

ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI
First Appeal No.40 of 2023
(*Shuja-ur-Rehman v. Junaid Ahmed*)

Date

Order with Signature(s) of Judge(s)

1. For Order on Office Objection / Reply 'A'

2. For hearing of main case

14.01.2026

Shaikh Adnan Usman, Advocate for Appellant

Has challenged the Judgment dismissing the Summary Suit No.69 of 2020, filed by the Appellant for recovering the proceeds of Cheque No.00000018 dated 15.2.2020 [of Rs. Nine Hundred Thousand], produced in the evidence as Exhibit P/2.

Despite service of notice, Respondent never appeared.

2. Learned Counsel has argued the matter at length and states that the impugned Judgment does not fall within the parameters of law, and is also contrary to record.

3. Succinctly, the Appellant / Plaintiff is a shopkeeper and had good relationship with the Respondent who is in the business of property development. The latter [Respondent] requested for a loan of Rs.9 Lacs for renovating a property which was given / lent to him on 20.11.2019 in the presence of two witnesses, namely Ziaur Rahman and Sohail Manzoor Khan [who also testified as witnesses of the present Appellant]. After much persuasion, the Respondent issued a postdated Cheque [the above subject Cheque] on 15.2.2020, for the above amount, which upon presentation, was dishonored. Despite requests when the amount was not paid, the Respondent was served with a legal notice followed by the above Suit.

4. Arguments heard and record perused.
5. The points for determination in this Appeal are:
 - i. Whether the subject Cheque was issued by the Respondent (Junaid Ahmed) to Appellant for consideration;
 - ii. Whether there is any nexus/relationship between the Respondent and Muhammad Hussain and the Appellant vis-à-vis the subject Cheque.
6. In his Leave to Defend Application, the defence setup by the Respondent is that there is no business relationship with the Appellant and he handed over the subject Cheque to one Muhammad Hussain (who also appeared as witness of Respondent) for purchase of Muhammad Hussain's property and the Respondent does not know how the Cheque was transferred to the Appellant; whereas, in his Written Statement, the Respondent has clearly mentioned in Paragraph No.6 that he issued the Cheque in the name of the Appellant. The second defence is that since the transfer of the immovable property belonging to Muhammad Hussain could not be finalized; therefore, the Respondent issued "stop-payment" instruction. The other plea is that this fact was in the knowledge of Appellant, who filed the Suit as he was witness to the Sale Agreement dated 24.01.2020, available at page-57 of the present LIS File, but was never exhibited.
7. Evidence evaluated.
8. The Appellant has reiterated his stance in Examination-in-Chief / Affidavit-in-Evidence with specific denial of the above Sale Agreement. The Cross Examination does not highlight any material contradiction, which can be construed as an untrue statement [on the part of the Appellant]. The material

assertion of the Appellant denying the above Sale Agreement could not be falsified in his cross examination.

9. The witnesses of Appellant, namely, Zia-ur-Rehman and Sohail Manzoor Khan, have corroborated his version and their cross examination do not have contradictions.

10. Whereas, the testimonies of the Respondent and his Witnesses contained material contradictions. In his Affidavit-in-Evidence, Respondent has once again stated that subject Cheque was not issued in the name of Appellant, but was given to Muhammad Hussain for the purchase of latter's property. In his Cross Examination, the Respondent introduced a new fact that the house was to be purchased for the Respondent's sister, but admitted to suggestion that this plea was not mentioned in his pleadings. Although, he denied any liability towards Appellant, but admitted in Cross Examination that no instructions of "stop-payment" were issued and disputed Cheque was dishonoured, which belies his assertion in the examination-in-chief / Affidavit in evidence. He showed his ignorance that whether the Appellant was tenant in the house of Muhammad Hussain with whom the alleged sale transaction was done. This reply in Cross Examination also contradicts his other stance that the disputed Cheque was for the use of Muhammad Hussain, but was erroneously given to the Appellant.

11. Similarly the testimonies of witness of Respondent are also contradictory. Interestingly, above named Muhammad Hussain did not even know that in which case he has come to testify. In his Cross Examination, he states that he does not know the facts of the case; in his Cross Examination he deposed that the above Suit was filed by one Saleem; whereas, the other Witness, Naveed Ahmed, as admitted [in his cross examination] that he does

not know Appellant and the Respondent but only Mohammad Hussain. Claim of the Appellant is in respect of house purchased by the Respondent. He introduced a new fact, that Muhammad Hussain asked him to pay Rs.9 Lacs in respect of his house. Admitted that he is deposing on the request of Hussain and Respondent. The witness Naveed Ahmed further deposed that the Sale Deed in respect of the property was executed and signed, *inter alia*, by Respondent. This statement directly contradicts Respondent's claim in his Written Statement (in para-6), that the deal concerning the immovable property could not be finalized for which the Cheque was issued by him and therefore, he stopped payment of Cheque.

12. Conclusion of the above evaluation of evidence is that the Respondent has in fact repeatedly made false statements on oath, whereas, his Witnesses' testimonies are not only self-contradictory, but also belie the stance of the Respondent.

13. In view of the above discussion, the finding of the learned Trial Court mentioned in Paragraph No.13, holding that the Appellant **admitted** the above Sale Agreement, is incorrect. Had this finding been correct, the said Agreement although not exhibited, could still have been considered; but, since no positive evidence was lead for its existence and authenticity (by the Respondent), thus, it is wrongly determined by the Trial Court, that the Sale Agreement was '**admitted**'. The impugned Judgment has not at all appraised the evidence of the parties, rather misread it, while handing down the Judgment. We are surprised that how such apparent contradictions in the evidence of respondent and his witnesses were overlooked by the Trial Court.

14. The upshot of the discussion is that the impugned Judgment is not within the parameters of law and jurisdiction was not properly exercised,

consequently, it is set aside. Suit of the Appellant is decreed along with interest of 6% from the date of filing of the Suit till realization of the amount.

Accordingly, the Appeal is allowed.

Copy of this Judgment should be communicated to the learned Judicial Officer who has passed the impugned Judgment.

JUDGE

JUDGE

*FAIZAN/**