Stereo. H C J D A 38.

JUDGMENT SHEET

LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

R.F.A. No.338 of 2021

Liaquat Ali vs. Noor Ahmad

J U D G M E N T

Date of Hearing:	29.05.2024
Appellant by:	Ms. Qurat-ul-Ain Ijaz, Advocate.
Respondent by:	Mr. Tahir Mehmood, Advocate.

Anwaar Hussain, J. This appeal is directed against the impugned judgment and decree dated 14.12.2021 passed by the Additional District Judge, Vehari, in a suit instituted by the respondent, for recovery of Rs.1,100,000/-, on the basis of the impugned cheque issued by the appellant.

2. Learned counsel for the appellant submits that the Trial Court erred in decreeing the suit ignoring that the impugned cheque was torn down and mutilated and on the basis of such mutilated instrument, a suit for recovery cannot be instituted and even if a suit is filed and entertained, presumption of correctness could not be attached to it in terms of Section 118 of the Negotiable Instruments Act, 1881 ("**the Act**"). Adds that the torn-down condition of the impugned cheque was duly acknowledged by PW-5, namely, Mansoor Ali, who was the Branch Manager of M/s United Bank Ltd., which fact substantiates the stance of the appellant that earlier an FIR, bearing No.501/2020, dated 17.09.2020 was registered by the respondent, under Section 489-F of Pakistan Penal Code, 1860, in respect of another cheque given by the

appellant to the respondent, in respect of which the parties effected a compromise in the terms that arbitrators were appointed to determine the rights and liabilities of the parties and the impugned cheque was given as a guarantee to the said arbitrators and the earlier cheque was discarded, however, when the arbitration ended in favour of the appellant, the impugned cheque was torn into pieces and the said pieces have been misused by the respondent. Adds that neither specific issue *qua* torn-down/mutilated condition of the impugned cheque was framed nor any finding has been rendered by the Trial Court in this respect of the matter and therefore, the impugned judgment is liable to be set aside on this ground. Further contends that even otherwise, the respondent failed to establish any business relationship with the appellant and the latter was not under any obligation to pay any amount to the respondent, which aspect of the case has also escaped notice of the Trial Court.

3. Conversely, learned counsel for the respondent submits that presumption of correctness is attached to a negotiable instrument-the impugned cheque in the present case, and the appellant failed to rebut the same through credible evidence. Adds that the respondent categorically stated that how the respondent was given the impugned cheque and supporting evidence in the form of oral and documentary evidence was also led to substantiate the business relationship between the parties, therefore, the Trial Court has correctly passed the impugned judgment. He further submits that the appellant has set up a new case before this Court as it was never contended that the case does not lie on the basis of a torn-down or mutilated cheque, which is not permissible. Adds that a contradictory stance has been taken by the appellant inasmuch as on the one hand, it has been averred that a blank cheque was given to the respondent and on the other hand, it has been stated that the impugned cheque was given to the arbitrators.

Concludes that issuance of the impugned cheque has been admitted and hence, existence of *inter se* business relationship could not been refuted, therefore, the impugned judgment does not suffer from any infirmity.

4. Arguments heard. Record perused.

5. The core legal issue that requires determination by this Court is to examine whether presumption of correctness attached to a negotiable instrument, in terms of Section 118 of the Act, is lost or rebutted if the said instrument-the cheque in present case, is in a mutilated/torn-down condition?

6. Before rendering the decision, it will be advantageous to reproduce the issues framed by the Trial Court, which read as under:

> "**ISSUES**
>
> 1. Whether, at the end of season, after rendition of accounts, Rs.12,00,000/- were found outstanding against the defendant? OPP
> 2. Whether the defendant issued a cheque a (*sic*) Rs.11,00,000/- of account No.0016277900401303 of HBL, Ali-ud-Din Branch Luddan in favour of the plaintiff? OPP
> 3. Relief?"

It has been noticed that no specific issue was framed as regards the torn and/or mutilated condition of the impugned cheque. However, the appellant never objected to the same and did not file any application for resettlement of the issues and proceeded to lead the evidence to rebut the presumption of correctness attached to the impugned cheque. The appellant was fully aware of the issues and led evidence, therefore, he is estopped from raising the objection that since specific issue *qua* the mutilated condition of the impugned cheque was not

framed, therefore, the impugned findings are erroneous. Even otherwise, the fact that the impugned cheque is mutilated is not denied and its legal status is the nub of the matter before this Court i.e., to determine the effect of mutilation of a cheque *qua* the presumption of correctness attached thereto.

7. Before addressing the core issue, it is pertinent to hold that the suit does lie on the basis of a mutilated cheque, as there is no bar contained under the Act or Order XXXVII of the Code of Civil Procedure, 1908 ("**CPC**"), in this regard. It is only that the mutilated condition of an instrument, which may or may not affect the presumption of correctness attached to the said mutilated instrument or the outcome of the suit.

8. Adverting to the core issue, it is imperative to note that in terms of Section 118 of the Act, presumptions of correctness, *inter alia*, are attached in relation as to the consideration; to date; its holder; signature of the drawer. If a cheque is in a torn condition, it is called a mutilated cheque. If the cheque is torn into two or more pieces and the relevant information is damaged, the bank shall reject the cheque and declare it invalid, until the drawer confirms its validation. However, if the cheque is torn in the manner that all the important data on the mutilated cheque is intact, then the bank may process the cheque further for clearance. In present case, bare perusal of the impugned cheque reveals that the same had been torn from three places, however, the essential and crucial information, *inter alia*, the name of the payee-the respondent, the date, the admitted signature of the drawer/ appellant, the amount in words and figures, has not been damaged. Therefore, in such like cases where an instrument forming the basis of the suit under Order XXXVII, CPC, is mutilated, its effect is to be determined on case-to-case basis, considering the nature and

extent of the mutilation of such negotiable instrument. This in turn would also determine whether the legal presumption of correctness attached to a negotiable instrument, is lost or rebutted, as a consequence of such mutilation. I am of the opinion that if the key information of an instrument such as the name of payee, date, amount, signatures etc., have not been damaged, the presumption attached thereto is not lost.

9. There is another angle from which the matter can be examined. The appellant has narrated a specific story in the petition for leave to appear and defend the suit ("**PLA**") as to whom he gave the cheque-four arbitrators duly named in the PLA, and the fact that in connivance with one of the said arbitrators, the respondent misused the impugned cheque, after collecting torn down pieces thereof. Para-3 of the PLA reads as under:

> 3۔ یہ کہ مقدمہ مذکورہ بارے دراصل حقائق کچھ اس طور ہیں کہ سائل نے مدعی سے یوریا کھاد سال 2018 میں ادھار لی تھی۔ اور پھر عرصہ تین ماہ کے اندر اندر یہ رقم بمہ سود واپس بھی کر دی۔ لیکن مدعی ازاں سائل جب مزید ناحق رقم کا مطالبہ کرنے لگا تو مابین فریقین تنازہ بڑھ گیا تو سائل نے اسے ایک بینک چیک HBL لڈن برانچ وہاڑی کا بطور گارنٹی دے دیا۔ جس کا غلط استعمال کرتے ہوئے مدعی / مسئول علیہ نے سائل کے خلاف تھانہ لڈن وہاڑی میں ایک مقدمہ نمبری 501/20 مورخہ 17.09.2020 بجرم 489-F ت پ تھانہ لڈن وہاڑی درج رجسٹر کروادیا۔ جس میں سائل کی عبوری ضمانت عدالت عالیہ لاہور، ملتان بنچ ملتان میں منظور ہوئی جس میں بعد ازاں مدعی نے راضی نامہ کا بیان دے دیا۔ بعد ازاں تنازہ مذکورہ بارے مابین فریقین پنچائیت بنی۔ پنچائیت میں محمد علی ولد نتھے خان دولتانہ، گل محمد دولتانہ ساکنان لڈن وہاڑی محمد اقبال ولد غلام قادر سہو سکنہ موضع شاہ قدوس کھگہ، لڈن وہاڑی و سعید افضل ولد محمد افضل قوم قصائی سکنہ لڈن وہاڑی ثالثان مقرر ہوئے ثالثان مذکوران نے دونوں فریقین سے چیک بطور ضمانت لیے۔ سائل نے مدعی کو روبرو گواہان احمد شیر ولد اللہ داد سکنہ موضع توڈر مظہر ولد وریام سکنہ موضع تجوانہ کے ایک ایک blank چیک UBL لڈن برانچ وہاڑی کا بطور گارنٹی حوالے مذکوران ثالثان کر دیا جو کہ برائے ثالثی فیصلہ دیا گیا۔ **چیک مذکورہ کا نمبر 67201331 ھے۔ چیک مذکورہ سائل نے ثالثان کو بطور امانت دیا تھا لیکن بعد ازاں مدعی / مسئول علیہ نے ثالثان میں سے**

کسی ثالث سے ساز باز ہو کر چیک مذکورہ اس سے لے لیا اور سائل کے خلاف چیک مذکورہ کا ناجائز فائدہ اٹھاتے ہوئے جھوٹا بے بنیاد اور بر خلاف حقائق دعویٰ دائر کر دیا جو حقیقت پر مبنی نہ ہے۔

(*Emphasis supplied*)

It is pertinent to note that the name of the arbitrator who acted in connivance with the respondent has not been mentioned in the PLA. In fact, once the PLA was allowed and the appellant filed the written statement, he took a contradictory stance and did not mention about the connivance on part of any arbitrator. Para-11 of the preliminary objections, taken by the appellant, in his written statement reads as under:

"11۔ یہ کہ جس چیک کی بنیاد پر دعویٰ ہذا دائر کیا گیا ہے وہ مختلف ٹکڑوں میں ہے اور چیک ہذا بعد تصفیہ پھاڑ دیا گیا تھا اور پھینک دیا گیا تھا جسکو مدعی نے سازشی طور پر جوڑ کر جھوٹے واقعات بنا کر جھوٹا دعویٰ دائر کیا ہے اور اس fact کے بارے میں دعویٰ مدعی مکمل طور پر خاموش ہے بدیں وجہ قابل اخراج ہے۔"

In his written statement, on merits, in reply to paras No.3 and 4 of the plaint, the appellant stated as under:

"3۔ یہ کہ فقرہ نمبر 3 دعویٰ غلط ہے درست تسلیم نہ ہے۔ مدعی نے بر خلاف مدعاعلیہ بابت چیک متدعویہ ازاں بعدالت جناب جسٹس آف پیس سید جہانگیر علی شاہ صاحب دائر کی جس میں مورخہ 27.02.21 کو سپرنٹنڈنٹ آف پولیس نے رپورٹ بابت چیک متدعویہ داخل عدالت کی اور بعد ازاں مورخہ 28.04.21 کو درخواست اندراج مقدمہ مدعی خارج فرمادی۔ جو کہ بعد ازاں عدالت عالیہ لاہور ہائیکورٹ سے بھی فیصلہ ہو گئی۔ چیک متدعویہ بلا بدل ہے اور چیک ہذا برائے تصفیہ مابین فریقین روبرو گواہان حوالے ثالثان کیا تھا۔ جس کا لین دین سے کوئی تعلق واسطہ نہ تھا۔ گواہان احمد شیر ولد اللہ داد سکنہ موضع توڑ اور مظہر ولد وریام کے روبرو دیا گیا تھا۔ جو کہ عدالت میں پیش ہو کر گواہی بھی دینے کو تیار ہیں۔ مدعاعلیہ نے کبھی بھی مدعی کے ساتھ کوئی بھی کاروبار کی نہ کیا ہے اور نہ ہی مدعی کی کوئی رقم ادا کرنی ہے۔ دعویٰ ہذا میں کاروبار کی بابت غلط بیانی کی گئی ہے، مدعی نے محض لالچ اور طمہ نفسانی کی خاطر جھوٹے واقعات پر جھوٹا دعویٰ دائر کیا ہے۔

4۔ یہ کہ فقرہ نمبر 4 عرضید عویٰ غلط اور بے بنیاد ہے تسلیم نہ ہے۔ مدعاعلیہ نے مدعی کو نہ تو چیک متذکرہ عرضید عویٰ کی رقم لین دین کے تبادل نہ دیا ہے اور نہ ہی مدعی کو چیک ہذا بنک میں پیش کرنے کروانے کی ضرورت نہ تھی کیونکہ چیک بلا بدل تھا اور مدعی کو نہ دیا گیا تھا۔ روبرو گواہان چیک برائے تصفیہ دیا

گیا تھا جو کہ مابین فریقین ثالثان مقرر ہوئے تھے۔ جنہوں نے بطور گارنٹی مدعاعلیہ سے چیک وصول کیا تھا اور بعد تصفیہ اختتام ثالثی چیک متذکرہ دعویٰ نمبری 67201331 کو پھاڑ کر ٹوکری میں پھینک دیا تھا۔ جس کو بعد میں مدعی نے اٹھا کر اور ان ٹکڑوں کو جوڑ کر سازشی طور پر جھوٹے واقعات بنا کر بلیک میلنگ کرنے کی خاطر جھوٹا دعویٰ برخلاف مدعاعلیہ دائر کیا ھے۔ چیک متدعویہ کو عدالت جناب بھی بوقت شہادت observe کر سکتی ھے۔"

The contradiction between story narrated in the PLA and the written statement is well evident. Under the circumstances, the Trial Court was justified in decreeing the suit of the respondent on the ground that the issuance of the impugned cheque is admitted and the appellant has taken a contradictory stance regarding how the impugned cheque was handed over to the respondent, which brings the case of the appellant within the clutches of the legal maxim ***"Allegans Contraria Non Est Audiendus"*** (A person who alleges things contradictory to each other is not to be heard) disentitling the appellant to any relief.

10. Even otherwise, if the contradictory stance of the appellant is ignored, this Court has already opined hereinabove that the mutilated condition of a negotiable instrument is not sufficient to hold that presumption of correctness is no more attached with it if the crucial information of the instrument is intact, therefore, it was obligatory on part of the appellant to lead cogent evidence, to prove that the arbitrators were appointed; the impugned cheque was given to them; the arbitration took place; and the matter was decided in favour of the appellant and as a consequence thereof the impugned cheque was torn down. Not a single person named as arbitrator in the PLA appeared in support of contentions of the appellant, therefore, the Trial Court was justified in holding that since issuance of the impugned cheque is admitted, the appellant has failed to discharge the requisite burden of proof to rebut the presumption of correctness attached to it.

11. In view of the preceding discussion, this appeal has no merits and hence, the same is **dismissed.** No order as to costs.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood