

IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

First Appeal No.S-32 of 2024

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Appellant: Muhammad Yahya son of Jawaaid Khalid,
Through Mr. Wishan Das Kolhi, Advocate.

Respondent: Rozi Khan son of Akhter Khan.

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Date of hearing: **14.01.2026**

Date of Judgment: **14.01.2026**

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J U D G M E N T

Muhammad Hasan (Akber), J-: The appellant has impugned the judgment and decree dated 03.12.2022 passed by the learned Additional District Judge-II/MCAC, Mirpurkhas through which the Summary Suit No.26/2017 filed by the respondent Rozi Khan was decreed.

2. Brief facts of the case are that the parties are well known to each other; therefore, on the demand of the defendant, the plaintiff paid a sum of Rs.7,44,000/- to the defendant as *Amanat* with the undertaking that the same would be returned upon demand by the plaintiff. The defendant issued cheque No. 6257325 dated 01-07-2016 from his Account No. 0001069537 maintained at UBL, New Town Branch, Mirpurkhas, in the amount of Rs.7,44,000/-. The plaintiff/respondent deposited the said cheque in his Account No. 1095-0078-00839-01-8 for encashment; however, the cheque was dishonoured with the endorsement "Funds not sufficient." Thereafter, the plaintiff/respondent approached the appellant/defendant and demanded repayment of the said amount, but the appellant/defendant refused. Consequently, the plaintiff lodged F.I.R No.137/2016 at Police Station Town, Mirpurkhas, wherein the appellant/defendant was acquitted by the Judicial Magistrate-I, Mirpurkhas. Against such acquittal, the respondent/plaintiff filed Criminal Acquittal Appeal No.180/2017 before the High Court of Sindh, Circuit Court Hyderabad, which is still pending. The respondent/plaintiff is entitled to recover the said amount, which the

appellant/defendant has failed to pay, hence the appellant filed the above suit with the following prayers:-

- a) Direct the defendant to make payment of the amount of Rs.7,44,000/- to the plaintiff.
- b) Cost of the suit by borne by Defendant.
- c) Any other relief as may deem fit and proper under the circumstances of the case.

3. The defendant/appellant appeared and filed application under Order 37 Rule 3 C.P.C for leave to defend the suit which was allowed vide order dated 14-03-2018 subject to furnishing surety in the sum of Rs.7,44,000/-.

4. In his written statement, he denied the allegations of the respondent/plaintiff stating that they were partners in showroom business for more than 6/7 years and used to sit jointly where cash and cheque book of the plaintiff/respondent was lying in the drawer. The plaintiff/respondent denied issuance of cheque in question stating that same was dishonestly removed from his cheque book. According to plaintiff/respondent, the plaintiff/respondent is habitual to file suit for grabbing money from people and was also convicted by the Court of learned Judicial Magistrate-I Mirpurkhas in a case registered under S.489-F PPC.

5. On the pleadings of the parties, issues were framed as under:

ISSUES

- 1. Whether the plaintiff and the defendant were in business terms; on close of the business the plaintiff dishonestly removed cheque No.6257325 from the drawer of the showroom of defendant?
- 2. Whether no cause of action accrued to plaintiff for filing present suit?
- 3. Whether the suit of the plaintiff is not maintainable under the law?
- 4. Whether the plaintiff had given Rs.7,44,000/- to the defendant as Amanat with undertaking that the defendant will return his amount on demand?

5. Whether the defendant issued Cheque No.6257325 of Account No.0001069537 of UBL New Town Branch, Mirpurkhas, of Rs.7,40,000/- for the date 01-07-2016 which on presenting before the Bank was dishonoured and the Bank issued such memo having endorsement of insufficient funds?
6. Whether the defendant is liable to pay Rs.7,44,000/- to the plaintiff?
7. Whether the plaintiff is entitled to the relief claimed for?
8. What should the decree be?

6. The plaintiff/respondent Rozi Khan examined himself at Exh.42 who produced CTC of title of case and cheque at Exh.42/A & 42/B, title of case and memo of cheque at Exh.42/C & 42/D. The plaintiff/respondent was cross-examined and thereafter learned counsel for the plaintiff/respondent closed his side vide statement Exh.50. Thereafter, appellant/defendant Muhammad Yahya was examined as DW-1 at Exh.64 and his counsel closed his side vide statement Exh.65. Official witness PW-2 Zulfiqar Ali Mari, Operation Manager United Bank Limited Branch (0128) was examined at Exh.70 who produced Specimen Signature Card of Muhammad Yahya at Exh.70/A. PW-3 Fayaz Ahmed Branch Manager Bank Al-Habib Station Road Mirpurkhas was also examined at Exh.71 and produced bank statement of account holder Rozi Khan at Exh.71/A & 71/B.

7. After a thorough hearing of both parties, the learned trial court decreed the suit. Consequently, this First appeal has been filed.

8. Notice was issued to the respondent but he did not bother to appear and contest the matter.

9. It is contended on behalf of the appellant that the learned trial Court failed to properly appreciate the evidence on record and erred in law while decreeing the suit. He further argued that the cheque in question was not issued by the appellant and was allegedly misused by the respondent after being dishonestly removed from the appellant's cheque book. He further states that the parties were business partners and the amount claimed by the respondent

pertains to business loss, therefore, no liability could be fastened upon the appellant. Lastly he prayed that appeal be allowed.

10. I have heard learned counsel for the appellant and perused the available record.

11. From perusal of the impugned judgment, it appears that the learned trial Court framed all the relevant issues, afforded full opportunity of hearing to both the parties and decided the matter after recording evidence. The plea of the appellant that the cheque was misused was specifically examined by the learned trial Court, the burden to prove such plea squarely lies upon the appellant; however, he failed to produce any cogent evidence in his support. The learned trial Court also examined the concerned bank officials. PW-2 Zulfiqar Ali Mari, Operation Manager, United Bank Limited and PW-3 Fayaz Ahmed, Branch Manager Bank Al-Habib who categorically deposed that the cheque in question belonged to the appellant's account and that the signature appearing thereon matched with the specimen signature of the appellant. Their evidence remained unshaken during cross-examination. Furthermore, the learned trial Court has discussed each issue separately and recorded well-reasoned findings based on proper appreciation of evidence. In the present case, no illegality or material irregularity has been pointed out by the learned counsel for the appellant.

12. In view of above, the instant appeal being devoid of merit is dismissed. The judgment and decree dated 03.12.2022 passed by the learned Additional District Judge-II/MCAC, Mirpurkhas in Summary Suit No.26 of 2017 are hereby upheld. These are the reasons of short order dated 14.01.2026.

JUDGE

Faisal