore, the burden of this issue lies upon the Respondent/Defendant to proof that amount of Rs.10,50,000/- has been duly returned to the Plaintiff /Appellant. On the other hand, the Defendant has categorically denied about the loan amount of Rs.5,00,000/- as such burden of proof of this lies upon the Plaintiff /Appellant.

26. The Appellant/Plaintiff in his examination in chief has deposed as under:

“Thereafter, he taken out Rs.5,00,000/- on loan basis from me and no agreement was executed in this regard due to friendship atmosphere.

Emphasize and line supplied

In support of the claim of Rs.5,00,000/- of the Appellant, the PW-2 appeared and deposed as under:

“In year 2011, defendant taken out Rs.5,00,000/- loan from plaintiff....”

27. Firstly, the Respondent-Defendant has not challenged or controverted the testimony, and when the Respondent-Defendant and his witnesses stepped-in into the witness box, neither they have shaken the assertion and testimony nor they have directly or indirectly denied the liability of Rs.5,00,000/-. The Respondent/Defendant has failed to produce any oral or documentary evidence to rebut the claim of the Appellant in his pleadings and evidence on oath. The examination-in-chief of the Respondent/Defendant is re-produced:

“I was required some amount in respect of making payment to the seller of the business place. I obtained amount Rs.10,50,000/- as investment amount from the plaintiff in the year 2013 onwards in different dates. There was also another investor, namely Muhammad Zubair, who paid me Rs.16,00,000/- as an investment amount. We all three partners took some time to sell the purchased building, which is why it took time to distribute the amount among all three partners. As a result, I had to give shares as per percentage to both investors, namely plaintiff and Muhammad Zubair, which caused annoyance to the plaintiff. Thereafter, in the year 2018, I sold out my share to my partner Mohammad Saleem in the sum of Rs.50,00,000/-. I handed over the invested amount of Rs.16,00,000/- along with profit as per percentage Rs.200,000/- to Rs.250,000/- to Muhammad Zubair. The plaintiff was annoyed with me, which is why I handed over the cheque amounting to Rs.10,50,000/- to Mohammad Zubair for handing over to the plaintiff. The cheque was encashed by the plaintiff, and the same was informed to me by Mohammad Saleem. I also paid an amount of about Rs.175,000/- to the plaintiff through Muhammad Saleem. There is no outstanding amount that the plaintiff has against me.”

The DW-2 Muhammad Saleem in his examination in chief deposed:

“I do not know about the version of the plaintiff to the extent of Rs.15,50,000/- ...”

28. The testimony of the Appellant/Plaintiff and his witness has not been shaken by the Respondent/Defendant with regard to Rs.5,00,000/- and same stands unchallenged and uncontroverted. On the other hand, the Respondent / Defendant and his two witnesses have not rebutted the claim of the Appellant. It is by now settled principal of law that whenever a deposition is made to a particular fact and the same is not challenged in cross-examination, the same shall be deemed to be admitted and true. Guidance can be pleased on the case of Sikandar Hayat ⁹ wherein it has been held that the Material portion of a witness if not cross-examined or disputed, it was presumed that other party has accepted such part/portion and similarly in Muhammad Akhtar’s case¹⁰ it has held that:

"Where a fact asserted by one party remains unchallenged, the same amounts to admission on the part of the other party".

29. On careful examination of the substantive questions of law, it has established that the relevant evidence of the Appellant and Respondent has been ignored by the Appellate Court which was appreciated by the Trial Court. Furthermore, the Appellate Court has erred as it has drawn wrong inference against the **proved facts** while such proved facts have duly considered by the trial Court. Therefore, the impugned Judgment dated 15.11.2023 passed by the District Judge, Mirpur Khas in Civil Appeal No.52 of 2023 is set aside while

⁹ “Sikander Hayat v. Sugran Bibi” (2020 SCMR 214)

¹⁰ Muhammad Akhtar v. Mst. Manna and 3 others(2001 SCMR 1700) (1706)

the Judgment dated 15.11.2023 and Decree dated 16.11.2023 passed by the Trial Court in Suit No.98 of 2022 is restored.

JUDGE

**Faisal **