Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

R.F.A No.01 of 2019

Muhammad Akram
Vs.
Nisaar Ali Khan

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
05.	20.01.2021	Mr. Muhammad Kamal Hassan, Advocate for the appellant. Mr. SherAman, Advocate for the respondent.

Through the instant appeal under Section 96 of C.P.C., the appellant, Muhammad Akram impugns the judgment and decree dated 15.11.2018 passed by the Court of learned Additional District Judge-V, West Islamabad, whereby the suit for recovery of Rs.32,00,000/- filed by the respondent under Order XXXVII C.P.C. has beendecreed.

2- The facts essential for the disposal of the instant appeal are that the appellant and respondentwere known to each other for the last three years. The appellant / defendant requested the respondent/plaintiff for a loan and on his request the latteradvanced an amount of Rs.32,00,000/-. Subsequently on persistent demands of respondent / plaintiff, the appellant/defendant issued a pronote amounting to Rs.32,00,000/- but despite several requests, appellant / defendant delayed the payment on one pretext or the other and thereafter flatly refused to pay theamount to the respondent/plaintiff. Hence, the respondent/plaintiff filed a suit for recovery of Rs.32,00,000/- under Order XXXVII C.P.C.

3- The appellant/ defendant contested the suit by filing a written statement and denied the execution of the pronote.

The defence taken by the respondent / plaintiff was that the appellant/defendant took to him to a nearby house and extended threats of dire consequences.

4- Issues were framed and the learned trial Court has recorded the statements of PWs 1 and 2 and statement of appellant / defendant as DW.1 and also exhibited pronote as Ex.PA and Ex.PB. The main core in the suit was issue No.1, which was decided in favour of the respondent / plaintiff and the suit was decided vide impugned judgment and decree dated 15.11.2018.

5- The learned counsel for the appellant/defendant has stated that the pronote Ex.PA and Ex.PB are not duly signed by two witnesses and the basic requirement of law envisaged under Article 17 of Qanun-e-Shahadat Order 1984, has been violated. Even the said two eye witnesses of the transaction were not produced in the Court by violating the provisions of the Article 79 of the Qanun-e-Shahadat and no date and place of execution of pronote is mentioned on the documents Ex.PA and Ex.PB.

6- On the other hand, learned counsel for the respondent / plaintiff has stated that two witnesses of the transaction, PW.1 and PW.2 were produced in the Court. Learned counsel further stated that the respondent / plaintiff has a video recording of the transaction for which he filed an application before the learned trial Court for making the said video as part of evidence but the same was not allowed. Learned counsel added that as the appellant / defendant has made an evasive denial by stating that he has not signed the pronote but the appellant / defendant has not applied for the verification of handwriting expert and the learned Court has not done the same exercise.

7- We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

8- As it is evident from the record that an opportunity for production of additional evidence to the respondent / plaintiff was not provided, exercise of verification of signatures from the handwriting expert has not been done by the learned trial Court. It is held in the case titled "Zahoor Ahmed Vs. Mehra through Legal Heirs and others" (1999 SCMR 105) that *"law favours the decision on merits rather than on technicalitiesunless the party concerned is guilty of gross negligence"*. The same view has been laid down in the case titled "Mahmood Ali Butt Vs. Inspector-General of Police, Punjab, Lahore and 10 others" (PLD 1997 Supreme Court 823).

9- In the light of above discussion, the instant appeal is allowed; impugned judgment and decree dated 15.11.2018 is set-aside. Consequentlythe suit filed by the respondent shall be decided afresh after providing an opportunity to the respondent / plaintiff for production of additional evidence as well as conducting the exercise of verification of signatures of the appellant / defendant on the pronotein question.

(AAMER FAROOQ)
JUDGE

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

M.A.Baig