

2012 CLD 2027

**[Sindh]**

*Before Tufail H. Ebrahim, J*

Mst. NUSRAT MUFTI—Plaintiff

versus

MUHAMMAD HANIF and another—Defendants

Suit No.541 of 2009, decided on 8th December, 2009.

***Negotiable Instruments Act (XXVI of 1881) ---***

*—S. 118- Civil Procedure Code (V of 1908), O, XXXVII, Rr.2 &3---Limitation Act (IX of 1908), S.5—Suit for recovery of amount on basis of dishonored cheque—Time barred leave application without condonation application under S.5 of Limitation Act, 1908- Validity'—Defendant had failed to obtain leave to defend suit, thus, contents of plaint - would be deemed to be admitted—9ult was based on negotiable instrument, thus, suit cheque would be presumed to have been issued against-consideration—Plaintiff was entitled to decree against defendant, who had issued suit cheque—Suit was decreed with costs and mark-up/profit 0 12.5% per annum from date of suit till realization of decretal amount, [p. 2028, 2029) A & B*

Adeel Abid for the Plaintiff.

Date of hearing: 7th October, 2009.

**JUDGMENT**

TUFAIL H. EBRAHIM, J.—Brief facts of the case are that plaintiff had advanced a sum of Rs.34,50,000 to defendant No. 1 for purchase of goods, namely, reconditioned/second hand generators made in Japan; which payment was made

through defendant No. 2. That defendant No. 1 failed to supply the said goods and the purchase order was cancelled by the plaintiff. On the repeated request of the plaintiff, defendant No.1 issued two Cheques No.3813295 for the sum of Rs.22,00,000 and No.3813296 for the sum of Rs. 12,50,000 both cheques dated 17-3-2006 drawn at Standard Chartered Karachi Pakistan in favour of the plaintiff being the refund amount. The said cheques were presented by the plaintiff to her Bank, but the same were dishonored by the Bank of defendant No. 1 on 20-8-2006 and returned to the plaintiff with, the remarks "not arranged for/exceeds arrangement".

The plaintiff has filed this suit under Order XXXVII, Rules 1 and 2 of C.P.C. for recovery of the said amount of Rs.34,50,000 from the defendants on the basis of dishonoured cheques issued by defendant No. 1.

The defendants were duly served and they had filed their respective leave to defend applications after expiry of statutory period without any condonation application under section 5 of the Limitation Act. In such Circumstances the applications were not considered by the office and the same remained under objections as the said objections were not complied by the defendants. The matter was fixed for final disposal on 7-10-2009: on which date defendants their counsel were present.

The learned counsel of the plaintiff has argued that the cheques Nos.3813295 and,3813296 were issued by the defendant No. 1 in favour of the plaintiff for lawful consideration received by defendant. No. 1 from the plaintiff. The said cheques issued, by defendant No. 1 have been dishonored by the Bank of defendant: No. 1 with the remark "not arranged for/exceeds arrangements".

From the perusal of the record and the arguments forward by the learned counsel', It is evident<sup>1</sup> that the defendants have failed to obtain leave to defend the suit and the contents of the plaint are therefore, deemed to be admitted, as the suit is based on negotiable instruments, the presumption would be that the said cheques were issued by

defendant No. 1 against consideration and therefore, the plaintiff is entitled to a decree against defendant No. 1 who had issued the said cheques and accordingly the suit against defendant No.2 is dismissed.

In such circumstances the suit of the plaintiff is decreed in the sum of Rs.34,50,000 against the defendant No. 1, the defendant No. 1 is also liable to pay the markup/profit at the rate of 12.5% per cent per annum from the date of filing of the suit till realization of the said amount, the plaintiff is also entitled for cost of the suit.

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Suit decreed.