

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

**R.F.A. No.1829 of 2023**

**Tanveer Ahmed**

**Versus**

**Imtiaz Anwar**

**J U D G M E N T**

Date of hearing: 06.11.2024.  
Appellant by: Malik Mushtaq Ahmad, Advocate.  
Respondent by: Mr. Muhammad Murtaza Hassan,  
Advocate.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** Through instant appeal, appellant has assailed *vires* of judgment & decree dated 16.12.2022, passed by learned Additional District Judge, Sialkot, whereby respondent's suit, filed under Order XXXVII Rules 1 & 2 C.P.C. for recovery of Rs.10,00,000/- along with markup, was decreed as prayed for.

2. Brief facts of the case are that respondent filed suit under Order XXXVII Rules 1 & 2 C.P.C. against appellant / defendant, seeking recovery of an amount of Rs.10,00,000/- along with markup on the basis of a promissory note. Appellant contested the suit by filing petition for leave to appear and defend the suit, which was accepted vide order dated 19.05.2021.

Out of the divergent pleadings of the parties, learned Trial Court framed the following issues:-

1. Whether the plaintiff is entitled to recover Rs.10,00,000/- against promissory note with profit Rs.18,00,000/- @ 5% monthly for last three years (total amount Rs.28,00,000/-) along with future from the defendant? OPP
2. Whether the suit is not maintainable in its present form? OPD

3. Whether the plaintiff has no cause of action and suit is barred by law? OPD
4. Whether the suit is false, fictitious and baseless and is liable to be dismissed? OPD
5. Relief.

Respondent, in oral evidence, himself appeared in the witness box as PW-1 and examined Ansar Atta Ullah as PW-2 and Adnan Dar, Advocate as PW-3. In documentary evidence, respondent produced pronote and its receipt as Exh.P1 & Exh.P2, respectively. On the other hand, appellant himself appeared as DW-1 and closed his evidence. Learned Trial Court, after recording evidence and hearing arguments of learned counsel for the parties, proceeded to decree the suit as prayed for vide judgment & decree dated 16.12.2022. Hence, this appeal.

3. Learned counsel for appellant submits that only one attesting witness, namely Adnan Dar, Advocate (*PW-3*) was produced by the respondent, in whose presence the alleged pronote (*Exh.P1*) was executed and allegedly received by the respondent vide receipt (*Exh.P2*). He adds that even the said attesting witness has denied payment of any loan in his presence. He maintains that there are material contradictions in the statements of PWs. He argues that respondent's objection upon deficiency of stamp duty has not been dealt with in accordance with law while passing impugned judgment & decree, which is unsustainable in the eye of law.

4. On the other hand, learned counsel for respondent defends impugned judgment & decree and submits that appellant has failed to point out any illegality or legal infirmity in the impugned judgment, which is liable to be upheld under the law. He states that appellant had the choice to produce a Handwriting Expert when he disputed his signature upon the pronote, but he opted not to produce any such expert. In support of his stance, learned counsel for respondent has referred to *Sheikh Muhammad Shakeel v. Sheikh Hafiz Muhammad Aslam* (2014 SCMR 1562), *Abdul Rasheed v.*

Syed Fazal Ali Shah (2016 SCMR 2163), Najaf Iqbal v. Shahzad Rafique (2020 SCMR 1621), Sardar Ali Muhammad v. Muhammad Ayyub (2015 YLR 1649), Aziz Ahmad v. Akbar Shamsher (PLD 2016 Lahore 502) and Muhammad Nawaz v. Qazi Muhammad Rashid [2018 CLC Note 34].

5. Arguments heard. Available record perused.

6. In application for leave to appear and defend the suit, appellant specifically denied execution of the pronote and receipt of payment / loan, therefore, initial burden was on the shoulders of respondent to prove payment of loan consideration, besides valid execution of pronote and receipt. Respondent (PW-1), in her examination-in-chief, stated that on 09.02.2016, appellant borrowed an amount of Rs.10,00,000/- from respondent and profit at the ratio of 5% per month was fixed and in this regard a pronote dated 09.02.2016 was executed in presence of witnesses, namely Adnan Dar and Ch. Ata Ullah and a receipt was also executed; that both these documents were attested by witnesses and appellant also affixed signatures & thumb impression on these documents; that the parties and the witnesses were present in his house where Ex.P-1 & Ex.P-2 were reduced into writing and signed & thumb marked by all the concerned in the same meeting. Whereas Adnan Dar (PW-3), Advocate admitted, during cross-examination, that appellant did not sign the pronote in his presence; that loan was not paid in his presence; and that the other witness of promissory note, namely Atta Ullah did not come to house of plaintiff in his presence at the time when the promissory note was being written. For ease of reference, relevant part of the statement of PW-3 is reproduced hereunder:-

“..... The defendant did not sign the promissory note in my presence. After writing of promissory note, I left the house of plaintiff within 15 minutes, thereafter, I did not visit the plaintiff again on that day. No payment of loan was made in my presence. The other witness of promissory note namely Atta Ullah did not come to house of plaintiff in my presence at the time when the promissory note was being written. ....”

7. Only one of the attesting witnesses i.e. PW-3 was produced, who has not supported the stance of respondent and his depositions are in contradiction to the statement of PW-1. The other attesting witness had died so could not be produced in evidence, however his son (PW-2) identified the signatures of his father on Ex.P-2. In these circumstances, evidence produced by respondent was not sufficient to hold that the disputed amount had been paid and pronote and receipt had been duly executed. The Courts below while passing the impugned decision has misinterpreted the evidence brought on record and erred in law, hence the same are unsustainable in the eye of law. Reference can be made to Gulzar Mehmood Khan v. Abdul Whaeed (2016 CLC 848) and Khawaja Aftab Ahmad v. Qazi Abdul Ali (2016 YLR 1552).

8. There is another important aspect of the matter. Respondent was required under the law to establish that there was a relationship between the parties business or family ties which pondered him to lend such a handsome amount. The contents of the plaint are not reflecting such averment, however in cross-examination as PW-1, respondent simply stated that appellant was his relative without further elaborating the nature of relation and family terms, if any, thus in absence of any explicit stance qua relationship, it is not understandable that how respondent gave such a considerable amount to appellant as loan, hence his claim was not sustainable on this score also. This view is supported by a recent verdict of Hon'ble Supreme Court of Pakistan in the case reported as Mehr Noor Muhammad v. Nazir Ahmed (PLD 2024 Supreme Court 45).

9. Respondent produced pronote and receipt thereof in evidence, respectively, and an objection was raised by the adversary counsel qua insufficient stamp duty and learned Trial Court vowed to address the aforesaid objection at the time of final decision, however exhibited the documents. Learned counsel for appellant has pleaded that the aforesaid objection has not been

appropriately addressed by learned Trial Court at the time of final decision, thus, the said documents could not have been given evidentiary value and impugned judgment and decree is not legally sustainable. The submission is totally misconceived *firstly* in view of Section 36 of the Stamp Act, 1899, which provides that once a document has been admitted in evidence, such admission cannot be called into question at any stage of the suit or in proceedings, on the ground that the instrument has not been duly stamped; and *secondly* it has been enunciated by the Hon'ble Apex Court in the case of Mehr Noor Muhammad supra that such objection has to be decided there and then when the document is tendered in evidence; once the Court, rightly or wrongly, admits the document in evidence and allows the parties to use it in examination and cross-examination, so far as the parties are concerned, the matter is closed; that the the party challenging the admissibility of the document must be alert to see that the document is not admitted in evidence by the Court. In the present case as the promissory note had been admitted in evidence, the same cannot be reviewed or revised by the same Court or a Court of superior jurisdiction.

10. In view of the above, instant appeal is allowed and impugned judgment & decree dated 16.12.2022 is set aside. Consequently, respondent's suit is dismissed.

**(Muhammad Sajid Mehmood Sethi)**  
**Judge**

**APPROVED FOR REPORTING**

**Judge**