

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

1st Civil Appeal No.S-06 of 2024

Appellant: **Kashif Ali s/o Jeeand Khokhar
Through Mr. Ahmed Hussain Shahani,
Advocate**

Respondent: **Jeeand s/o Ali Nawaz Khokhar
Through Mr. Atta Hussain Qadri,
Advocate**

For Government of Sindh: **Mr. Abdul Waris Bhutto, Asstt.A.G**

Date of hearing: **05-05-2025**

Date of Judgment: **14-05-2025**

JUDGMENT

Jan Ali Junejo, J;- This First Civil Appeal is directed against the judgment and decree dated 27.01.2024 (hereinafter referred to as the “Impugned Judgment and Decree”) passed by the learned Additional District Judge, Ratodero (hereinafter referred to as the “Trial Court”), in Summary Suit No.06/2023, titled “*Jeeand v. Kashif Ali & another*”, whereby the learned trial Court decreed the suit of the respondent/plaintiff for the recovery of Rs.50,00,000/- along with 10% interest from the date of issuance of the cheque till satisfaction of the decree. Being aggrieved by the said judgment and decree, the appellant/defendant No. 1 has preferred this appeal, seeking its reversal.

2. Briefly stated, the facts of the case, as gleaned from the record, are that the respondent/plaintiff filed a summary suit against the appellant/defendant No. 1, who is his son, for the recovery of Rs.50,00,000/- based on a dishonored cheque. The respondent/plaintiff claimed that he had handed over 1400 grams of gold to the appellant/defendant No.1 in 2016, with an agreement (Iqrarnama) that the appellant would pay monthly expenses and return the gold when the respondent recovered from his illness. Upon recovery, the appellant allegedly refused to return the gold. Subsequently, a cheque

No.00067077 dated 20.12.2022 for Rs.50,00,000/- drawn on Askari Bank, Naudero, was presented by Defendant No.2, Shahid Ali Arbani, purportedly as surety for the appellant. This cheque was dishonored due to a missing company stamp of "Universal Cable Network". The respondent/plaintiff prayed for a decree directing the appellant to pay Rs.50,00,000/- with compensation, costs of suit, and any other appropriate relief.

3. The learned counsel for the appellant argued that the learned trial Court erred in law and on facts. He contended that the judgment and decree were the result of misreading and non-reading of evidence. He submitted that the respondent/plaintiff had suppressed real facts and that the suit was not maintainable. The learned counsel further argued that the trial Court failed to comply with the mandatory provisions of Order XLI Rule 31 CPC while passing the judgment. He emphasized that the appellant had produced documents, including "*Faislas*" (settlements), and screenshots of messages, which were not properly considered by the trial Court. He argued that the respondent/plaintiff failed to prove his case and that the trial Court should not have solely relied on the respondent's oral testimony. The learned counsel also highlighted the fact that the cheque was dishonored due to the absence of the company stamp, which the respondent failed to rectify.

4. Conversely, the learned counsel for the respondent/plaintiff, vehemently opposed the appeal, arguing that the trial Court had correctly appreciated the evidence and arrived at a just conclusion. He submitted that the appellant had admitted to the transaction involving the gold and the issuance of the cheque, although he later attempted to retract his admission. The learned counsel drew attention to the bank's verification report confirming the genuineness of the cheque and the dishonor memo. He argued that the appellant's evasive replies

and failure to specifically deny the issuance of the cheque further strengthened the respondent's case.

5. The learned Assistant Advocate General, Sindh, also supported the respondent's arguments and submitted that the appeal lacks merit and should be dismissed. He argued that the trial court had correctly applied the law and appreciated the evidence on record.

6. After careful consideration of the arguments advanced by the learned counsel for the parties and perusal of the record, this Court finds that the defendants in their written statement have made the following admissions:

- They partly admitted the contents of paragraph 2 of the plaint, acknowledging that the plaintiff is the father of defendant No. 1 and that the plaintiff gave 1400 grams of gold to defendant No. 1 in 2016 through an Iqrarnama.
- The defendants admitted that defendant No. 1 issued cheque No. 00067077 dated 20.12.2022 of Askari Bank Naudero branch for Rs.50,00,000/- to the plaintiff.

Despite these admissions, the defendants have denied the remaining averments. The learned trial Court has correctly concluded that the respondent/plaintiff is entitled to recover the amount claimed. The appellant's admission of the gold transaction, coupled with the production of the dishonored cheque and the bank's verification report, constitute strong evidence in favor of the respondent/plaintiff. The appellant's failure to specifically deny the issuance of the cheque, his signature on the cheque and his evasive responses further weaken his case. The "Faislas" produced by the appellant, instead of supporting his claim, actually acknowledge the outstanding dues. Furthermore, the initial dishonor of the cheque due to the missing company stamp does not absolve the appellant of his liability, as the issuance of the cheque itself creates a presumption under Section 118 of the Negotiable Instruments Act that it was issued for consideration. The burden was on the appellant to rebut this presumption, which he failed to do. The trial Court rightly observed that the defendant No.1 voluntarily, knowingly issued the cheque in sum of Rs.50,00,000/- dated 20.12.2022 to the plaintiff of Askari Bank Naudero (Branch), though defendant No.1 knows that funds are not available in his account. In similar circumstances in Case of *Najaf Iqbal v.*

Shahzad Rafique (2020 SCMR 1621), it was observed by the Honourable Apex Court of Pakistan that: “*Presumptions mentioned in section 118 of the Negotiable Instruments Act (XXVI of 1881) are attached with a negotiable instrument unless proved contrary. In the instant case it is an admitted position that the cheque was of the account and cheque book of the appellant*”.

7. In light of the preceding discussion, this Court concludes that the learned trial Court did not err in law or fact in decreeing the suit of the respondent/plaintiff. The impugned judgment and decree are founded on sound reasoning and a thorough evaluation of the evidence. Therefore, this instant Civil Appeal is dismissed, and the Impugned Judgment and Decree rendered by the learned trial Court are upheld. The parties to bear their own costs.

JUDGE