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JUDGMENT SHEET

LAHORE HIGH COURT
MULTAN BENCH MULTAN

JUDICIAL DEPARTMENT

R.F.A. No.258 of 2022

Malik Muhammad Ashraf

Versus

Muhammad Asif, etc.

J U D G M E N T

Date of Hearing:	23.02.2024
Appellant by:	Mr. Muhammad Masood Bilal, Advocate.
Respondents No.1 and 3 by:	Ch. Waqas Ahmad, Advocate.
Respondent No.2 by:	Proceeded *ex-parte* on 24.10.2022.

Anwaar Hussain, J. This regular first appeal is directed against consolidated judgment and decree dated 08.03.2022 through which the suit for recovery of amount of Rs.3,554,262/- on the basis of cheque, under order XXXVII Rules 1 and 2 of the Code of Civil Procedure, 1908 ("**CPC**") instituted by respondent No.1 ("**respondent**") has been decreed and the suit instituted by the appellant, for cancellation of the said cheque was dismissed.

2. By way of factual background, it has been noted that in plaint of his suit, the respondent averred that the respondent had good business relations with the appellant who used to purchase the agricultural products from the respondent and in furtherance of one such transaction, wheat was purportedly purchased in the year 2016 and the impugned cheque bearing CD No.0093205 dated 05.12.2016 was

issued, which, on presentation, was dishonoured. Criminal proceedings were also initiated in terms of registration of case under Section 489-F of Pakistan Penal Code, 1860. The appellant also filed a suit for cancellation of the impugned cheque with the averments that the cheque was issued to one Muhammad Altaf (respondent No.2) who was employee of the respondent, as a guarantee cheque for payment on account of the ongoing business transaction(s), and the specific transaction was fully paid in cash (Rs.16,250/-) and through voucher No.JRV 27 dated 05.12.2016 Rs.3,538,113/-. It is case of the appellant that the impugned cheque was misused and therefore, liable to be cancelled. Both the suits were consolidated and after framing of the consolidated issues and recording of evidence adduced by the parties, the suit of the respondent was decreed, whereas, the suit of the appellant was dismissed.

3. Learned counsel for the appellant submits that the evidence has been misread inasmuch as during the criminal trial, in respect of the same cheque, the respondent appeared and categorically recorded his statement that payment in respect of the transaction underlying the issuance of the impugned cheque had been received by his above-referred Manager, Muhammad Altaf and this statement was brought on record as Exh.D-2 before the Trial Court and the respondent, when confronted with the said statement categorically acknowledged its correctness, therefore, documentary evidence available on record clearly depicted that the impugned cheque was issued as a guarantee cheque and was misused, hence, liable to be cancelled, which fact has escaped notice of the Trial Court.

4. Conversely, learned counsel for respondent has supported the impugned judgment and decree, whereas, respondent No.2 has been proceeded *ex-parte* on 24.10.2022.

5. Arguments heard. Record perused.

6. In the light of the factual matrix of the case, following points of determination can be formulated for opinion of this Court:

(i) Whether the appellant was able to rebut the presumption of correctness attached to the impugned cheque, issued by the appellant, by putting forth probable defence and leading credible evidence, shifting the burden upon the respondent to prove the issuance of cheque in respect of a particular transaction entered into by Muhammad Altaf- the Manager of the respondent? and

(ii) if the answer to above quoted question is in affirmative, whether the respondent was able to prove that the impugned cheque was not given as guarantee for clearance of any balance amount, due in favour of the respondent, on account of ongoing business dealings between the parties but was issued to clear the amount due in respect of the disputed transaction?

7. Admittedly, the signatures on the cheque are not denied. The crucial aspect of the matter is to ascertain whether the respondent received the amount due pertaining to a particular transaction that was admittedly entered by the appellant with respondent No.2/the Manager of the respondent, namely, Muhammad Altaf in respect of which the respondent claims that the impugned cheque was issued. There is also no denial that a criminal case was registered on the basis of the same cheque (and the transaction) and after a full-fledge trial, the appellant has been acquitted and the respondent admitted therein that payment in respect of the disputed transaction was cleared by the appellant. There is no doubt that standard of evidence to prove a civil case is different from the evidence required to convict an accused in a criminal case. In civil cases, it is preponderance of evidence on the basis of which a dispute is to be decided, however, it does not mean that the conclusion in civil cases based on same set of facts is drawn mechanically, ignoring the crucial piece of evidence available on record such as statement of the plaintiff during the criminal trial, having direct nexus

with the dispute. Issues No.1 and 4 were core issues and the same read as under:

> 1. Whether the plaintiff is entitled to decree for recovery of Rs.3,554,262/- as prayed for? OPP
>
> 2. ……
>
> 3. ……
>
> 4. Whether the defendant is entitled to the decree for declaration/cancellation of cheque No.CD0093205 dated 05.12.2016, amounting to Rs.3,554,362/- as prayed for? OPD

While deciding the said issues, against the appellant, the Trial Court has observed as under:

> "18……In the entire evidence brought in the witness box only one witness defendant Malik Muhammad Ashraf himself appeared as DW-1 whereas remaining documentary evidence was produced in the Court. The only single oral recorded witness of Malik Muhammad Ashraf had admitted the business transaction and named the impugned cheque as one of that guarantee and he further stated that same cheque was required to be returned since the same was issued as guarantee. In order to get the corroboration, independent witness was required to prove whether the same was guarantee cheque or not but no evidence was brought. Similarly, even in the single recorded oral evidence, this issue was not properly pressed and cancellation of cheque was not demanded in the evidence. Similarly, the documents were produced, according to which it has nowhere been written that the cheque was a guarantee cheque and it remained only oral assertion."

8. The conclusion drawn by the Trial Court is erroneous as the appellant brought on record the documentary evidence in the form of statement of the respondent in criminal trial relating to the impugned cheque, which the respondent claimed to have been issued to clear the payment due in respect of the disputed transaction entered into by the appellant with the above referred Muhammad Altaf. Statement of the respondent in criminal case (Exh.D-1) reads as under:

''میری عمر 36 سال ہے میں زمیندارہ کرتا ہوں۔ میں نے کاروبار کیلئے آصف کے نام سے اپنی آڑھت بنائی ہوئی ہے۔ میں سالانہ دو کروڑ کا کاروبار کرتا ہوں جس کا میں ٹیکس ادا کرتا ہوں۔ میں نے اس سال آڑھت کا کوئی ٹیکس نہ دیا ہے از خود کہا کہ سارے کاروبار کا مشترکہ ٹیکس ادا کیا ہے۔ میں نے اس سال 4 کروڑ 75 لاکھ روپے سالانہ ٹیکس ادا کیا۔ میں اس ٹیکس کی رسید پیش کر سکتا ہوں۔ الطاف میرے ساتھ بطور مینجر کام کرتا ہے جس کی ماہانہ تنخواہ 25 سے 30 ہزار روپے ہے۔ اگر میں اپنی آڑھت پر کسی کو ادائیگی کر کے اپنے ووچر میں اندراج کروں تو اس کی قانونی حیثیت ہے تو وہ بندہ پیسے وصول کرنے والا دوبارہ اسی پیسے کا مطالبہ نہیں کر سکتا۔ میری آڑھت پر جو کھاتہ استعمال ہوتا ہے اگر اس میں کوئی رقم کا اندراج کیا جائے تو اس کی قانونی حیثیت ہے۔ اسی طرح تمام کاروباری لوگ بذریعہ کھاتہ یا واوچر جو لین دین کرتے ہیں اس کی قانونی حیثیت ہوتی ہے۔ یہ درست ہے کہ سودا الطاف کے ساتھ ہوا اور الطاف کو ملزم نے ادائیگی کی جس کا اندراج واوچر نمبر JRV27 مورخہ 05.12.2016 کیا گیا ہے۔''

(Emphasis provided)

Above quoted statement of the respondent (Exh.D-1) depicts that there might have been multiple transactions between the appellant and the respondent, in respect of the wheat and/or other agricultural products, however, it is well evident that the respondent claims that the impugned cheque was issued for the discharge of obligation pertaining to a particular transaction in respect of which the respondent has not given any specific date, however, the amount was admittedly cleared and the same was recorded in voucher No.JRV 27 dated 05.12.2016, which is precisely the stance/defence of the appellant in the present case. When the amount due was admittedly cleared, there appears to be no reason for issuance of the impugned cheque in respect of same transaction. Once the probable defence in the form of Exh.D-1 was available on record, it was for the respondent to prove that there was some other transaction between the respondent and the appellant that remained unpaid and the impugned cheque or the voucher dated 05.12.2016 was issued for the other transaction and not the disputed transaction. On a pointed question by this Court, learned counsel for the respondent acknowledged that nothing was available on record to substantiate that the impugned cheque was issued by the appellant for any other transaction entered into by the appellant and said Muhammad

Altaf or the respondent. Therefore, this Court is of the opinion that the Trial Court erred in appreciating the crucial factual aspect of the matter and the documentary evidence (Exh.D-1) thereof has been erroneously ignored.

9. It is settled principle of appraising evidence that the statement of a witness must be consistent with the circumstances of the case before the same is believed and relied upon. The preceding discussion makes it amply clear that as on 05.12.2016 there was only one transaction, entered into between the appellant and Muhammad Altaf, Manager of the respondent, in respect of which the respondent claims that the impugned cheque was issued, however, the respondent side could not refute that the payment in respect of the said transaction was cleared through voucher dated 05.12.2016, which propels to conclude that the impugned cheque was lying with the respondent side as guarantee on account of the admitted business relationship of purchase of wheat to secure any balance due and despite receiving payment in respect of the disputed transaction, the impugned cheque has been misused.

10. In view of the above discussion, this Court is of the opinion that the Trial Court has not correctly decided the core issues, misread the evidence on record and erred in decreeing the suit of the respondent and dismissing the suit of appellant. Therefore, the present appeal merits acceptance and hence, **allowed**. As a natural corollary, the suit of the respondent is dismissed whereas the suit of the appellant is decreed. No order as to cost.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood