

**(JUDGMENT SHEET)**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT)**

**Regular First Appeal No.242 of 2019**

Amjad Ali and another

*Versus*

Shakeel Ahmed Sajjad

Appellants by:	Malik Imtiaz Hussain Awan, Advocate.
Respondent by:	Syed Jahanzeb Javed, Advocate.
Date of decision:	02.11.2020.

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**GHULAM AZAM QAMBRANI, J.:-** Through the instant appeal, the appellants have assailed the Judgment and decree dated 01.07.2019, passed by the learned Additional District Judge, East-Islamabad, whereby suit for recovery in the sum of Rs.31,80,000/- (Rupees thirty one lac eighty thousand only), filed by the respondent, was decreed in his favour.

2. The facts in brief of the instant appeal are that the respondent/ plaintiff instituted a suit under Order XXXVII CPC before the learned Additional District Judge, East-Islamabad, for recovery of an amount of Rs.31,80,000/-, with the averment that an agreement was executed between respondent/ plaintiff and appellant No.1/ defendant No.1 on 24.03.2015, whereby the respondent/ plaintiff paid an amount of Rs.30,00,000/- to the appellant No.1 for purchase of cement and he was to pay profit contribution @ Rs.30/- per bag and at the end of six months, appellant No.1 has to pay an amount of Rs.31,80,000/- to the respondent, but he stopped the profit amount and finally handed over a cheque No.20017695 amounting to Rs.30,00,000/-, to the respondent, which on presentation was dishonoured due to insufficient funds. Thereafter, the respondent got lodged F.I.R No.312 under Section 489-F P.P.C against the appellant. The

appellant moved an application for grant of pre-arrest bail before the learned Additional Sessions Judge, East-Islamabad, and during the proceedings of bail, the appellant handed over a fresh cheque No.1122369746, which was also dishonoured on presentation. The respondent being aggrieved filed the above titled suit, which was decreed vide impugned judgment and decree dated 01.07.2009, hence, the instant appeal.

3. The appellant appeared before the Court on 16.07.2018 and filed an application for leave to appear and defend the suit, which was dismissed by the learned trial Court vide order dated 05.12.2018. The appellant being aggrieved filed a Civil Revision Petition No.406/2018, before this Court, which was dismissed vide order dated 11.06.2019. The respondent/ plaintiff was directed to produce evidence in support of his pleadings.

4. The respondent/plaintiff, in order to prove his case, produced his affidavit Ex.PA and copy of cheque No.1122369746 dated 25.04.2018 amounting to Rs.31,80,000/- Ex.PB, copy of cheque No.20017695 dated 31.05.2017 amounting to Rs.30,00,000/- Ex.PC, copy of cheque No.1122369746 dated 25.04.2018 amounting to Rs.31,80,000/- Ex.PD, cheque returned memo dated 27.04.2018 Ex.PD/1, copy of dishonour slip dated 20.09.2017 Mark-A, copy of dishonour slip dated 06.10.2017 Mark-B, copy of dishonour slip dated 08.11.2017 Mark-C and closed his oral as well as documentary evidence.

5. The learned trial Court after hearing arguments of the respondent/ plaintiff passed judgment and decree vide order dated 01.07.2019 (hereinafter called impugned judgment). Feeling aggrieved and dissatisfied from the impugned judgment & decree, the appellant has filed the instant Regular First Appeal before this Court.

6. The learned counsel for the appellant contended that the learned trial Court committed illegality while passing the impugned

judgment and decree; that the learned trial Court failed to consider that there was no direct financial liability towards the appellants whereas the respondent had invested an amount of Rs.30,00,000/- through an agreement dated 24.03.2015 with Gammon Company Pakistan Limited through appellant No.1; that the learned trial Court has knocked out the appellants through the impugned judgment and decree on the basis of the technicalities, therefore, the same is liable to be set-aside.

7. On the other hand, learned counsel for the respondent argued that the appellant has not denied the issuance of cheque thereafter; the cheque was deposited in the account of respondent which was dishonored. Dishonored slip was also brought on record. Furthermore, oral evidence is available on record against the appellant which has proved that the appellant had issued a cheque to the respondent which was dishonored, therefore, the learned Trial Court had rightly decreed the suit of the plaintiff/ respondent.

8. Heard arguments of the learned counsel for the parties and perused the available record with their able assistance.

9. Perusal of the record reveals that the respondent/ plaintiff filed a suit for recovery of Rs. 31,80,000/- on the basis of a cheque/ Ex.PB stating therein that an agreement dated 24.03.2015 was executed between the respondent and appellant No.1, whereby it was agreed that the respondent would pay an amount of Rs.30,00,000/- to appellant No.1 for purchase of cement and appellant No.1 undertook to pay profit contribution @ Rs.30/- per bag but he stopped paying profit to the respondent after six months and for repayment of the same, he issued cheque Ex.PB amounting to Rs.31,80,000/- which was subsequently dishonored.

10. Respondent/ plaintiff in support of his claim produced his affidavit Ex.PA stating therein that appellant No.1 received an

amount of Rs.30,00,000/- from him in presence of witnesses through an agreement dated 24.03.2015 wherein he stated that he is investing the amount of the respondent for purchase of cement at his project of Gammon Pakistan Limited and promised to return an amount of Rs.31,80,000/- to the respondent including profit of Rs.1,80,000/- within six months of the said agreement; that he paid the profit amount of Rs.1,80,000/- to the respondent but did not return the amount of Rs.30,00,000/- and thereafter, he issued cheque No.20017695 amounting to Rs.30,00,000/-, to the respondent, which on presentation was dishonoured due to insufficient funds; that he got lodged F.I.R No.312 under Section 489-F P.P.C against the appellant wherein he moved an application for grant of pre-arrest bail before the learned Additional Sessions Judge, East-Islamabad, and during the proceedings of bail, the appellant handed over a fresh cheque No.1122369746 for an amount of Rs.31,80,000/-, which was also dishonoured on presentation.

11. Record further transpires that though the appellant has appeared and filed an application for leave to appear and defend the suit, but the same was dismissed vide order dated 05.12.2018 on the ground that stance of the defendant/ appellant No.1 that it was an investment agreement between the respondent and Messer's Gammon Pakistan Ltd did not substantiate the record, and that the appellant No.1/ defendant had not given any reason of issuance of cheque to the plaintiff/respondent.

12. Perusal of the record shows that appellant No.1 issued the cheque to the respondent for return of amount, which is strengthened by the documentary evidence produced by the respondent and in the absence of any evidence in rebuttal; the learned trial Court has rightly decreed the suit of the respondent.

13. In view of the above facts and circumstances, we are of the view that learned trial Court has rightly decreed the suit of the respondent through impugned judgment and decree dated

01.07.2019, which does not call for any interference by this Court.  
The instant appeal being devoid of merit is accordingly  
**dismissed.**

**(AAMER FAROOQ)  
JUDGE**

**(GHULAM AZAM QAMBRANI)  
JUDGE**

*"Rana. M. If"*