

Form No: HCJD /A38
JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

JUDGMENT

Regular First Appeal No. 25617 of 2023

Allah Ditta **Versus** **Noor Ahmad**

Date of Hearing: **09.10.2024**

Appellant by: Peer Amjad Shah Sawar Bodla,
Advocate.

MASUD ABID NAQVI, J. Brief facts necessary for the adjudication of this *lis* are that the appellant/plaintiff (hereinafter called as ‘**plaintiff**’) filed a suit for recovery of Rs.760,000/- on the basis of pronote. After the acceptance of application for leave to appear and defend the suit by the learned trial Court, the respondent/defendant (hereinafter called as ‘**defendant**’) contested the suit by filing written statement and raised certain legal as well as factual objections. Out of divergent pleadings of the parties, issues were framed, evidence of the parties was recorded by the learned trial Court and dismissed the suit with special cost u/s 35-A CPC of Rs.50,000/- vide judgment and decree dated 31.01.2023. Feeling aggrieved, the appellant/plaintiff has filed instant appeal and challenged the validity of impugned judgment and decree dated 31.01.2023.

2. I have heard the arguments of learned counsel for the appellant and minutely gone through the record as well as the impugned judgment and decree.

3. It is well settled law that under section 118 of the Negotiable Instruments Act, 1881, there is an initial statutory presumption that the negotiable instrument is made, drawn, accepted or endorsed for consideration and in a case to contrary, the onus is on the person who is denying the consideration to prove the same. However, if the plaintiff presents facts contrary to the stated consideration in the pronote or which militate against the presumption then the presumption is lost/destroyed and the burden of proving the validity shifts to the plaintiff to prove that the pronote was executed by the defendant for consideration. In the instant suit, the plaintiff himself pleaded that due to the involvement of defendant's son, an FIR No.689/2018 with offences u/s 392/411 of PPC was registered against him and the defendant being father of accused executed the disputed pronote/Ex.P-1 & receipt pronote/Ex.P-2 with the clear undertaking/promise to pay an amount of Rs.760,000/- to plaintiff if his son namely Abid Ali was found involved in the crime and during the investigation, police declared his son guilty. On the refusal to honour his promise, the plaintiff was constrained to file suit against the defendant. The defendant completely denied the facts pleaded by the plaintiff. After carefully going through the alleged facts, pleaded by the

plaintiff himself in the plaint, there remains no doubt that the defendant did not receive any consideration for this pronote/Ex.P-1 & receipt/Ex.P-2 and the amount written in these exhibited documents is simply an imaginary figure which was not received by the executor. Hence, the alleged negotiable instrument is made or transferred without valid consideration and the negotiable instrument without consideration creates no obligation for the payment between the parties, according to Section 43 of the Negotiable Instruments Act 1881.

Section 23 of the Contract Act, 1872 also invalidates agreements if their considerations, objects or purposes are illegal, including those that violate public policy. Non-compoundable offenses are regarded as matters of public concern and permitting private agreements to settle such offences would compromise public interest and proper administration of justice. No court of law can countenance or give effect to an agreement which attempts to take administration of law out of hands of the judges and put it in the hands of private individuals. This policy is based on the principle that criminal prosecution in non-compounding offenses cannot be compounded at the free will and choice of the parties which is not a private dispute between them but is one in which society at large is interested and any private agreement by the person ostensibly aggrieved, in return for a reward, to forbear from or withdraw or abandon the prosecution knocks at the root of criminal justice. If such agreements are allowed to be enforced

by the courts, the doors will be opened to blackmailing on large scale. For instance, a man who loses or believes that he has lost something may frighten another by starting or threatening to start a case for theft against him or somebody in whom he is interested, then the later will often come around and in his anxiety to safe himself from harassment of trial, make an offer or execute a pronote or actually pay money. Therefore, the agreement to pay consideration for the pronote in the present case being the compounding of non-compoundable criminal charges is void in law. Hence, the learned trial Court has properly discussed in detail the pleadings as well as evidence adduced by both the parties and has elaborately discussed the factual as well as legal controversy between the parties and arrived at right conclusion, therefore, the findings of the learned Court below are hereby upheld/confirmed.

4. Learned counsel for appellant/plaintiff has not been able to point out any infirmity, legal or factual, in the impugned judgement and decree passed by the learned trial Court. Therefore, the impugned judgment is ***maintained*** being well reasoned and in accordance with law and this appeal is accordingly ***dismissed in limine***.

(MASUD ABID NAQVI)
JUDGE

Approved for reporting.

JUDGE