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Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE.
JUDICIAL DEPARTMENT

RFA No. 78871 of 2024

Muhammad Anwaar Anjum and another

Versus

Muhammad Shakeel Sattar

JUDGEMENT

Date of Hearing:	17.11.2025
Appellants by:	M/s. Saif ul Malook and Waqas Ahmed, Advocates
Respondent by:	Mr. Saqib Asghar Baig, Advocate

KHALID ISHAQ, J. This Regular First Appeal, filed under section 96 of the Code of Civil Procedure, 1908 (**C.P.C.**), calls into question judgment and decree dated 12.11.2024 ("**Impugned Judgment**") whereby the suit for recovery of Rs.12,000,000/-, along-with profit (the **"Suit"**), was decreed by the learned Additional District Judge, Toba Tek Singh ("**Trial Court**"), while exercising jurisdiction under Order XXXVII, Rules 1 & 2 of the CPC.

2. Briefly, Respondent/Plaintiff filed the Suit before the Trial Court on the basis of a dishonored Cheque bearing No.0956536 dated 08.03.2023 for an amount of Rs.12,000,000/- drawn on United Bank Ltd., Adda Phaloor Branch, T.t. Singh (the "**Cheque**"), allegedly issued by the Appellants/Defendants from their joint account. Pursuant to the issuance of summons, the Appellants/Defendants appeared and filed application for leave to appear and defend, which application was allowed and leave was granted vide order dated 16.10.2023; the Appellants/Defendants filed written statement, contested the Suit and sought dismissal of the same. The plaint avers that the Defendants/Appellants availed various finance facilities, which were sanctioned with the help of the Respondent/Plaintiff being a banker and being faced with financial hardships for repaying the said finance facilities, the Appellants/Defendants asked for help to the

Respondent/Plaintiff and considering their request of borrowing the amount, the Respondent/Plaintiff managed to pay the Suit amount to the Appellants/Defendants through his various relatives.

3. Conversely, the main defence of the Appellants/Defendants was that the Cheque is without consideration; Respondent/Plaintiff was a banker, who facilitated them in procuring various loans/finance facilities and for that purpose the Respondent/Plaintiff used to retain various cheques of the Appellants and the Cheque in issue was in his custody but he misused the Cheque and filed Suit on the basis thereof. Out of the divergent pleadings of the parties, following issues were framed:-

1. *Whether the plaintiff is entitled to the decree for recovery of Rs.12,000,000/-/- alongwith profit from the defendants on the basis of cheque No.0596536 dated 08.02.2023? OPP*
2. *Whether the plaintiff has no cause of action to file the instant suit? OPD*
3. *Whether plaintiff has not come to the Court with clean hands? OPD*
4. *Whether plaintiff is estopped by his words and conduct to file the instant suit and liable to be dismissed under order VII Rule 11 of CPC? OPD*
5. *Relief.*

4. Both the parties led their oral as well as documentary evidence. The Respondent/Plaintiff appeared as **PW-1** and also produced Muhammad Aqeel as **PW-2**, Muhammad Abdullah as **PW-3**, Manzoor Qadir as **PW-4**, Khurram Tahir Ch. as **PW-5** and Ihtasham Aftab, Clerk Post Office as **PW-6**. Respondent/Plaintiff also produced documentary evidence Ex.P1 to Ex.P7 as well as Mark-A to Mark-U.

5. On the other hand, Appellants/Defendants appeared as **DW-1** and produced Shoban Tahir as **DW-2**. He also produced documentary evidence Ex.D1 & Ex.D2 as well as Mark-DA to Mark-DC.

6. After evaluation of the evidence led by both the parties and while rendering findings on issues reproduced above, the Trial Court decreed the Suit vide the Impugned Judgment. Hence this Appeal.

7. Learned counsel for the Appellants/Defendants submits that the contents of the plaint are devoid of material particulars as to the consideration of the Cheque; adds that there are absolutely no details as to when, how and who paid the alleged amounts to the Appellants/Defendants, further submits that there are no witnesses cited/mentioned in the pleadings for asserting the purported payments to the Appellants/Defendants; adds that no evidence of credence was produced by the Respondent/Plaintiff, whereas, while decreeing the Suit, the Trial Court has proceeded to rely upon the disputed documents, which were merely marked and were produced in the statement of learned counsel for the Respondent/Plaintiff, thus, the same has no evidentiary value and the Trial Court erred in law while relying upon such documents.

8. On the other hand, learned counsel for the Respondent/Plaintiff vehemently supported the Impugned Judgment; contends that the appellant has failed to refute the presumption attached to the Cheque in terms of Section 118 of the *Negotiable Instrument Act, 1881* (**"Act"**); submits that the payments in issue were made by and on behalf of the Respondent/Plaintiff through various banking transactions and the corresponding statements of accounts have been brought on record, the validity and veracity whereof has not been challenged in appeal. He has specifically referred to Mark-O to Mark-U to contend that these are bank statements reflecting that consideration amount was paid from time to time by the family members of the Respondent/Plaintiff; adds that the Appellants/Defendants has failed to make out a case that the Cheque was without consideration and the presumption attached in terms of Article 118 of the Act remained unrebutted; argues that the Respondent/Plaintiff has produced sufficient evidence and witnesses, who have corroborated the averments of the plaint; finally submits that the Cheque pertains to the account of the Appellants/Defendants, its execution is not denied and only an attempt has been made to avoid the liability by way of concocting a story of obtaining finance facilities through the Respondent/Plaintiff.

9. Arguments heard, record perused.

10. Issue No.1 is the only relevant issue requiring determination on the basis of pleadings of the parties. The onus to prove the same was placed upon Respondent/Plaintiff.

11. Before proceeding further in the matter, it would be expedient to lay down the principles which govern a suit founded on the basis of a negotiable instrument. The instant Suit has been filed on the basis of a Cheque. One of the presumptions in terms of section 118 of the Act is that "….. *every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration*". The inference of presumption of consideration is thus the basis of every negotiable instrument. This presumption shall arise every time the execution of negotiable instrument is admitted by a defendant, which is a rebuttable presumption and can, of course, be rebutted by a defendant through a direct and circumstantial evidence to demonstrate that consideration is absent in which case the onus would shift onto the plaintiff. The initial proof of due execution of negotiable instrument by the defendant shall rest on the plaintiff and upon such discharge, the onus shall shift onto the defendant by the force of presumption of section 118 of the Act. It is then for the defendant to prove that the negotiable instrument is not supported by consideration, notwithstanding the fact that leave to appear and defend has been granted[1]. As regards the standard of proof for rebuttal of presumption of section 118 of the Act is concerned, the Supreme Court of Pakistan has held that such a presumption in favour of a cheque had to be rebutted strongly by issuer of the cheque[2]. It has also been settled that when the execution is not denied, the burden and standard of rebuttal is much heavier[3]. It is also vouched by the respectable authority that in a case where

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[1] *Muhammad Azizur Rehman v. Liaquat Ali* (**2007 SCMR 1820**), *Haji Karim and another v. Zikar Abdullah* (**1973 SCMR 100**)
[2] *Rab Nawaz Khan v. Javed Khan Swati* (**2021 SCMR 1890**)
[3] *Muhammad Arshad and another v. Citibank N.A., Lahore* (**2006 SCMR 1347**), *Col. (Retd.) Ashfaq Ahmed and others v. Sh. Muhammad Wasim* (**1999 SCMR 2832**)

it is established that the cheque in issue belonged to the bank account of the defendant and the cheque has been dishonored due to "insufficient funds", the rebuttal of presumption of negotiable instrument needs clear evidence of absence of consideration.

12. The next question arises as to what ought to be the standard of threshold evidence required from the defendant to demonstrate that the consideration upon which the negotiable instrument is based or such consideration, as it is stated in the plaint, is highly improbable. In doing so, a defendant may rely on presumptions of fact as mentioned in Article 129 of the Qanoon-e-Shahadat, 1984 including the presumption that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it[4]. The question of burden of proof, of course, becomes of academic nature once the parties lead the evidence after joining the issues. In such a situation, the Court has to weigh the evidence, both pro and contra, to make a determination about the issue on which evidence has been led. The legal position with regard to the evidence, a defendant is required to produce to rebut due consideration, has been stated by the Indian Supreme Court in the case of *Bharat Barrel and Drum Manufacturing Company v. Amin Chand Payrelal* **[(1999) 3 SCC 35],** which Judgment has extensively been referred and relied upon by our Courts. The relevant portion of the judgment reads as under:

> *The defendant can prove the non-existence of consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by*

[4] Adverse inference under Article 129(g) of the Qanoon-e-Shahadat, 1984

> *showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.*
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> [Emphasis Supplied]

13. A full bench of Andhra Pradesh High Court in the case of *G. Vasu v. Syed Yaseen Sifuddin Quadri* **(AIR 1987 Andhra Pradesh 139)** (cited with approval in *Bharat Barrel's* case) had this to say about the negative proof cast upon the defendant in a recovery suit based on a negotiable instrument.

> *Having referred to the method and manner in which the presumption under is to be rebutted and as to how, it thereafter 'disappears' we shall also make reference to three principles which are relevant in the context.* ***The first one*** *is connected with the practical difficulties that beset the defendant for proving a negative, namely that no other conceivable consideration exists. We had occasion to refer to this aspect earlier. Negative evidence is always in some sort circumstantial or indirect, and the difficulty or proving a negative lies in discovering a fact or series of facts inconsistent with the fact which we seek to disprove (Gulson, Philosophy of Proof, 2nd Edition, P. 153 quoted in Cross on Evidence, 3rd Edition, page 78 Fn).*
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> *In such situations, a lesser amount of proof than is usually required may avail. In fact, such evidence as renders the existence of the negative probable may shift the burden on to the other party (Jones, quoted in A Sarkar on Evidence, 12th Edition, p.870).*

14. Having considered the above legal principles[5], I have considered the facts as stated in the pleadings of the parties with regard to the transaction in respect of which the Cheque was allegedly issued by the Appellants/Defendants to Respondent/Plaintiff. The plaint avers that the Cheque was issued in furtherance of a reconciliation reached between the parties through a *Panchayat*, whereas, there are no details as to the alleged respectable(s), who conducted the *Panchayat*. The plaint pleads that as a consequence of *Panchayat's* decision, the Cheque was handed over to the Respondent/Plaintiff by the Appellants/Defendants in presence of Muhammad Abdullah son of Abdul Majeed (**PW-3**) and Muhammad Aqeel son of Abdul Sattar (**PW-2**). Both these witnesses were produced by the Respondent/ Plaintiff. PW-2 is real brother of the Respondent/Plaintiff, who admitted this fact while taking the witness stand; while facing the cross examination, PW-2 has admitted that no payment of consideration against the Cheque was made in his presence. He, however, deposed that the Appellants/Defendants used to take the funds from his office on the directions of Respondent/Plaintiff; he has further stated that around Rs.100,000/- was paid by him on behalf of Respondent/Plaintiff to the Appellants/Defendants, however, this witness failed to state the necessary details *viz* this meager amount i.e. the date, month or year when such payment of Rs.100,000/-, was allegedly made. PW-2 further admitted that the other witness i.e. Muhammad Abdullah (**PW-3**) is also their relative. As regards the testimony of PW-3, he has frankly admitted that no consideration of Cheque was paid by the Respondent/Plaintiff to the Appellants/ Defendants in his presence (شکیل نے انوار کو میرے سامنے کوئی پیسے نہ دیے تھے). He further went on to depose that no payment or Cheque was exchanged in his presence (میرے سامنے کوئی رقم یا چیک کا لین دین نہ ہوا). Although the plaint is devoid of the necessary details and the necessary material particulars as to when, where and how the amount in question was paid, if any, by the Respondent/Plaintiff to the Appellants/Defendants. As settled, such defect by itself is an incurable defect on the touchstone of settled principles of law

[5] *These principles have also been discussed in an unreported judgment authored by* ***Shams Mehmood Mirza, J****. in the case of "Bashir Ahmed v. Haji Muhammad Ali", (RFA No. 1141 of 2015).*

that the parties are bound by their pleadings and no amount of evidence can be led or relied upon, which is beyond the scope of pleadings[6], however, considering the aspect of special jurisdiction and element of a negotiable instrument being the basis of claim, I have minutely perused the evidence and statement of Respondent/Plaintiff (**PW-1**), which evidence/statement further reflects that even the oral statement fails to supply these details and much reliance was placed upon the reconciliation brought about through *Panchayat*. A case was sought to be made that the payments were allegedly made to the Appellants/Defendants through the relatives of the Respondent/Plaintiff, however, neither any such details have specifically been incorporated in plaint nor those relatives have been produced for proving the payment of consideration against the alleged Cheque. The evidence in the form of statements of PW-2 & PW-3 has been discussed above, whereas, PW-4 is Branch Manager of United Bank Ltd., who was only witness to the fact of Cheque being issued from the Cheque Book of the Appellants/Defendants. Similarly, PW-5 & PW-6 were produced as witnesses for the purpose of proving the issuance of notice of default to the Appellants/Defendants, however, it is of note that overwhelming documents have been produced in the statement of learned counsel for the Respondent/Plaintiff, some of these documents have been exhibited, whereas, the remainder of the documents were marked. One such document is **Mark-O**, which has been relied upon by the Trial Court for decreeing the Suit. These documents have no evidentiary value as the same were tendered in evidence through counsel's statement, which documents should not have been considered as per settled law that the disputed documents cannot be tendered in evidence in statement of the counsel for a party because such procedure deprives the opposing party to test the authenticity of those

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[6] *Moiz Abbas v. Mrs. Latifa and others* ***(2019 SCMR 74)***; *Saddaruddin through LRs v. Sultan Khan (Since deceased) through LRs and others* ***(2021 SCMR 642)*** *Muhammad Nawaz alias Nawaza and others v. Member Judicial Board of Revenue and others* ***(2014 SCMR 914)*** *Combined Investment (Pvt.) Ltd. V. Wali Bhai and others* ***(PLD 2016 Supreme Court 730)***; *Muhammad Iqbal v. Mehboob Alam* **(2015 SCMR 21);** *Messrs Essa Engineering Company Pvt. Ltd. and another v. Pakistan Telecommuncation Company Limited and another* **(2014 SCMR 922)**

documents by exercising his right of cross examination[7]. Thus, all those documents brought on record in the statement of the learned counsel for the plaintiff were merely marked for the reason that these documents were neither produced in original nor tendered in evidence from the person(s)/witnesses competent to produce, and are thus, inconsequential, having no evidentiary value, have erroneously been relied upon by the Trial Court.

15. The testimonies of the witnesses of the Appellants/Defendants are also contradictory as discussed above and no credence can be attached to their statements. The financial worth of the appellant to have advanced a huge amount of Rs.12,000,000/- was also not proved in these set of facts; further, in absence of any evidence of plaintiff's assertion that the amounts borrowed by the defendants was being paid by his relatives is devoid of any plausible basis. In fact, it is not at all clear from the evidence on the record as to what was the source of income of the appellant and who made the alleged payments.

16. From the evidence produced by the Appellants/Defendants, it has been established by them that the Respondent/Plaintiff was a banker, who used to help the Appellants/Defendants in procuring the finance facilities and abused the fiduciary relation while misusing the Cheque.

17. As per Article 2(4) of the Qanun-e-Shahadat, 1984, different standards of proof are applicable in civil, criminal and *quasi* criminal cases. If a fact is asserted by a party, it does not require a perfect proof of fact, as it is very rare to have absolute certainty on facts. This provision sets the standard of prudent man. The principle of preponderance of probability is applicable in civil cases[8]. The standard of proof is well settled for the civil cases which are ordinarily decided on the evidential standards of

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[7] *"Rustam and others v. Jehangir (deceased) through L.R.s"* (**2023 SCMR 730**); *"Mst. Akhtar Sultana v. Major Retd. Muzaffar Khan Malik through his legal heirs and others"* (**PLD 2021 SC 715**); *"Manzoor Hussain v. Misri Khan"* (**PLD 2020 SC 749**); *"Hameeda Begum v. Irshad Begum"* (**2007 SCMR 996**)

[8] *Salamat Ali and others v. Muhammad Din and others* (**PLD 2022 SC 353**), *Chief Justice of Pakistan Iftikhar Muhammad Chaudhary v. President of Pakistan through Secretary and others* (**PLD 2010 SC 61**)

preponderance of probability[9]. The standard of balance of probability means that establishing is dependent upon whether, on the basis of evidence, the Court considers and concludes that occurrence of the fact was more likely than not. In **re H (Minors) [1996] AC 563**, Lord Nicholls explained that it was a flexible test[10]:

> *"Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."*

18. Considering the standards of preponderance of probabilities, I am satisfied that the Appellants/Defendants were able to successfully refute the presumption of the negotiable instrument in terms of Section 118 of the Act by proving that the consideration underlying the Cheque was absent. Thus, the onus was successfully shifted upon the Respondent/Plaintiff, who had failed to prove that the alleged amount was advanced to the Appellants/Defendants or that the Cheque in question was issued against valid consideration. No reasonable person looking at the facts of the case, as established through the evidence, could arrive at the conclusion that the Respondent/Plaintiff would collect the amounts from various relatives and will give it to the Appellants/Defendants, particularly, when no such relative was produced in the witness box. This clearly brings home that the Respondent/Plaintiff failed to discharge the burden of issue No.1, which was placed upon him. After thorough examination of the merits of the case and Impugned Judgment, I am of the view that the findings rendered by the Trial Court are not in accordance with law as these findings are based on patent misreading and non-reading of the record and evidence; have been handed down while ignoring the settled principles of law, therefore, the same are set

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[9] *Haji Muhammad Younis (Deceased) through legal heirs and another v. Mst. Farukh Sultan and others* (**2022 SCMR 1282**)

[10] See [*Bashir Ahmed v. Haji Muhammad Ali* (**RFA No. 1141 of 2025** *supra*)]

aside. Consequently, **this appeal is allowed** and the Suit filed by the Respondent/Plaintiff stands dismissed.

(Khalid Ishaq)
Judge

APPROVED FOR REPORTING.

(Khalid Ishaq)
Judge

Awais!