JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

(1). R.F.A. No.133 of 2008

Mrs. Najeeba Touqeer
Versus
Muhammad Shakeel and another

(2). R.F.A. No.116 of 2008

Muhammad Shakil and another
Versus
Mansoor Alam Wafa and others

Appellant by	:	Mr. Muhammad Waqas Malik, Advocate for the appellant in the captioned appeal as well as for the respondents in R.F.A. No.116/2008.
Respondent by	:	Malik Mumtaz Ahmed, Advocate for respondents in the captioned appeal as well as for the appellants in RFA No.116/2008.
Dates of Hearing	:	19.10.2022, 21.11.2022, 08.12.2022 and 11.01.2023.

ARBAB MUHAMMAD TAHIR,J.:- This single judgment shall dispose of Regular First Appeals Nos.133 of 2008 and 116 of 2008 since they are factually common in nature and since both of the appeals arise from and relating to the same judgment dated 24.07.2008 (hereinafter referred to as **"the impugned judgment and decree"**) passed by the leaned Additional District Judge-Islamabad, whereby the suit instituted by respondents No.1 and 2 (Muhammad Shakeel and Muhammad Shafeeq (who are also appellants in R.F.A.No.116/2008), was decreed partially only to the extent of respondent No.1 (Muhammad Shakeel) against the appellant, Mrs. Najeeba Tauqeer and one Mansoor Alam Wafa (who are also respondents No.1 and 2 in R.F.A. No.116/2008), in the following terms:-

"For what has been discussed above, the suit of the plaintiff No.1 for recovery of Rs.2,80,000/- on the basis of cheque is decreed with costs against defendants No.1 & 2. Plaintiff No.1 is also entitled to recover profit at a rate of 5% from the date of institution of the suit till the realization of the amount, while suit to the extent of plaintiff No.2 Muhammad Shafique is dismissed.....".

02. For the purposes of clarity, Muhammad Shakeeel and Muhammad Shafeeq (respondents No.1 and 2 in R.F.A. No.133/2008) shall hereinafter collectively be referred to as "the respondents") whereas Mrs. Najeeba Touqeer (appellant in R.F.A. No.133/2008) shall hereinafter be referred to as **"the appellant".**

03. The facts, as enumerated in both the appeals, are that the respondents filed a suit under Order XXXVII C.P.C. for recovery of Rs.5,30,000/- against *inter alia* the appellant and Mansoor Alam Wafa & Iftikhar Hussain Shah (i.e. respondents No.1 and 3 in R.F.A. No.116/2008, who shall hereinafter be referred to as **"Mansoor and Iftikhar"**) by contending therein that the appellant was the Director of Hareem International Private Limited. That for the purposes of sending the respondents to Korea, Mansoor, the appellant & Iftikhar (i.e. Chief Executive and Directors, respectively) of the said company received a sum of Rs.5,30,000/-. That in case of failure on the part of the appellant, (Mansoor & Iftikhar) to send the respondents abroad, the former were under an obligation to return the received amount. That Muhammad Shakeel, respondent No.1 went to Bangkok along with Mansoor, Chief Executive of the company, but was deported on the basis of forged documentations. That towards fulfillment of the obligations, the appellant's side gave two cheques which were dishonored on their presentation before the concerned bank. Hence, the suit.

04. Mr. Muhammad Waqas Malik, learned counsel appearing for the appellant has argued that the appellant produced unimpeachable evidence, but the learned trial Court did not give credence to the same. While passing the impugned judgment and decree, the learned Court below did not apply its judicial mind. The learned trial Court framed different issues which were decided ambiguously. The Company's receipts produced by the respondents were dated 10.07.2000 and 11.08.2000 i.e. pre-date of the incorporation of the Company on 17.08.2000. Neither the appellant received the alleged amount nor issued any receipts, thus she cannot be held liable to pay the alleged amount. The respondents failed to prove their case against the appellant. The learned trial Court did not take into account the appellant's version. Respondent No.1 himself admitted during the evidence that he himself put date on the cheque with the sole purpose to get it dishonored. The learned trial Court wrongfully placed reliance on the evidence produced by the respondents thus, committed grave illegality while passing the impugned judgment and decree. That on the basis of the same very alleged cheques, the respondents filed other civil suits in District Haripur, Khyber Pakhtunkhwa. That there were major contradictions in the depositions of the PWs, but the learned trial Court ignored the same without any plausible explanation. That the impugned judgment and decree is the result of misreading and non-reading of the evidence available on the record. That the impugned judgment and decree is not sustainable in the eye of law. He prayed for the appeal (i.e. R.F.A. No.116/2008) filed by the respondents to be dismissed and for the appeal (i.e. R.F.A. No.133/2008) to be allowed and inconsequence whereof, the impugned judgment and decree was sought to be set aside.

08. Conversely, Malik Mumtaz Ahmed, learned counsel for the respondents while controverting the arguments advanced by the learned counsel for appellant has contended that the appellant was legally and morally bound to return the amount to the respondents.

That the respondent time and again approached the appellant for the return of the borrowed amount, but the matter was lingered on on one pretext or the other. That the appellant along with other respondents in the connected appeal was reluctant to return the amount to the respondents. That the learned trial Court has committed no illegality calling for any interference by this Court. That the appellant failed to produce confidence inspiring evidence. That the appellant tried to deprive the respondents from their hard earnings. That the appellant in return of the amount, gave two cheques to the respondents, which were dishonored on their presentation before the concerned bank. That the appellant did not honour her commitment regarding return of the received amount to the respondents. That the impugned judgment and decree is based on correct appreciation of the evidence. That the impugned judgment and decree does not suffer from any material irregularity. That the appellant under the garb of her appeal try to protract the execution of the decree and deprive the respondents from their huge amounts. He prayed for the appellant's appeal to be dismissed and for the respondents' appeal to be allowed.

06. Heard. Record perused.

07. Perusal of the record would reveal that apparently on 25.04.2003, the respondents filed a suit for recovery of Rs.5,30,000/- under Order XXXVII C.P.C. along with mark-up at scheduled rate on the pretext that the appellant and Mansoor & Iftikhar received the said amount in order to send them abroad. It was further asserted in the suit that it was agreed upon by the parties that in case the appellant's side fail to send the respondents abroad, then the former were liable to refund the received amount. It was also asserted that since the appellant along with Mansoor & Iftikhar did not comply with their commitment by sending the respondents abroad, the respondents demanded their amount back and the appellant and Mansoor & Iftikhar towards the fulfillment of

their obligation, issued cheque Nos.298153 dated 19.06.2001 and another un-dated cheque bearing No.298154 amounting to Rs.280,000/- and 250,000/- respectively, which were dishonored when presented before the concerned bank for encashment. This caused the respondents to institute the aforementioned suit against *inter alia* the appellant. The said suit was vehemently opposed by the appellant by way of filing a written statement. It was *inter alia* pleaded in the written statement that the appellant was not the signatory of any negotiable instrument falling within the ambit of Order XXXVII C.P.C. Furthermore, it was pleaded that the appellant never signed any cheque nor did the cheques in question belong to her. The divergence in the pleadings of the parties was summed up by the learned Court below in the framing of the following issues:-

1. *Whether cheque No.298153 dated 19.06.2001 and cheque No.298154 dated 19.06.2001 drawn at ABN Amro Bank, Markaz F-7, Islamabad were issued by defendant No.1 as Chief Executive of Hareen International (Pvt.) Ltd. Islamabad in settlement of liability against all the defendants and as such, all the defendants are jointly and severally liable to for payment of the amount of cheques along with interest at market rate till realization of the amount claimed? OPP*
2. *Whether the pleas raised by defendants No.2 & 3 in their written statement are contrary to the averments of leave to defend filed by them, if so, its effect? OPP*
3. *Whether the present suit is not maintainable? OPD*
4. *Whether plaintiffs have concealed true and vibrant facts from this Court? OPD*
5. *Whether plaintiffs have impleaded defendants No.2 & 3 with malafide and plaintiffs are liable to pay heavy cost for filing vexatious suit? OPD.*
6. *Whether defendants received amount of Rs.5,30,000/- from the plaintiff to send them Korea? OPP*
7. *Whether defendants No.2 & 3 have no concern whatsoever with the business of visa? OPD*
8. *Relief.*

08. In order to substantiate their version, the respondents examined Amir Siddique as PW-1, Mazhar Khan as PW-2, Abdul Khaliq as PW-3 whereas Muhammad Shakeel, respondent No.1,

himself appeared as PW-4 and deposed that he alone has come to the Court for recording of his evidence and there is no power of attorney on behalf of his brother i.e. respondent No.2, Muhammad Shafeeq, authorizing him to give evidence on the latter's behalf. During the course of his cross-examination, he categorically admitted that Mansoor had received the said amount from him. He further candidly admitted in the cross-examination that against the same very amount, he had earlier instituted two civil suits in District Haripur, KP, which he withdrew and filed the suit, from which these proceedings arise, under Order XXXVII C.P.C. He further admitted that he does not know to as whether the suit under Order XXXVII C.P.C. makes mention the fact regarding the filing of the earlier two suits. Furthermore, it was admitted by him that he does not know as to whether he had sought permission from the Civil Court at Haripur to withdraw the said civil suits with permission to file afresh one; and that he also does not know the year in which he filed the said civil suits at Haripur. He further showed his lack of knowledge as to the month and year of filing the above-mentioned suit under Order XXXVII C.P.C.

09. After careful scrutiny of the available record and hearing the arguments, the point that needs to be determined by this Court is whether the cheques in question were validly given to the respondents for their encashment and the respondents were entitled for the decree as prayed for. Before going into details, I would add that a *'cheque'* is normally expected to remain in the safe hands of the *'account holder'* as the result of the relationship between the account holder and the bank. It is a matter of fact that cheque is generally issued by the bank directly to the *'account holder'* with a clear understanding that whenever a cheque, duly signed, shall normally be honored by the bank if amount, so mentioned in the cheque, is sufficient for such encashment. Such a cheque, in law, has been given the status of *'negotiable instrument'*, which however, cannot be engineered or fabricated as other document (s), declared or qualified as *'negotiable*

instrument'. Proper execution normally requires only two parties i.e., taking out the cheques from the cheque-book, which is believed to be in the safe hands of the account holder, and signing/execution thereof. The first part is exceptional, which no other person can perform except by, stealing; defrauding, or finding a lost one, which claims shall always rests upon the person who otherwise is expected to keep it in safe hands.

10. As per the contents of the plaint, the respondents took a stance that the appellant issued the abovementioned disputed cheques against the repayment of their liability, which were presented for encashment before the concerned Bank, but the same were returned with the remarks "Refer to Drawer".

11. The entire substratum of the respondents' case was built upon cheque No.298153 dated 19.06.2001 and un-dated cheque bearing No.298154 amounting to Rs.280,000/- and 250,000/- respectively. During the course of cross-examination, respondent No.1, Muhammad Shakeel admitted in an unequivocal term that Mansoor had given him the said cheques somewhere in January or February, 2001, one of which was in his name whereas the other one was in his brother's name i.e. respondent No.2. He also volunteered that when he went to the Bank, there was no balance in the Account whereafter, Mansoor gave him the office equipments and car. As regards the second un-dated cheque, he admitted that there is no date on the said cheque. Volunteered that when respondent No.2 gave him the said cheque for encashment, the said cheque was un-dated. He categorically admitted that the cheque issued in his name, makes mention of the date. Self-stated that when the opposite party lodged an FIR against him, he then in retaliation of the opposite party's action, himself entered the said date on the cheque and presented the same in the National Bank at Haripur Branch, where he maintains his account. **He further categorically admitted that he presented the said cheques in the irrelevant Bank with the sole object to get**

them dishonored. It would not be out of context to mention that the cheques (Exh.P-17 and Exh.P-18) pertain to ABN-AMRO Bank, Markaz, F-7, Islamabad, but respondent No.1, intentionally for the reasons best known to him, presented the said cheques before National Bank at Haripur Branch. Exh.P-32 and Exh.P-33 are the slips issued by ABN-AMRO (N.V.) Bank, Markaz, F-7, Islamabad, perusal whereof shows that the said cheques were also presented before the said Bank too on 17.08.2001 and 13.08.2001, whereby they were returned with the reason **"Refer to Drawer"**. The said slips nowhere make mention of the fact that the cheques in question were in fact returned with the remarks **"dishonored due to insufficient balance".** It is imperative to mention that the said cheques were malafidely presented before the National Bank at Haripur Branch of which the same had no relevance, and were not dishonored. As mentioned above, the slips i.e. Exh.P-32 & Exh.P-33 issued by ABN-AMRO (N.V.) Bank, Markaz, F-7, Islamabad also show that the said cheques were returned with the reason "Refer to drawer", therefore, no case for dishonor of cheque is made out. At this juncture, this Court perused the said cheques (Exh.P-17 and Exh.P-18) which show that the same were issued by the Chief Executive of Hareem International Pvt. Ltd., Islamabad (hereinafter referred to as "the Company"). The Chief Executive of the said Company was stated to be Mansoor. Had the said cheques been presented in the concerned Bank and had the same in effect been dishonored on presentation, Mansoor, who being principally responsible for issuance of the same, could have been held liable for payment of the said amount. But the present case is altogether contrary to the said fact inasmuch as the appellant has been held liable to pay the said amount, who was indeed not the signatory of the said instruments. The learned trial Court turned a blind eye towards the facts and circumstances of the case and did not apply its mind judicially and thus contravened the norms of natural justice.

12. Furthermore, it would also be apt to mention that Mansoor had issued certificate dated **10.07.2000** (Exh.P-14) and certificate dated **11.08.2000** (Exh.P-15) which are on the letterhead of the Company certifying that the respondents had given him/them Rs.280,000 and 250,000/-, respectively for the purpose of sending them to Korea. On the certificate (Exh.P-15) dated **11.08.2000**, it has also been mentioned by the said Masoor that in case the said respondents could not be sent to Korea within a period of thirty days, the amount so received shall be returned to the respondents. Similarly, Exh.P-19 dated **02.01.2001** which is also on the letterhead of the said Company, is a certificate wherein it has been stated that the office equipment's of the said Company had been sold to respondent No.1 for a total amount of Rs.20,000/-. All these certificate (Exh.P-14, 15 and 19) have not been witnessed by anyone. The dates mentioned on the said certificates (Exh.P-14, Exh.P-15) are of paramount importance since they are on the letterhead of the Company and are dated **10.07.2000** and **11.08.2000**, respectively. The Company was incorporated on **17.08.2000** according to the Certificate of Incorporation (Exh.D-8) issued by the Deputy Registrar of Companies, SECP, Government of Pakistan Islamabad. The question which perturbs this Court is that how the said certificates (Exh.P-14 and 15) dated 10.07.2000 and 11.08.2000 were prepared and issued on the letterhead of the said Company, which at the relevant time, was indeed not in existence. Apart from other peculiarly circumstances, this fact brushes aside the truthfulness of the respondents' version. A 20-pager statement recorded by respondent No.1 as PW-4 is nothing but a concocting story. The learned trial Court has committed a grave illegality by not appreciating the evidence available on the record in its true perspective.

13. Additionally, there is no cavil with the legal proposition that suit under Order XXXVII, Rule 2, C.P.C. can be filed in respect of negotiable instruments which in the instant case is lacking. The entire edifice of the respondents' case was based on alleged cheques,

which were neither dishonored nor proved to have validly been issued towards the fulfillment of any financial obligation. The statements of the PWs are replete with major discrepancies and contradictions, and the suit filed by the respondents was nothing but was in fact a tool used for abusing the process of the Court. Apparently, the learned Court below seemed to be alien to the law governing the subject. The record is suggestive of the fact that the precious time of the Court as well as the general public has been consumed uselessly in the *lis* at hand by the respondents, which cannot be ignored.

14. It has been time and again deprecated by the superior Courts that where there is only one legal issue involved in a *lis,* the Court of the first instance is bound to resolve the same at the very initial stage of the suit. Had the Court, which was ceased of the suit had attended to the plaint that could not only have saved the precious time of the Court, the parties and their hard earned money on one hand, but could have also achieved the goals stipulated in the National Judicial Policy easily on the other. In the case at hand, the learned trial Court erred by not attending to the said observations. It is by now well settled that incompetent, vexatious, illegal, and frivolous suits must be buried at their very inception, as their growing up would not only prolong the agony of the parties, which have unnecessarily been embroiled in such litigations, but also the wastage of precious time of the Courts as well. Furthermore, fruitless and useless litigations must not be encouraged rather the same ought to be dealt with sternly. Guidance in this regard may be sought from the judgment of the Hon'ble Supreme Court in the case titled **Capital Development Authority, CDA through Chairman, CDA, Islamabad Versus Ahmed Murtaza and another (2023 SCMR 61),** whereby it was held as follows:-

> *"10. Rule A(3) of Order XXVIII of Part VI of the Supreme Court Rules, 1980 (Rule) provides that* ***this Court may impose costs on a party who files a false or vexatious appeal or other proceedings and thereby wastes the time of the Court. This***

Court has imposed such costs, to curb frivolous litigation, in the cases of Syed Iqbal Haider v. Federation of Pakistan (1998 SCMR 1318), Muhammad Akbar v. Major Tajjuddin (2007 SCMR 140) and Commissioner of Inland Revenue v. Packages Limited (2022 SCMR 634) for prolonging the agony of the respondents and wasting the time of this Court which could have been spent in resolving legitimate disputes.

11. Under the circumstances, we are not inclined to dismiss the petition simpliciter as we believe that such frivolous litigation overburdens this Court with vexatious cases thereby delaying and thus denying the rightful claim of access to justice guaranteed under Article 9 of the Constitution. Such frivolous litigation also impairs expeditious justice and offends Article 37(d) of the Principles of Policy under the Constitution. Court time can be well spent on handling genuine cases as opposed to pursuing cases which are vexatious and meritless on their face and which have already been decided between the parties.

(Emphasis supplied)

15. For what has been discussed above, the appeal filed by the appellant, Mrs. Najeeba Touqeer (i.e. R.F.A. No.133/2008) is **allowed** whereas the appellant (i.e. R.F.A. No.116/2008) filed by the respondents is **dismissed.** Consequently, the impugned judgment and decree dated 24.07.2008 is **set aside**. Moreover, as has been observed above, the conduct of the respondents is such which cannot be taken lightly particularly when the same is in stark violation of the law. Therefore, under attending circumstances, costs to the tune of Rs.200,000/- are imposed on the respondents, which shall be paid by both the respondents in equal shares to the appellant.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on 16.02.2023.

JUDGE

//Kamran//