ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

(JUDICIAL DEPARTMENT)

RFA no.85/2015

Malik Manzoor Hussain

vs.

Muhammad Khalid Zaman

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
11	27.02.2023	Sh. Faisal Ijaz, Advocate for the appellant. Mr. Shakir Javaid, Advocate for the respondent.

What good is a guarantee cheque for if it cannot be encashed when the underlying obligation for which it was given as a guarantee is breached? That a guarantee cheque does not create any obligation for its honour on presentation is precisely the appellant's core argument in this RFA from the impugned judgment and decree dated 08.01.2015 decreeing the respondent's suit under Order 37 CPC for recovery of Rs.3,000,000/-, with mark up at the (unspecified) bank rate, on dishonour of the cheque issued by the appellant (defendant) to the respondent (plaintiff).

2 The plaintiff claimed in the plaint that the defendant owed him Rs. 450,000/- under a promissory note (Ex P-1), that later the plaintiff lent the defendant another Rs. 1,050,000/- to enable the defendant to complete a property deal that would enable him to repay the aggregate sum of Rs. 1,500,000/-, that the defendant issued him a cheque in the sum of Rs. 3,000,000/-, which was dishonoured on presentation.

3 The defendant in his written statement denied any liability, claimed blackmail and harassment compelling him to issue the cheque, and referred to rapt no.39 that he lodged with the police on 22.03.2010 claiming that the cheque was issued by him as a guarantee under blackmail. However, his written statement did not mention the cheque being issued as a guarantee, even though the written statement was filed more than a year after the said rapt was filed. The defendant was granted leave to defend.

4 The learned trial court decreed the suit primarily for the reason that the defendant in his written statement had not taken the stance that the cheque was a guarantee cheque, but had taken this stance in his evidence at the trial only,

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and that since evidence could not be led beyond the pleadings, the defendant's stance of the cheque being a guarantee could not be taken into consideration.

5 Learned counsel for the appellant/defendant could not answer the question that, were the defendant's stance to be accepted, what was the cheque a guarantee for? Instead, he attempted to divert the argument to blackmail and harassment by the plaintiff, for which he had only the assertion to this effect in the written statement, in the defendant's own evidence, and in rapt no. 39 to fall back on. But the fact remains that the defendant admitted in his evidence that rapt 39 was consigned to record by the police, and he took no action to invoke any legal process for his alleged complaint of blackmail to be investigated and adjudicated. He fell silent.

6 Learned counsel for the appellant referred to the plaintiff's evidence, wherein the FIR under section 489-F PPC registered by the plaintiff was tendered in evidence as Ex P-4, the contents whereof contain the plaintiff's statement that he had given Rs.1,500,000/- to the defendant in total, against which the defendant gave him a cheque of Rs.3,000,000/- as a guarantee.

7 But the plaintiff does not explain in his evidence what the extra Rs.1,500,000/- under the guarantee cheque represented. Though the learned trial court referred to the presumption of consideration arising under the *Negotiable Instruments Act, 1881*, but it did not advert to that presumption being rebutted partially in the instant case where the plaintiff states that he tendered consideration of Rs.1,500,000/- in total. In the circumstances, it is not clear as to how that presumption to the extent of the balance Rs.1,500,000/- did not stand rebutted by the plaintiff's own evidence.

8 Learned counsel insists that the consideration had to be proved independent of the cheque itself, and that it had not been proved on record. But this is not correct. The promissory note is exhibited, the cheque is admitted, PW-2 also attests to that the plaintiff gave Rs. 1,500,000/-, and these items of evidence, particularly the cheque, on a balance of probabilities, establish the plaintiff's version that remains quite unshaken in cross-examination. Further, on the one hand he asks this Court to accept the plaintiff's evidence and the FIR to claim that the cheque was a guarantee cheque, but then goes on to say that the assertion of Rs. 1,500,000/- payment

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per the same evidence should be ignored. He then states that the plaintiff's other witness was his own clerk, but that alone is no reason to discard that testimony corroborated by the cheque. However, while saying all this, he is unable to explain why the appellant issued the cheque in the first place, except for his repeat mantra of blackmail and harassment, but does not answer that, if that were indeed correct, why he took no action when the rapt was consigned to record, and why he did not file any suit for cancellation of the cheque; the rapt was registered on 22.03.2010, and the suit was filed more than a year later on 07.05.2011. All this while, the defendant took absolutely no legal action whatsoever to prevent the presentment of the cheque, which was dated for 23.04.2010, i.e., a month after the rapt was lodged. In these circumstance, the inexorable inference would be that the rapt was a preventive action by the defendant.

9 Learned counsel's repeat references to the cheque being a guarantee, and therefore not good for a recovery suit under Order 37 CPC, rests on a misconception of law that a guarantee cheque cannot be presented for honour. This misconception arises from the use of this concept in bail proceedings under section 489-F, where the cheque being a guarantee is generally taken to make the matter one of further inquiry. But that practice has no bearing in civil proceedings, where the considerations are entirely different. Unless it is demonstrated that the underlying obligation for which the cheque was issued as a guarantee stood discharged by performance or release, a guarantee cheque is no different from a regular cheque, since it is meant to be presented when the time to call the guarantee arises. No evidence is on record nor did the learned counsel point to any circumstance to infer that the guarantee cheque was not intended – by both parties – to be presented when the date for its presentment fell due, or that the underlying obligation stood discharged by then, for only then the absence of consideration (by repayment) can be established. Short of that, a guarantee cheque in civil proceedings is as good as a cheque issued for honour on its due date.

10 However, the record establishes that the consideration under the cheque was half the sum represented by the cheque. This crucial fact ought not have been ignored by the learned trial court. As leave was granted, therefore, to all intents and purposes, the suit was tried as a regular suit with the parties'

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evidence led in full. Therefore, the actual consideration admitted by the plaintiff became all important, and regardless of the sum stated in the cheque, only the actual consideration proved could have been decreed by the trial court.

11 But 12 years have passed since the cheque was dishonoured, and the plaintiff remain deprived of his money for the entire period. Therefore, with the principal sum adjudged at Rs.1,500,000/-, interest under section 34 CPC from the date of the suit to the date of this appellate decree is considered at an average annual interest rate of 8%. But the 7 years it took this Court to decide this straightforward appeal cannot be ignored either to the detriment of the appellant. Accordingly, it is appropriate to award interest for 5 years, counted from 2011 when the suit was filed to 2016, considering that this appeal filed in 2015 should have been decided within one year. Thus, interest comes to Rs.600,000/-.

12 Resultantly, this appeal is **allowed in part**, and the impugned decree is modified to a decree for the principal sum adjudged at Rs.1,500,000/- (one million five hundred thousand) and Rs.600,000/- (six hundred thousand) as the interest awarded thereon. Office is directed to draw the decree accordingly.

(Sardar Ejaz Ishaq Khan)
Judge

Rana.M.Ijt

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