# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

1st Civil Appeal No.S-29 of 2022

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| Appellant | : | Ambrat Lal son of Arjan Dass, through M/S Ubedullah Ghoto and Naeemuddin Chachar, Advocates. |
| Respondent | : | Nand Lal alias Raja son of Mohandass, through M/S Sudhamchand @ Sudhamo Kewalrani and Sanaullah Mahar, Advocates. |

***Date of Hearing:*** ***26.05.2025.***
***Date of Decision:*** ***26.05.2025.***
***Date of Reasons:*** ***04.08.2025.***

## ***J U D G M E N T***

***Abdul Hamid Bhurgri, J***,- The appellant, Ambrat Lal, who was the defendant in the court of first instance, has preferred the present appeal challenging the Judgment and Decree dated 07.09.2022, rendered by the learned Additional District Judge-II, Ghotki, in Summary Suit No.09/2015 titled Nand Lal alias Raja v. Ambrat Lal. The trial Court decreed the suit in favour of the plaintiff/respondent. Through this appeal, the appellant seeks to have the aforementioned Judgment and Decree set aside.

2. The plaintiff/respondent instituted the Summary Suit on the basis that he and the appellant were erstwhile business partners functioning as commission agents at Jung Juwan Rice Mills, situated on Jung Road near the bypass in Ghotki. It was averred that on 01.06.2014, the parties mutually resolved to sever their business relations and accordingly settled their accounts. As a consequence of this settlement, an outstanding liability to the tune of Rs. 90,00,000/- was allegedly due from the appellant. It was further contended that the appellant issued a cheque bearing No.00013814, drawn on Askari Bank, Ghotki Branch, dated 26.08.2014, towards discharge of the said liability. However, upon presentation, the said cheque was dishonoured, with the relevant memo indicating insufficient funds. Subsequent to the dishonour of the cheque, the plaintiff/respondent lodged an FIR bearing No.239/2014 under Sections 489-F, 506(2), and 34 of the Pakistan Penal Code at Police Station Ghotki, accusing the appellant of default. Despite this, the payment was not made, thereby giving rise to a cause of action, which ultimately culminated in the filing of the instant Summary Suit with following prayers:-.

*(a) To direct the defendant to pay amount of Rs:90,00,000/- (Ninety Lacs) along with the markup at the bank rate from the date of issuing of the Cheque till the payment is finally made by the defendant to the plaintiff.*
*(b) To award the cost of the suit to the plaintiff.*
*(c) To grant any other relief suitable to the plaintiff under the circumstances of the above suit.*

3. Upon service of summons, the defendant/appellant submitted an application seeking leave to defend, which was duly granted. Thereafter, he filed his written statement, asserting that the plaintiff/ respondent had initially been employed by him and was subsequently granted a 25% working share in the business. The appellant further alleged that the plaintiff/respondent had forged his signature as well as of Dinna Ram. It was contended that, acting with mala fide intent, the plaintiff/ respondent procured a dishonour memo from the bank through fraudulent means. On these grounds, the appellant sought the dismissal of the suit.

4. Learned trial court in order to ascertain claim of the parties, framed following issues:-

*1. Whether the suit of the plaintiff is maintainable?*
*2. Whether on 01.06.2014 as settlement Rs.90,00,000 become due against the defendant for such amount the defendant issued a post dated cheque No.00013814 of Rs.90,00,000/- of Askari Bank Branch Ghotki dated 26.08.2014 in favour of plaintiff which on its presentation has been dishonored by the bank concerned?*
*3. Whether said post dated cheque bearing No.00013814 of Rs.90,00,000/-of Askari Bank Branch Ghotki dated 26.08.2014 allegedly issued by defendant in favour of plaintiff is forged cheque?*
*4. Whether the plaintiff is entitled for recovery of Rs.90,00,000/- with interest?*
*5. Whether the plaintiff is entitle for any relief claimed?*
*6. What should the decree be?*

5. In order to substantiate his claim, the plaintiff/respondent Nand Lal alias Raja and his witnesses Jagdesh Kumar and Bhagwandass filed their affidavits in evidence respectively, but they were not cross examined by other side despite giving ample opportunities and imposing costs of Rs.1500/-. The plaintiff/respondent also examined PW-1 Tanveer Ahmed at Ex.21, who produced cheque and memo at Ex.21/A and 21/B, he also examined PW-2 Ihsan Ahmed at Ex.27, who produced summon of the court, copy of the system Generated statement bank account detail/record of account, Bank account statement and copy of dishonoured

record at Ex.27/A to Ex.27/D respectively, however, they were also not cross examined albeit chance was given.

6. In rebuttal defendant/appellant Ambrat Lal had filed his affidavit in evidence; he was cross examined by other side.

7. Upon conclusion of the evidence and after hearing the learned counsel for both parties, the learned trial Court was pleased to decree the suit in favour of the plaintiff/respondent vide impugned Judgment and Decree dated 07.09.2022.

8. Learned counsel for the appellant submitted that the trial Court, while rendering the impugned Judgment and Decree, committed errors both of law and fact by failing to evaluate the evidence on record through a proper legal lens. He contended that FIR No.239/2014 had been lodged by the respondent at Police Station Ghotki under Sections 489-F, 506(2), and 34 of the Pakistan Penal Code, but that the narrative presented therein materially diverged from that submitted in the civil proceedings. He further submitted that the appellant was acquitted in the said criminal proceedings pursuant to the judgment dated 09.06.2017. He further argued that the respondent was, in fact, employed by the appellant and had orchestrated a fraudulent scheme by manipulating the signatures of both the appellant and one Dinna Ram, a business associate. It was contended that the institution of the suit was actuated by mala fide intent, with deliberate concealment of material facts. Learned counsel further contended that a settlement (faisla) had been arrived between the parties in the suit; however, the plaintiff/respondent later resiled from the same and failed to disclose this fact in the plaint. On these premises, he prayed that the impugned decree be set aside and the appeal allowed by dismissing the suit.

9. In rebuttal, learned counsel for the respondent contended that the judgment and decree of the learned trial Court was well-founded, being premised upon the documentary evidence comprising the dishonoured cheque and the accompanying bank memo. He further argued that the appellant’s acquittal in the corresponding criminal case did not, in and of itself, extinguish his civil liability, which arises from an independent cause of action. He also concluded by asserting that the appeal was devoid of merit and liable to be dismissed.

10. After hearing learned counsel for parties, in order to decide this appeal following points for determination are framed:-

***POINTS***

*1. Whether the cheque of Rs.90,00,000/- was issued by the appellant/defendant pursuant to settlement of accounts between the parties, and whether the same was dishonoured?*

*2. Whether the acquittal of defendant/appellant for the offence punishable under Section 489/F,506/2 and 34 PPC precludes civil recovery?*

*3. Whether the judgment and decree passed by the learned trial court suffer from any legal or factual infirmity warranting interference?*

*4. What should the decree be?*

11. My findings, on the above points are as follow:-

***FINDINGS***

Point No.1 ..... Affirmative.
Point No.2 ..... Negative.
Point No.3 ..... Negative.
Point No.4 ..... Appeal is dismissed.

***POINT NO.1.***

12. In order to discharge the burden of proof, the onus lay squarely upon the plaintiff/respondent. The foundational claim was established on the basis of the pleadings, wherein the plaintiff/respondent averred that he and the appellant were jointly engaged in a commission-based business, and had mutually agreed on 01.06.2014 to sever their commercial association and settle their accounts. Pursuant to this settlement, an outstanding sum of Rs.90,00,000/- was determined to be payable by the appellant, who consequently issued a post-dated cheque bearing No.00013814, drawn on Askari Bank, Ghotki Branch, dated 26.08.2014. This transaction allegedly occurred in the presence of witnesses Jagdesh @ Jaggi Ram (son of Washnomal) and Baghwandass (son of Gurmukhdass). The plaintiff/respondent asserted that he presented the cheque for encashment on the due date, but the same was dishonoured. Upon contacting the appellant for payment, the appellant allegedly refused and instead resorted to threats, prompting the lodging of an FIR. To substantiate his claim, the plaintiff/respondent submitted an affidavit in evidence, supported by the affidavits of Jagdaish Kumar and Bhagwandas, corroborating the narrative set forth in the plaint. In furtherance of proof, the plaintiff/respondent also examined Tanveer Ahmed (Judicial Department Clerk) at Ex.21, who produced the dishonoured cheque and bank memo (Ex.21/A and Ex.21/B), as well as Ihsan Ahmed (Bank Manager) at Ex.27, who tendered official documents,

including the court's summon, system-generated account statements, detailed bank account records, and dishonour memos (Ex.27/A to Ex.27/D). Notably, the learned trial Judge duly returned the cheque to the relevant court officer after perusal. It bears mention that both the bank manager and the judicial clerk were not subjected to cross-examination, despite the opportunity being afforded to learned counsel for the appellant. The affidavits in evidence of the plaintiff and his aforementioned witnesses were formally tendered on 16.11.2021. As recorded in the case diary dated 15.03.2022, although the plaintiff/respondent and his witnesses were in attendance, the appellant and his counsel failed to appear. In the interest of justice, the matter was adjourned upon payment of costs amounting to Rs.1500/- to the next date, i.e., 22.03.2022. However, on the said date as well, there was no representation on behalf of the appellant. Consequently, the learned trial Judge passed the following order:

> *"Matter is fixed for cross examination, on last date of hearing i.e. 15.03.2022 matter was adjourned subject to payment of costs. For ready reference. said order is reproduced below;*
> *Matter is fixed for cross examination. Defendant and his counsel are absent. Plaintiff Nand Lal is present and his witnesses are present for cross examination. The respondent's advocate is absent for cross examination, the matter is old one. In the interest of justice one chance is given to the defendant for cross examination subject to payment of Rs.1500/- payable as T.A/D.A to each witness in case of failure and non-payment of costs on or before the coming date of hearing the side will automatically stands closed.*
> *Today witnesses are in attendance for their cross examination, the defendant and his counsel is absent. Cross treated nil. Let the matter be fixed for defendants evidence."*

13. The aforementioned order demonstrates that in the absence of any cross-examination of the plaintiff/respondent's witnesses and the bank official, their evidence remained unchallenged and, therefore, stood unrebutted on record. The plaintiff/respondent has satisfactorily discharged the evidentiary burden by placing on record sworn affidavits of the witnesses, as well as that of the bank manager, substantiating the fact that the cheque in question had been issued and subsequently dishonoured. Furthermore, even on a statutory footing, Section 118 of the Negotiable Instruments Act, 1881, creates a legal presumption subject to rebuttal that every negotiable instrument is issued for consideration, unless the contrary is proved. The relevant provision is reproduced below:

> *"118. Presumptions as to negotiable instruments---(a) Of consideration; (b) as to date; (c). as to time of acceptance; (d)*

*as to time of transfer; (e) as to order of endorsements (1) as to stamp; (g) that holder is a holder in due course. ---Until the contrary is proved, the following presumptions shall be made*

*(a) that every negotiable instrument was made or drawn of consideration, and that every such instrument, when it has been accepted, endorsed negotiated or transferred, was accepted, endorsed negotiated or transferred for consideration:*

*(b) that every negotiable instrument bearing a date was made or drawn on such date;*

*(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*

*(d) that every transfer of an negotiable instrument was made before its maturity; that endorsements appearing upon a negotiable.*
*(e) that endorsements appearing upon an negotiable instrument were made in the order in which they appear thereon;*

*(f) that a lost promissory note, bill of exchange or cheque was duly stamped;*

*(g) that the holder of a negotiable instrument is a holder in due course, provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence of fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."*

14. Section 118 of the Negotiable Instruments Act, 1881, engenders a statutory presumption to the effect that every negotiable instrument is issued for consideration. Accordingly, the evidentiary burden shifts to the drawer of the instrument to rebut this presumption by adducing credible and cogent evidence. In the present case, the plaintiff/respondent not only produced the dishonoured cheque along with the return memo issued by the bank citing "insufficient funds," but also examined the concerned bank manager, who corroborated the dishonour of the said cheque. These steps, in the considered view of this Court, were sufficient to activate the statutory presumption under Section 118. The defendant/appellant, in response, relied solely upon oral denials and failed to adduce any cogent, credible, or documentary evidence to effectively rebut the case established by the plaintiff/respondent.

15. I now turn to the defence advanced by the appellant, particularly the argument that the dispute had been amicably resolved via faisla between the parties. The appellant, in his written statement, alleged

that a settlement was arrived at on 11.12.2014 and that the faisla was conducted by ***Om Lal (son of Doloo Mal) and Amar Lal (son of Lachhoo Mal of Ghotki).*** It was contended that the plaintiff/respondent later reneged on the terms of said settlement. However, having raised a plea based on faisla, the appellant bore the burden of proving the same. It was incumbent upon him to examine the individuals alleged to have conducted the faisla. His failure to do so, despite such evidence being available, attracts the adverse presumption enshrined under Article 129(g) of the Qanun-e-Shahadat Order, 1984, which provides as follows:

> *"that evidence which could be and is not produced would, produced be unfavourable to the person who withholds it"*

16. The presumption of above article is that non examination or withheld of the best evidence would draw adverse inference.

17. This principle dictates that if the appellant had indeed produced the witnesses, their testimony would not have supported his claim. Alternatively, their absence suggests the evidence does not exist. The Hon'ble Supreme Court of Pakistan in ***"Jehangir v. Mst. Shams Sultana and others" (2022 SCMR 309)*** has held as follows at paragraph No.4:-

> *"We are surprised that the plaintiff/respondent No.1 did not come forward to testify that she had not sold the property as reflected in the said sale mutation, particularly when her sister and mother had testified in support of the said sale. A direct challenge had also been thrown to her husband/ attorney that if the plaintiff came to testify she would acknowledge the sale. When the best evidence is intentionally withheld an adverse presumption ensues that if it was produced it would be against the person withholding it as per Article 129(g) of the Qanun-e-Shahadat, 1984."*

Likewise, Hon'ble Supreme Court of Pakistan in "***Mst. Zarsheda v. Nobat Khan" (PLD 2022 SC 21)*** has ruled as follows at paragraph No.9:-

> *"9. At this juncture Article 129 of the Qanun-e Shahadat Order 1984 is quite relevant under which court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. According to the illustrations highlighted for resonating the presumption, Illustration (g) is quite relevant which illuminates "that evidence which could be and is not produced would, if produced, be un-favourable to the person who withholds it". Adverse inference for non production of evidence is one of the*

> *strongest presumptions known to law and the law allows it against the party who withholds the evidence. Regardless of the presence of important witnesses (the alleged donor) and the alleged witness of the mutation, the defendant failed to produce them despite framing of specific issue whether there was no transaction of sale but a gift."*

In the same vein in ***"Muhammad Naeem Khan and another v. Muqadas Khan (decd) through L.Rs. and another" (PLD 2022 SC 99),*** the Hon'ble Supreme Court of Pakistan has held as follows:-

> *"Where a party keeps hold of the witnesses, the presumption would be that if such witnesses were produced, their testimony must have against him, therefore adverse inference of withholding evidence goes against the party who failed to call the concerned person engaged in the transaction who was in a better position to give firsthand and straight narrative of the matter in controversy. According to Article 129 of the Qanun-e-Shahadat Order 1984, the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Illustration (g) attached to this Article is quite relevant to the facts and circumstances of the case in hand in which the court may draw adverse inference or presumption that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. No misreading or non-reading of evidence or any other defect or error was pointed out in the impugned judgments which may warrant interference by this court."*

18. In light of the foregoing, this Court is of the considered view that the plaintiff/respondent has successfully discharged the burden of proof incumbent upon him. The documentary and oral evidence presented by the plaintiff remained unrebutted and unchallenged due to the absence of cross-examination. The statutory presumption under Section 118 of the Negotiable Instruments Act, 1881, was thereby attracted and remained unrebutted. Furthermore, the appellant/defendant failed to substantiate his plea regarding the faisla. Consequently, this point is answered in the ***Affirmative.***

***POINT NO.2***

19. The learned counsel for the appellant/defendant strenuously argued that the Summary Suit ought not to be maintainable in light of the appellant's acquittal in criminal proceedings arising out of the same transaction. It was contended that the FIR registered under Sections

489-F, 506(2), and 34 of the Pakistan Penal Code, which culminated in acquittal, rendered the civil claim unsustainable.

20. However, it is a well-established principle of law that civil proceedings under Order XXXVII of the Code of Civil Procedure are autonomous and unaffected by the outcome of any parallel criminal prosecution, even when both originate from the same transaction. The acquittal of a defendant in a criminal case particularly under Section 489-F PPC does not per se exonerate him from civil liability arising from a dishonoured negotiable instrument. The standard of proof in criminal proceedings is that of proof beyond reasonable doubt, whereas in civil claims, including suits under summary procedure, the matter is adjudicated on the balance of probabilities. In the present case, the plaintiff/respondent has conclusively proved the issuance and dishonour of the cheque through cogent and unrebutted oral and documentary evidence. The failure of the defendant/appellant to cross-examine or present a defence has further fortified the plaintiff's case. Accordingly, the appellant's acquittal in the criminal proceedings does not negate or extinguish the underlying civil liability evidenced by the dishonoured cheque.

21. This Court was of the view that the appellant has discharged his burden of proving case against defendant by producing abundant evidence coupled with the fact that they have not been cross examined and the presumption under article 118 of the Negotiable Instrument Act, 1881 and the failure of defendant/appellant to prove his plea regarding faisla.

22. In view of the legal principles and factual findings outlined above, this point is answered in the ***Negative***.

***POINT NO. 3***

23. Upon meticulous appraisal of the foregoing discussion and the settled principles of law, it is manifest that the respondent/plaintiff succeeded in establishing his claim through cogent, consistent, and unrebutted evidence. Conversely, the defence put forth by the appellant remained wholly unsubstantiated and was not pursued through cross-examination. The learned trial court, in decreeing the suit, rightly assumed jurisdiction under the provisions of Order XXXVII of the Code of Civil Procedure. The appellant's acquittal under Section 489-F of the Pakistan Penal Code bears no relevance to the civil summary proceedings for recovery, as both realms function within distinct legal frameworks and are

governed by differing thresholds of proof. The appellate forum finds no trace of legal error, perversity, or procedural infirmity in the impugned judgment that would justify appellate interference. Consequently, this point is also determined in the ***Negative***.

***POINT NO. 4***

24. In consequence of the discussion supra, the instant appeal, being devoid of substance, is ***dismissed*** with no order as to costs. The Judgment and Decree dated 07.09.2022, rendered by the learned trial court, is hereby affirmed. The plaintiff/respondent has sufficiently proved his case, and the appellant/defendant has failed to displace the presumption arising under Section 118 of the Negotiable Instruments Act, 1881. The plea premised upon criminal acquittal, which bears no determinative effect upon civil liability is likewise rejected. A decree shall follow accordingly.

25. Above are the reasons for the order announced on 26.05.2025, whereby instant appeal was dismissed.

*Judge*

*A.R Brohi/PS*