IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Naeem Akhter Afghan
Justice Shahid Bilal Hassan

CPLA No.1618 of 2024
(Against the judgment dated 06.03.2024 passed by Peshawar High Court, D.I.Khan Bench in R.F.A.No.53-D of 2020 with C.M.No.31-D of 2020)

Muhammad Adnan

... *Petitioner(s)*

Versus

Salah-Ud-Din

... *Respondent(s)*

For the Petitioner(s):	Mr. Aftab Alam Yasir, ASC Sheikh Mehmood Ahmed, AOR
For Respondent:	Mr. Burhan Latif Khaisori, ASC for legal heirs of respondent
Date of Hearing:	17.02.2025

ORDER

SHAHID BILAL HASSAN, J. Succinctly, the respondent instituted a suit under Order XXXVII, Rules 1 & 2, Code of Civil Procedure, 1908 for recovery of Rs.1,962,000/- on the basis of promissory note alongwith costs, wherein the petitioner was served, who filed application for leave to appear and defend the suit as required under Rule 3(1) of the Order *ibid* which was allowed and after submission of written statement, the controversies were summed up into issues by the trial Court. The parties adduced and produced their oral as well as documentary evidence in support of their respective contentions. On conclusion of trial Court, the trial Court vide judgment and decree dated 29th February, 2020 decreed the suit in favour of the respondent/plaintiff to the extent of reliefs alif and bay (i.e. Rs.1,892,000/- outstanding amount against the defendant and court

fee amounting to Rs.15,000/-) while reliefs *jeem* and dal (i.e. Rs.50,000/- counsel fee and Rs.5,000/- miscellaneous expenses) were declined. The petitioner being aggrieved preferred an appeal bearing R.F.A.No.53-D of 2020. However, the High Court vide impugned judgment dated 06th March, 2024 dismissed the appeal, which has been called into question through the instant civil petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973.

2. We have given patient hearing to the learned counsel for the parties and have also gone through the record with their able assistance.

3. It is observed that as per Section 4 of the Negotiable Instruments Act, 1881, a promissory note is required to contain four essential ingredients: (i) an unconditional undertaking to pay, (ii) the sum should be the sum of money and certain, (iii) the payment should be to or to the order of a person who is certain, or to the bearer, of the instrument, and (iv) the maker should sign it. If an instrument fulfils these four conditions, it will be called a promissory note, and the requirement of attestation of a document provided under Article 17(2)(a) of the Qanun-e- Shahdat,1984, does not apply to a promissory note.[1] In the instant case, the respondent, in order to substantiate and prove his stance produced Fazal Rehman, the petition writer as P.W.1, who brought on record, through his testimony, on oath, register and excerpt of the same as Ex.P.W.5/1, promissory note Ex.P.W.5/2 and receipt thereof Ex.P.W.5/3. The respondent also brought two marginal witnesses namely Muhammad Shafiq Ullah and Zahid Irfan Khalil, who fully supported and corroborated the stance of the respondent. They remained unscathed and affirmed their deposition(s) while standing firm in front of the cringemaking questions put by the counsel for the petitioner during the cross examination. As against this, the present petitioner took a contradictory and different stance in his written statement because at one hand he pleaded that he had no friendly relations with the respondent and on the hand took a plea that he had a joint business venture of sugarcane with the respondent and in this regard an Iqrar Nama was also executed inter se the parties. Such a self-contradictory stance does not benefit the petitioner rather

[1] Sheikh Muhammad Shakeel v. Sheikh Hafiz Muhammad Aslam (2014 SCMR 1562)

it is fatal to the petitioner and corroborates the assertion(s) and averments made by the respondent as to cordial relations between the parties. It is settled principle of law that contents of plaint or written statement do not equate evidence rather the same have to be proved by leading strong and cogent evidence in the shape of oral (*witness(es) to depose on oath and also face the cross examination of the rival party*) as well as documentary evidence. Moreover, evasive denial is no denial rather it has been disapproved, because Rules 3, 4 and 5 of Order VIII, Code of Civil Procedure, 1908 require specific denial of each allegation of fact[2]. For ready refence, the said provisions of law are reproduced infra:

> 3. ***Denial to be specific***. *It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.*
>
> 4. ***Evasive denial***. *Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it alongwith those circumstances.*
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> 5. ***Specific denial***. *Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:*
>
> *Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.*

In the present case, the petitioner took a vague stance as observed above and evasively denied the allegation(s) so made by the respondent as to his claim against the petitioner; therefore, such denial, without any substantive proof cannot be considered and approved. The discussion ends with the observation(s) that the trial Court and the High Court have minutely appreciated and evaluated pleadings of the parties and have assessed evidence on the principle of preponderance and have reached to a just conclusion that the petitioner has failed to, successfully, overturn the stand taken up by the respondent against

[2] Muhammad Ashraf v. Abdul Ghafoor and 4 others (1999 SCMR 2633)

him, resultantly, the petitioner has rightly been non-suited while passing decree in favour of the respondent and against the petitioner.

4. Outcome of the above portrayal is that no case for grant of leave is made out, consequent whereof leave is refused and the petition in hand stands dismissed.

Judge

Judge

Islamabad:
17.02.2025
'Approved for reporting'
(M.A.Hassan)