

IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No. 81 of 2015

[Mahmood-ul-Hassan Advocate v. Prof. Dr. Syed Misbah-uz-Zafar and others]

Applicant : In Person

Respondent No. 1 Through Mr. Muhammad Hashim
Soomro, Advocate

Respondent No. 2 & 3 : Through Syed Hussain Shah,
Assistant Advocate General

Date of Hearing : 23.09.2026
Date of Announcement : 29.09.2026

J U D G M E N T

SAMAN RAFAT IMTIAZ, J.- This Civil Revision Application under Section 115, CPC has been filed by the Applicant [Mahmood-ul-Hassan Advocate], to challenge the judgment dated 22.02.2014 and decree dated 25.02.2014 passed by the learned VIIth Senior Civil Judge, Karachi (South) decreeing Civil Suit No. 394 of 2010 filed by Respondent No.1 [Prof. Dr. Syed Misbah-uz-Zafar] for damages and recovery of Rs.1,300,000/- and the judgment and decree dated 30.09.2015 passed by the learned VIIIth Additional District Judge, Karachi (South), dismissing Civil Appeal No. 59 of 2014 against the trial court judgment.

2. Precisely, the relevant facts, as narrated by Respondent No.1 in the plaint of Civil Suit No. 394 of 2010, are that he met the Applicant in 2005 through a mutual acquaintance and engaged him as an advocate in connection with various FIRs concerning his car and household goods. Thereafter, the Applicant disclosed his financial difficulties and requested a loan of Rs.1,300,000/- which Respondent No.1 advanced through cheque No. AIR-3244047 dated 09.10.2005 drawn on Bank Al-Habib Limited, Karachi. The Applicant allegedly encashed the cheque and issued a certificate/undertaking on the same date regarding repayment of the loan. Despite expiry of the agreed period, he failed to repay the amount. On the Applicant's request, Respondent No.1 extended the repayment period and the Applicant issued an amended undertaking but still failed to make any payment. Respondent No.1 thereafter lodged a complaint before the Sindh Bar Council and filed the aforesaid suit for recovery of Rs.13,00,000/- along with mark-up.

3. The Applicant/defendant, after service of summons, contested the suit through a written statement, raising certain objections alleging that the Respondent No.1 was liable for perjury under Section 476, Cr.P.C. On merits, the Applicant denied obtaining any loan and stated that the Rs.1,300,000/- cheque was part payment of agreed professional/legal fees of Rs.1,500,000/- with remaining Rs.200,000/- payable during the legal proceedings. He further alleged that the Respondent No.1 subsequently converted the professional fee into an alleged loan by preparing documents on two blank letterheads of the Applicant obtained during visits to his office.

4. Issues were framed and evidence was recorded. After hearing the parties, the learned Trial Court decreed the suit vide judgment dated 22.02.2014 and decree dated 25.02.2014. The learned Trial Court found that Respondent No.1 and his witnesses had supported each other that the Applicant had obtained a loan of Rs.1,300,000/- from Respondent No.1 but had failed to repay the same, whereas the Applicant had claimed that the cheque of Rs.1,300,000/- was issued by Respondent No.1 in respect of professional fee, but had changed his stance in cross examination by stating that it was not for proceedings of cases in Court but on account of consultation, which he was unable to prove, and that the written statement was not even verified on oath.

5. The Applicant challenged the same through Civil Appeal No. 59 of 2014, contending that the Trial Court had failed to properly appreciate the facts, law and documentary evidence, particularly Annexure-D to the written statement, which allegedly established that the amount of Rs.1,300,000/- was received as professional fee and not as a loan. The Respondent No. 1 opposed the appeal and supported the Trial Court's judgment. The learned Appellate Court, after hearing the parties and thoroughly examining the record, dismissed the appeal vide judgment dated 30.09.2015 by finding no illegality or infirmity in the judgment and decree of the Trial Court and concurring with the trial Court that the Applicant had taken inconsistent pleas.

6. Being aggrieved, the Applicant has filed the instant Civil Revision Application assailing both judgments and decrees, mainly contending that the Courts below failed to apply judicial mind, passed non-speaking orders and did not decide the legal objections raised in the written statement. It is contended that the suit was barred by limitation under Article 73 read with section 3 of the Limitation Act, 1908, as the cheque was dated 09.10.2005 and the suit was filed after three years. The Applicant further contends that there was no agreement between the parties and the objections under the Specific Relief Act, 1877 and Stamp Act, 1899 were not properly

considered. He also relies upon the plaintiff's complaint before the Sindh Bar Council and Annexure-D to the written statement to assert that the amount was received as professional fee and not a loan. Lastly, it is contended that the plaintiff was required to prove his case through his own evidence and not on the weakness of the defence.

7. During the pendency of this Civil Revision Application, vide order dated 27.10.2015, Respondent No.1 was directed not to proceed with the execution proceedings. Respondent No.1 has since died and is now represented by his legal heirs, of whom legal heirs No.2, 3 and 6 have been represented before this Court by Mr. Muhammad Hashim Soomro, Advocate. Vide order dated 03.03.2026, the last opportunity was granted to the Applicant, with a clear direction that no further time would be granted and that in the event of his failure to appear and proceed with the matter on the next date, appropriate orders, including dismissal of this revision application for non-prosecution, would be passed without providing any further opportunity. On 07.08.2026, the Applicant, who is himself an advocate, appeared in person and sought an adjournment on the ground that his counsel was on general adjournment, which request was objected to by learned counsel for Respondent No.1 by pointing out that the matter had been pending and lingering on since 2015 and that the Applicant had himself been appearing and submitting arguments before the Court on the last few dates. In view thereof, and particularly since the Applicant, being an advocate, was himself appearing and was present in Court, the request for adjournment was declined. On perusal of the file in chamber, however, it was noted that one of the grounds raised in the memo of petition was that the suit filed by Respondent No.1 was time barred under Article 73 of the Limitation Act read with section 3 thereof, which provides a three years limitation period for a suit on a bill of exchange payable on demand and not accompanied by any writing restraining or postponing the right to sue, which time period begins from the date of the bill or note, and that, according to section 3 of the Limitation Act, a suit instituted after the period of limitation shall be dismissed even where limitation has not been set up as a defence. In view thereof, learned counsel for Respondent No.1 was directed to satisfy this Court as to how the suit was maintainable, given that the money lent by Respondent No.1 was paid to the Applicant by way of cheque dated 09.10.2005 whereas the suit was instituted on 03.05.2010, and the Applicant was directed to satisfy this Court as to whether Article 57, 58 or 73 of the Limitation Act is attracted in the instant matter.

8. The learned counsel for the Applicant relied upon the cases of *Jameel Qadir and another v. Govt. of Baluchistan and others*, 2023 SCMR

1919, Khushi Mohammad v. Fazal Bibi, PLD 2016 SC 872, United Bank Ltd. v. Noor-un-Nisa, 2015 SCMR 380, Wakeel Akhtar v. Shahzad Alam, 2021 CLC 54, Hafiz Tassaduq Hussain v. Muhammad Din, PLD 2011 SC 241, Rehmat Noor v. Zulqarnain, 2023 SCMR 1645, Sindh Irrigation & Drainage Authority v. Province of Sindh, 2026 SCMR 190, Hassan Akhtar and others v. Azhar Hameed and others, PLD 2010 SC 657, Muhammad Ejaz v. Judge Family Court Hyderabad and others, 2026 SCLR 87, Afzal v. Abdul Ghani, 2005 SCMR 946, Rahat & Company v. Trading Corporation of Pakistan, PLD 2020 SC 366, SDO/AM Hasht Nagri Sub-Division, PESCO v. Khawazan Zad, PLD 2023 SC 174, Rahim Shah Mian v. Muhammad Iqbal, 2026 SCMR 901, Abdul Sattar Khan v. Umar Ayar, 2026 SCMR 812, Ghulam Qadir v. Ghulam Muhammad Kaleem and others, 2025 SCMR 1425 and Sohail Islam v. Saadullah Khan, 2026 SCMR 757.

9. The learned counsel for the Respondent No.1 relied upon the cases of *National Bank of Pakistan v. Nisar Ahmed through his legal heirs*, 1991 CLC 1958, *Muslim Commercial Bank Ltd. v. Mohsin Baig*, 2006 CLC 1540, *Muhammad Yousuf & Co. v. M/s United Vegetable Ghee Mills and others*, 1984 CLC 360 and *M/s Norwich Union Fire Ins. Society Ltd. Karachi v. M/s Zakaria Industries Karachi*, 1994 CLC 1280.

10. Heard the learned counsels for the parties and perused the entire record with their assistance.

11. Respondent No. 1 in the plaint filed in his Suit stated in paragraph 6 that the Plaintiff gave his consent and agreed to extend the time period for the return of the loan amount, and in response, the Defendant issued the amended letter/undertaking to the Plaintiff. However, no date is mentioned in this paragraph. Copy of such undertaking was attached as Annexure P/2 to the plaint and as per the impugned judgments was produced in evidence as Ex-P/3. Yet, the Applicant has failed to file the said document in the instant appeal. In any event, the impugned judgments record that the date of such undertaking was 10.12.2007. Since acknowledgment of the debt was given by the Applicant in writing during the limitation period as per Article 73 of the Limitation Act commencing from the date of issuance of the cheque, i.e. 09.10.2005, a fresh period of three years started from the date of such acknowledgment by virtue of Section 19 of the Limitation Act and therefore, the suit filed on 03.05.2010 was within time.

12. The Appellant, by way of written arguments filed on the last date, submitted that limitation cannot be calculated on the basis of a disputed document. However, this ground challenging the authenticity of Exhibit P/3 has been appropriately discussed in the Trial Court judgment, noting that

the Applicant owned his letterheads, but deposed that the same was stolen from his office by the Respondent No. 1, for which he made an application to the Police Station Preedy. However, copy of such application was not brought on record. In fact, the Applicant did not even remember the date, year, or time of making such application. No non-reading or mis-reading of evidence or other illegality or infirmity has been pointed out by the Applicant with such finding. In the written arguments, he has stated that there is a material difference in signature, which was a substantial question of fact and law. However, no such ground was taken in the written statement or in the instant revision petition.

13. In view of the foregoing, the concurrent judgments do not suffer from any illegality, infirmity, or misreading or non-reading of evidence, and no irregularity has been made pointed out as such, the instant appeal is dismissed as being devoid of merit.

**[SAMAN RAFAT IMTIAZ]
JUDGE**

Announced in open Court on 29th September, 2026.

JUDGE

Imran