

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

R. S. A. No. 08 of 2012

Abdul Sattar Khan

versus

*Muhammad Ibrahim (deceased) through L.Rs. and
others*

JUDGMENT

<i>Date of hearing</i>	05.04.2024
<i>Appellant(s) by:</i>	<i>Mr. Aejaaz Ahmed Ansari, learned Senior-ASC.</i>
<i>Respondent(s)by:</i>	<i>Mr. Nazir Ahmad Lar, learned ASC.</i>

Sultan Tanvir Ahmad, J:- Through this regular second appeal, order dated 18.01.2012 passed by the learned First Appellate Court is challenged, whereby, judgment and decree dated 18.11.2008 passed by the learned trial Court has been *set-aside* and suit filed by Abdul Sattar Khan has been dismissed.

2. Brief facts of the case are that on 19.09.1998 Abdul Sattar Khan filed suit for specific performance of agreement to sell dated 21.03.1995. This suit

was contested and the learned civil Court Rahim Yar Khan framed the relevant issues, out of divergence in the pleadings. The parties led their evidence. On 18.11.2008 the learned trial Court decreed the suit in favour of Abdul Sattar Khan and against Muhammad Ibrahim and others.

3. Muhammad Ibrahim preferred appeal No. 153 of 2011 on 04.12.2008. In course of proceedings, before the learned First Appellate Court, Abdul Sattar Khan made offer that if Muhammad Ibrahim would state on special oath to the effect that he has neither executed any agreement to sell nor issued the receipt or obtained any amount, he has no objection in accepting the appeal. The offer was accepted on the same day i.e. 18.01.2012. As per the order-sheet, on oath statement of Muhammad Ibrahim was recorded. Consequently, through order dated 18.01.2012, the judgment and decree of the learned trial Court was *set-aside* and the appeal was accepted. Decree sheet was drawn accordingly. Order and decree dated 18.01.2012 has been challenged through the present second appeal.

4. Mr. Aejaz Ahmed Ansari (learned Senior-ASC) on behalf of the appellant has stated that special oath was never administered by the learned First Appellate Court. Learned counsel for the appellant has submitted that upon the acceptance of offer, administering oath by laying hands on the Holy Quran after arranging Holy Quran in the Court and to give statement in the presence of the parties and their learned counsel, was inevitable; that the learned First Appellate Court has failed to follow the required procedure, which is fatal for the case. Learned counsel for the appellant is seeking an order of remand so that the first appeal can be adjudicated and

decided on its merits.

5. On the other hand, Mr. Nazir Ahmad Lar, learned counsel for the respondents, has opposed the above arguments by stating that the oath was administered in terms of the Oath Act, 1873 (the '*Oath Act*'), after offer was accepted in unambiguous terms; that the challenge through the present appeal is an attempt to resile from the terms of binding contract that has taken place before a Court. Learned counsel for the respondents has further stated that the principle of *approbate* and *reprobate* is attracted to this case and in this regard, he relied upon case titled "Muhammad Rafique versus Nasir Mehmood" (**PLD 2016 Lahore 428**). Learned counsel for the respondents has also argued his case on basis of principle of estoppel as well as sanctity attached to the oath while relying upon cases titled "Rafi Kashif versus Imtiaz Ahmad and 2 others" (**2001 MLD 128**), "Pitras Gill versus Parvaiz Bhatti" (**2016 CLC 1618**), "Chief Commissioner Inland Revenue Regional Tax Office, Multan versus Muhammad Bilal and 7 others" [**PLJ 2012 Lahore 149 (DB)**] and "Muhammad Mansha and 7 others versus Abdul Sattar and 4 others" (**1995 SCMR 795**).

6. I have heard the arguments and also gone through the record with the help of the learned counsel for the parties.

7. The law is already settled in case titled "Sajid Mehmood versus Mst. Shazia Azad and others" (**2023 SCMR 153**) that an offer or proposal to be bound by on oath statement of the opposite party after its acceptance and administering special oath is binding upon the parties, who then cannot wriggle out from the same and in the

absence of satisfactory or sufficient cause the Courts are obliged to implement the agreement and rest the decision of the case on the basis of the binding contract.

8. The *Oath Act* has not provided any procedure for recording the statement on special oath but the Court can adopt its own procedure ensuring that no prejudice is caused to any of the parties to the *lis*. In this regard, ample guidelines have already been given by the Supreme Court of Pakistan in cases titled “Ahmad Khan and others versus Jewan” (**PLD 2002 Supreme Court 655**) and “Muhammad Ali versus Major Muhammad Aslam and others” (**PLD 1990 Supreme Court 841**). The Courts are obligated to secure the interest of the parties and prevent from hasty decisions taken by the parties, during examination of witnesses or during a heated discussion or arguments. It is observed by the Supreme Court that during heated or intense discussions sometimes such offers are made or accepted, which otherwise in the state of cool deliberation one would not arrive at. The Courts of the Country are guided to be cautious in observing that such statements are not recorded with the snap-speed.

9. Though the statements in the present case are recorded on the same day, however, learned counsel for the appellant has not argued that the offer was made by Abdul Sattar Khan in haste or due to any heated discussions. I have also carefully examined the grounds taken in this second appeal. No ground is taken in the appeal raising any grievance as to recording the offer, acceptance and then passing final order in one day. Thus, offer and its acceptance are not disputed and the only controversy is regarding the administration of the special oath.

10. Now I would like to reproduce the statements and proceedings recorded in order-sheet, prior to the final order, which are as under: -

"During the course of arguments, the respondent wants to make his statement. As per request, let his statement be recorded.

*Dated: 18.01.2011. Addl: District Judge
Rahim Yar Khan.*

Statement of respondent Abdul Sattar Khan S/O Ghulam Muhammad Khan, Caste Khossa Balouch R/O Chak No.143/A, Tehsil Liaquat Pur District Rahimyarkhan, duly Identified by his counsel Mr. Ghulam Murtaza Bhatti, Advocate, on Oath.

States that if the appellant/defendant gives Oath on Holy Quran by saying that he has neither executed any agreement to sell or receipt in my favour nor obtained any amount from me, I have got no objection on the acceptance of the appeal and dismissal of the suit.

*RO & AC. Addl:District Judge,
18.01.2012. Rahim Yar Khan.*

Statement of appellant Muhammad Ibrahim S/O Abdul Rahim, Caste Pathan R/O Chak No.142/A presently resided in Chak No.143/A, Tehsil Liaquat Pur District Rahimyarkhan, duly Identified by his counsel Mr. Nazir Ahmad Lar, Advocate, on Oath.

States that I accept the offer made by the respondent and gives oath on Holy Quran that I neither executed an

*agreement to sell or receipt in favour of
the respondent/plaintiff nor obtained
any amount from him.*

*RO & AC.
18.01.2012.*

*Addl:District Judge,
Rahim Yar Khan”*

11. The above reflects that in unambiguous and clear terms Abdul Sattar Khan has made his offer that if oath on Holy Quran is given by Muhammad Ibrahim to the effect that he has not executed the agreement to sell and issued the receipt or obtained any amount from Abdul Sattar Khan, then he has no objection if the suit is dismissed by accepting the appeal. At the margin of this order-sheet thumb impression of Abdul Sattar Khan is reflected. His learned advocate also signed at the margin of the order-sheet. They being fully aware of the consequences have made this offer, which is not disputed even today before this Court. The learned Judge after recording this statement proceeded to record the statement of Muhammad Ibrahim which is also reproduced above. First part of the statement of Muhammad Ibrahim says that he accepted the offer made by respondent. This acceptance is followed by word “and”. The statement after the word ‘and’ reveals that Muhammad Ibrahim gave oath on Holy Quran that he neither executed any agreement or receipt nor obtained amount from Abdul Sattar Khan. It seems that first offer was accepted and then statement of Muhammad Ibrahim, after administration of oath, was recorded.

12. The above is followed by a detailed order of the learned First Appellate Court, which reads as under: -

“Presence as before.

In view of the offer made by the

respondent/plaintiff as well as statement made by the appellant/defendant in presence of their counsel, the proceedings on Oath initiated after recording statement of respondent Abdul Sattar, the appellant accepted the offer and recorded his statement. The law facilitates to decide the case on Oath, since counsel for the parties and the parties themselves are satisfied to decide the matter on the basis of Oath. In view of statements recorded by the Court, the appeal in hand stands accepted and the impugned judgment and decree dated 18.11.2008 stand set-aside. Resultantly, the suit filed by the respondent/plaintiff is deemed to be dismissed, with no order as to costs. Record of the learned trial Court alongwith copy of this order be sent back and record of this Court be consigned to the record room after due completion.”

This order also discloses that the proceedings on oath were initiated and the statement was recorded after Muhammad Ibrahim took oath on Holy Quran. The subsequent part of the above order confirms that the learned Judge of the First Appellate Court was mindful of the fact that law facilitates to decide cases on oath. It is also observed by the learned First Appellate Court that the parties and their lawyers remained satisfied to decide the matter on oath. Only thereafter the learned Judge proceeded to allow the appeal and dismiss the suit.

13. Mr. Aeiaz Ahmed Ansari (learned Senior-ASC) has relied upon an affidavit of Abdul Sattar Khan that he filed in consequence of order dated 10.02.2012 passed by this Court. It is stated in the affidavit of Abdul Sattar Khan that after mutual consent (offer and acceptance), proceedings for administering special oath have not taken place. The relevant clause (No. 4) of this affidavit reads as follows: -

"یہ کہ عدالت اپیل نے بعد ازاں رضامندی کے بیان کے بعد باقاعدہ حلف کی کارروائی نہ کی نہ ہی یہ بیان لکھا کہ میں قرآن مجید پر حلف دے کر کہتا ہوں کہ میں نے اراضی متعدد یہ کاسودا ہمراہ مدعاً رسپانڈنٹ نہ کیا تھا اور زر شمن و صول نہ کیا تھا جبکہ بیان لکھنا ضروری تھا اور لازمی شرائط معاهدہ تھی۔"

14. As a matter of fact, the entire case is built up on the basis of above affidavit negating that the proceedings of administering oath have not taken place before the learned First Appellate Court. However, the order-sheet recording the statement and the detailed order passed on 18.01.2012 reflect otherwise. In case titled "Abdullah versus Shaukat" (**2001 SCMR 60**), the Supreme Court ruled that the genuineness of judicial record cannot be sacrificed at the altar of expediency of a litigant. In the said case an affidavit of learned counsel for the appellant to contradict order passed in first regular appeal, was given no effect. In "Fayyaz Hussain versus Akbar Hussain and others" (**2004 SCMR 964**) the Supreme Court refused to accept an affidavit of a learned Advocate to persuade against the sanctity of judicial order. It has been observed: -

"...There is always a presumption of correctness in favour of judicial proceedings and credibility is attached to the proceedings before a judicial forum. Strong and unimpeachable evidence is required to rebut the presumption which is badly lacking in the case in hand. We are fortified in our view, by the dictum laid down by this Court in Ghulam Muhammad v. Malik

Abdul Qadir Khan PLD 1983 SC 68 which is on all fours and attracted in the facts and circumstances of this case... ”

15. In case titled “Nasrullah Jan versus Rastabaz Khan” (**NLR 1996 SCJ 163**), where a party attempted to resile from his offer after on oath statement of the rival party was taken, the Supreme Court held that once the oath is completed on the basis of offer and acceptance culminating into a decree, such decree cannot be lightly interfered with and set-aside on flimsy or technical ground in view of the sanctity attached to a statement on oath. In case titled “Najibullah Khan and another versus Fazal Karim and 2 others” (**1997 SCMR 1085**) the Supreme Court of Pakistan, while dealing with a case where the decision was made on the basis of special oath, observed that presumption of correctness is attached to the order of the learned District Judge. It will be beneficial to reproduce the following extract of Najibullah Khan case (*supra*): -

“3. We have considered the submissions made by the learned counsel for the petitioners. We do not agree with him. We find that in the order dated 6-10-1994, it is clearly stated that the petitioner No.1 in presence of his counsel offered oath to the plaintiffs which was accepted by the latter. **It has also been stated in the same order that Najeebulah defendant/petitioner agreed and made offer that in case the plaintiffs/respondents take oath on the Holy Qur'an, their suit may be decreed. The presumption of correctness is attached to the order of the District Judge.** Neither the petitioners/defendants, nor their counsel filed any Affidavit to the

effect that Najeebulah or the petitioners had not agreed and made offer that in case the plaintiffs/respondents take oath on the Holy Qur'an then their suit may be decreed. When the plaintiffs/respondents took oath on the Holy Qur'an in the open Court, the petitioners did not object to it. Now, when the plaintiffs/respondents have taken oath on the Holy Qur'an and the District Judge has decided the suit accordingly, it does not lay with the petitioners to resile from agreement and their offer and to say that the decision was made against their consent. The objection that the oath proceedings were not covered by Article 163 of the Qanun-e-Shahadat, 1984 was raised before the High Court and was rightly disposed of. Since the District Judge has decided the appeal in accordance with the Oath taken by the plaintiffs on Holy Qur'an and that too with the agreement of the petitioners, we do not see any justification to interfere with the impugned judgment."

(Emphasis Supplied)

16. As already observed that reading of the order-sheet as well as final order dated 18.01.2012 of the learned First Appellate Court does not suggest that special oath was not administered. Strong presumption of correctness is attached to said order. The affidavit of a litigant (Abdul Sattar Khan) is not sufficient to rebut presumption of correctness. This too in view of the fact that Muhammad Ibrahim, who is now represented through his legal heirs, during his lifetime and the pendency of this second appeal filed his affidavit on 27.03.2012 categorically confirming that the learned First Appellate Court administered special oath, in the

following terms: -

"3۔ مظہر حلفابیان کرتا ہے کہ عبدالستار پٹشیز کی جانب سے پیش کش کو قبول کرتے ہوئے مظہر نے قرآن پاک پر ہاتھ رکھ کر حلف دیا کہ مظہر نے کوئی اقرار نامہ بیچ بحق عبدالستار تحریر نہ کیا ہے اور نہ ہی کوئی رقم اس سے وصول کی ہے۔"

The reliance by Mr. Ansari on the affidavit of Abdul Sattar Khan, in view of the counter affidavit of Muhammad Ibrahim that he gave in his life time and the strong presumption of correctness to the order-sheet / judicial proceedings of the Court, has no value.

17. The *Oath Act* does not prescribe any formality of procedure for a special oath. What required is an offer (section 8 of the *Oath Act*), its communication to the other party or witness by the Court in terms of section 9 of the *Oath Act* and acceptance, followed by administration of oath and then statement, as envisaged in section 10 of the *Oath Act*. Section 11 of the *Oath Act* provides that *the evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated*. In case titled "Ratanlal Saligram and another versus Nathulal Pankarji Namdeo" [AIR 1961 Madhya Pradesh 108 (V 48 C 43)] it has been observed that where the above discussed requirements have been fulfilled and recorded in the order-sheet, it becomes inconsequential that the statements are not separately recorded. It will be beneficial to reproduce the following extract of Ratanlal Saligram case (*supra*):-

"(4) *Adverting to the merits of the case, it is true that the plaintiff's proposal and the defendants' acceptance to administer special oath*

were not made by means of applications, and it is also true that on a separate deposition form the statement of the defendant was not recorded. I am called up- on to decide the effect of this. In the Oaths Act 1873, no such formalities of procedure have been prescribed. All that is required is that there must be an offer to be bound by a special oath as mentioned in section 8, and the acceptance of the offer by the other party; thereupon the court may proceed to administer such oath. The evidence given by the party taking oath then becomes conclusive proof of the matter stated.

Where all this is recorded in the order sheet of the Court, it is inconsequential that the proposal, the acceptance and the statement were not separately recorded. In the absence of any special procedure, the judgment and decree of the trial Judge could not be set aside for want of those formalities. The Court has to see in substance whether the requirements of the Oaths Act were fulfilled. In this case, below the order-sheet of December, 5, 1957, the plaintiff has put his signature. Neither on that day nor on any other day, did he approach the trial Judge with any grievance."

18. In the wake of above discussion, I am of the opinion that no mistake is made by the learned First Appellate Court. Therefore, present appeal is dismissed. No order as to costs.

(Sultan Tanvir Ahmad)
Judge

Announced in open Court on 09.04.2024.

Approved for Reporting

Iqbal*

Judge