

THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Civil Revision Application No. S - 142 of 2023

[Zaheer Abbas versus Province of Sindh & others]

Applicant/Plaintiff : Zaheer Abbas son of Mushtaque Ali through Mr. Ghayoor Abbas M. Shahani, Advocate.

Respondents 1 to 5 : Province of Sindh through Secretary Irrigation Department and four others through M/s. Abdul Waris Bhutto and Munawar Ali Abbasi, Assistant Advocate Generals Sindh.

Dates of hearing : 02-02-2026 & 09-02-2026

JUDGMENT

Adnan Iqbal Chaudhry J. - Applicant/Plaintiff filed Suit No. 87/2020 against the Province of Sindh and officers of the Irrigation Department before the Senior Civil Judge, Larkana for recovery of Rs. 40,54,565/- as the balance due for goods supplied under contract to said Department in 2016 for works along Dadu Canal RD 257 to 310, in Larkana Sub-Division of Northern Dadu Division Larkana.

2. In the first round, the Senior Civil Judge rejected the plaint on the ground that the suit filed in 2020 for recovery of bills raised in 2016 was time-barred. The order was sustained in Civil Appeal No. 124/2020. However, upon Revision Application No. 19/2021, the High Court revived the suit by holding that in the circumstances of the case, limitation was a mixed question of law and fact which could only be determined after recording evidence.

3. On behalf of the Irrigation Department, written statement was filed by the Executive Engineer, Northern Dadu Division and the Assistant Executive Engineer, Larkana (Defendants 4 and 5). They stated in para 9 that :

“That the contents of para No.9, we have all sympathies with the plaintiff, because matter has already been submitted to the department for release of

additional funds in favour of plaintiff and other side precisely and partly payment amounting to Rs. 7,00,000/- has been paid to the plaintiff as well as such photostat copies of letters of demand of additional funds are attached as (Annexure A & B). But original record is not available”.

‘Annexure A & B’ to the written statement were photocopies of letters dated 13.01.2017 and 24.07.2020 by the Executive Engineer to the Superintending Engineer seeking additional funds for settling the Plaintiff’s bills.

4. Based on para 9 of the written statement, the Applicant/Plaintiff made an application under Order XII Rule 6 CPC for judgment on admission. The Defendants contested, submitting that since documents relied upon by the Plaintiff did not exist in the record of the Department, there could be no admission of liability. The application was dismissed by the trial Court on the ground that in Revision Application No. S-19/2021 the High Court had ordered that the suit should be decided after recording evidence.

5. After recording evidence, the suit was again dismissed by the trial Court *vide* judgment/decree dated 13.04.2023. The Applicant preferred Civil Appeal No. 91/2023, which too was dismissed by the VI-Additional District Judge, Larkana *vide* judgment/decree dated 15.09.2023; hence, this revision application.

6. Heard learned counsel and perused the record.

7. The trial Court’s reasons for dismissing the suit were: (a) that the Plaintiff had filed suit on behalf of a company namely ‘Shahani & Brothers’, but there was no authorization by said company to the Plaintiff; (b) that the Plaintiff could not prove that he was a licensed Government contractor, or that he was awarded the subject contract by the Department, or that he had performed said contract; (c) that officers of the Irrigation Department who filed written statement, appeared to be in collusion with the Plaintiff, and therefore the written statement should be viewed with caution. The Appellate

Court did not dwell on ground (a), rather upheld the judgment of the trial Court essentially on ground (b).

8. The observation that 'Shahani & Brothers' was a company, was not based on any evidence, rather it was an assumption. In fact, in para 10 of the judgment, the trial Court itself was not certain of the status of 'Shahani & Brothers' and referred to it as a '*partnership firm/company*'. It may well be that 'Shahani & Brothers' was simply a sole proprietorship of the Plaintiff. Therefore, dismissal of the suit as unauthorized, is not sustainable. However, as discussed *infra*, the trial Court had also dismissed the suit on the merits.

9. With the plaint, the Applicant/Plaintiff had annexed photocopies of documents consisting of: (i) publication dated 17.04.2016 by the Executive Engineer inviting bids for procurement of goods; (ii) letter dated 04.07.2016 by the Chief Engineer to the Superintending Engineer to sanction procurement of goods for the subject works; (iii) letter dated 12.07.2016, said to be a work order issued to the Plaintiff (iv) extracts of the Measurement Book for supplies made by 'Shahani & Brothers'; (v) letters dated 13.01.2017 and 20.01.2017 issued respectively by the Executive Engineer and Chief Engineer seeking additional funds to settle outstanding bills of 'Shahani & Brothers'. But then, the only document tendered in evidence by the Plaintiff was photocopy of letter dated 12.07.2016, said to be a work order issued to the Plaintiff. No other document was exhibited by the Plaintiff.

10. As narrated above, it was averred by the Department at the onset that its record did not contain any of the documents annexed to the plaint. On examination-in-chief, the Executive Engineer posted at Northern Dadu Division at the time, came out clearly to suggest that said documents were manipulated. He deposed that: "*In our office record no any work order/contract as disclosed by plaintiff is available. As per our office record, no bidding of work/contract has been done with regard to suit contract. As per our office record, no any suit work order has been*

issued in favor of plaintiff. No any agreement was executed between plaintiff and our department with regard suit work order. I have verified our office record and did not find any record with regard to letter No. SKP-G-66/801/2016 Larkana dated 12.07.2016. I have also verified our office record and did not find any proof with regard to letter No. Assistant/G-148/63/2017 Larkana dated 13.01.2017. I have also verified our office record and did not find any proof with regard to letter No. SAC/G-148/WC/87/2017 Larkana dated 20.01.2017.” Hence the observation by the trial Court that previous officers of the Department were in collusion with the Plaintiff. Despite the foregoing, the Plaintiff did not make any attempt to produce secondary evidence under Article 76 of the Qanun-e-Shahadat Order, 1984 of documents filed with the plaint. The only document exhibited by him *viz.* photocopy of letter dated 12.07.2016, was without the requisite notice under Article 77 of the Qanun-e-Shahadat Order. Plaintiff’s case was therefore, of no evidence.

11. At the stage of final arguments before the trial Court, the Applicant/Plaintiff made an application under Order XVI Rule 1 CPC to summon officers of the Department to produce documents annexed to the plaint. That application was of course dismissed. There was no point to such application when the Department had denied existence of such documents and the Plaintiff himself had not led secondary evidence of those documents.

12. It was submitted by learned counsel for the Applicant that the suit was liable to be decreed on admission of liability made in the written statement. However, it is settled law that for judgment on admission, the admission should be specific, clear, unambiguous and categorical.¹ One look at the written statement will show that was hardly the case.

¹ See *Macdonald Layton & Company Pakistan Ltd. v. Uzin Export Import Foreign Trade Co.* (1996 SCMR 696).

13. In view of the foregoing, even though the trial Court had erred in holding that the suit was by an unauthorized person, the finding that the Applicant/Plaintiff did not prove that he was awarded the subject contract by the Department, does not call for interference. Resultantly, the revision application is dismissed.

JUDGE

Signed at Hyderabad
on: 06-05-2026

Announced by & on: