

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Second Appeal No. S-14 of 2024

Present:

Mr. Justice Dr. Syed Fiaz ul Hasan Shah

Muhammad Shakir

....Appellant.

Versus

Muhammad Iqbal

.... Respondent.

Date of Hearing:

Date of Decision:

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

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

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J: 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 Respondent/Plaintiff is entitled for amount of Rs.10,50,000/- while dismissing his claim for remaining amount of Rs.5,00,000/-.

The concise facts are that the Respondent 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

Appellant 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 Respondent/Plaintiff is entitled for amount of Rs.10,50,000/- while dismissing claim for remaining amount of Rs.5,00,000/-.

Being aggrieved with, the Appellant 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.

2. The Respondent had filed suit before the trial Court against the Appellant Muhammad Shakir asserting that Respondent/Plaintiff Muhammad Iqbal was a close friend of Appellant/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 Respondent always gives respect and honour to Appellant. The Respondent used to deal in the business of garment and previously he was area Manager in Medicine Company. Thereafter, the Respondent 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 Appellant due to the trust as old friend. The Appellant 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 Appellant placed a business plan and request the Respondent to invest the amount for one year against lucrative profit. The Respondent accepted the proposal of Appellant 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 Respondent. 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 Honourable court be directed to attached the properties

of defendant moveable and immoveable 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 Honourable 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 Honourable court may deem fit and proper under the circumstances of the case

3. The Appellant/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.

4. 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? Is yes what is its effect?
3. Whether plaintiffs are entitled for the relief claimed?
4. What should the decree be?

5. The Respondent examined himself at Ex.11. PW-2 Abdul Wahid examined at Ex.12 and during evidence they produced several documents.

In rebuttal the Appellant 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 Respondent 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 Respondent/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 2nd Appeal.

6. Heard the learned counsel for the Appellant, Respondent and learned Assistant A.G and perused the record and the impugned order with their assistance. This Second Appeal is filed against the concurrent Judgments passed by the Trial Court and maintained by the Appellate Court in a way that Judgment and Decree for payment of Rs.10,50,000/- has been passed against Respondent-Defendant while the claim of Respondent for further Rs.5,00,000/ has been dismissed. The Appellant has filed Second Appeal against the Judgment and Decree for payment of Rs.10,50,000/- and whereas the Respondent-Plaintiff has filed separate Second Appeal No.12/2024 against the dismissal of his claim

of Rs.5,00,000/-. The arguments advanced by the learned Counsel for the Appellant mainly stressed on the point of findings of facts and which is not necessary to record as no question of substantive law has been advanced that may permit me to invoke provision of section 100 or 103 CPC.

7. I have examined the Judgment and perused the record. The judgment of trial Court and Appellate Court has passed after due appreciation of material evidence and proved facts. The Appellant has not denied the liability of Rs.10,50,000/- and led evidence with defence that the said liability has been paid through DW Saleem or some time contra stance that it has been repaid through Zubair. Nevertheless, the findings on facts have duly appreciated by the Courts below and no illegality is committed. On the other hand, the connected Second Appeal No.12 of 2024 has been allowed by me on same finding of facts. It is settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the CPC unless it is based on non-consideration of evidence or duly proved facts or wrong inference against proved facts. Reliance can be placed on **Syed Rafiul Qadre Naqvi Vs. Syeda Safia Sultana and others (2009 SCMR 254)** and **Amjad Sharif Qazi and others Vs. Saleemullah Fareedi reported as PLD 2006 SC 777**. The Judgment passed by Court below does not warrant any interference as neither it is contrary to law nor the learned Counsel for the Appellant stated any perversity in it which are in accordance with law, therefore, I am not inclined to interfere with it. Consequently, the Second appeal stands dismissed.

JUDGE