

**COURT OF SHEIKH RASHID MAJEED,  
DISTRICT JUDGE, MUZAFFARABAD, AJ&K**  
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*File No:* 27 – Civil Suit  
*Date of Institution:* 09.06.2012  
*Date of Decision:* **05.10.2017**

Chaudhary Muhammad Yaqoob S/O Chaudhary Sharf-ud-Din, R/O Babu Mohallah, Ward No. 7, Tehsil & District Muzaffarabad.

**(PLAINTIFF)**

**VERSUS**

(1) Muhammad Nissar Ahmed, (2) Ibrar Ahmed, (3) Israr Ahmed S/O Muhammad Bashir, R/O Sahlian Chamankot, Tehsil Dhirkot, District Bagh, presently Mohallah Shoukat Line, Tehsil & District Muzaffarabad.

**(DEFENDANTS)**

**SUIT UNDER ORDER XXXVII OF CPC FOR  
RECOVERY OF RS. 19,84,500**

*File No:* 285 – Civil Suit  
*Date of Institution:* 09.06.2012  
*Date of Decision:* **05.10.2017**

(1) Ibrar Ahmed, (2) Nisar Ahmed S/O Muhammad Bashir, R/O Chamankot, Tehsil Dhirkot, District Bagh, presently Sund-Gali, Tehsil & District Muzaffarabad.

**(PLAINTIFFS)**

**VERSUS**

(1) Chaudhary Muhammad Yaqoob S/O Chaudhary Sharf-ud-Din, R/O Babu Mohallah, Ward No. 7, Tehsil & District Muzaffarabad, (2) Muhammad Nasim Awan, (3) Khan Muhammad Khan, petition writer, Muzaffarabad, (4) Wajid Khan S/O Khan Muhammad Khan, (5) Khawaja Ghulam Rasool.

**(DEFENDANTS)**

**SUIT FOR DECLARATION ALONG WITH  
PERMANENT INJUNCTION**

**PRESENT:**

1. Muhammad Kaleem Afsar/ Raja Zahid Akram,  
Advocates for the Plaintiff

2. Sheikh Muhammad Saleem, Advocate for the Defendants

**JUDGMENT:**

Brief facts of the case suit titled "*Chaudhary Muhammad Yaqoob versus Muhammad Nisar Ahmed and others*" are that plaintiff (*Chaudhary Muhammad Yaqoob*) filed a suit for recovery of Rs. 19,84,500/- under Order XXXVII of CPC.

It was stated in the plaint that plaintiff is 1<sup>st</sup> Class State Subject and is a respectable citizen. Plaintiff after serving in the Defence Department is now retired. Defendants are resident of village Sahalian, P.O. Chamankot, Tehsil Dhirkot, District Bagh and are now running their business in 1AK Brigade Domel. The defendants who had cordial relation with the plaintiff borrowed total amount of Rs. 100000/- from different occasions. They made a commitment that they will transfer their plot situated at Rawalpindi in favour of plaintiff. Plaintiff has asked the defendants time and again to fulfil their commitment. but they failed to do so. On 24.03.2010 defendants, in presence of witnesses executed an agreement (اقرار نامہ) in favour of plaintiff along with a receipt about payment of Rs. 9,84,000/-. Defendants have

never acted upon contents of said agreement.

It was further claimed that plaintiff has contacted the defendant times and again requested them to pay back the said amount but the defendants on one or the other pretext delayed the matter with malafide intention. On demand of plaintiff, defendant No. 1 gave cheque book of account No. 31116-7 of National Bank, Chatter Branch. Plaintiff approached the concerned bank along with cheques. Said cheques were dishonoured due to insufficient balance. In this way, defendants committed fraud with plaintiff and failed to pay back the outstanding money. Lastly, it was prayed that a decree for recovery of total amount Rs. 19,84,500/- may kindly be granted in favour of plaintiff.

**2.** On filing of above titled suit, defendants were summoned who appeared before this Court and submitted their written statement on 26.06.2014.

It was stated in written statement that plaintiff has no cause of action, so plaint is liable to be rejected under Order VII, Rule 11 of C.P.C. The suit of plaintiff is based on false and fabricated story. Other factual

contents of the plaint were also denied by the defendants. Lastly, it was prayed that suit may kindly be dismissed with costs.

3. Brief facts of the cross case titled "*Ibrar Ahmed and others versus Chaudhary Muhammad Yaqoob and others*", are that plaintiffs (*Ibrar Ahmed and others*) filed a suit for declaration cum permanent injunction and cancellation of agreement deed dated 29.06.2009, 11.07.2009, 24.08.2009, 02.09.2009, 19.12.2009 and 24.03.2010 before the Court of Senior Civil Judge.

It was stated in the plaint that in the year 2009 plaintiffs were in dire need of money for which they asked defendant No. 1 for 100000/- rupees as loan. Initially defendant No. 1 didn't tell that use he use to give loan on interest. Defendant No. 1 only demanded guarantee said demand plaintiffs gave registered documents of land surety.

It was further stated that initially plaintiffs use to return 15000/- per month to defendants. Later on, defendant No. 1 by pressurizing and blackmailing the plaintiffs use to receive 25,000/- rupees per month. Moreover, defendant also got various other things from plaintiffs. In this way, defendant

received an amount of Rs. 4,55,000/- instead of original loan money i.e. 1,00,000/-.

It was further stated that defendant has also prepared a fake agreement deed by obtaining thumb impression of plaintiff on blank paper. Defendants have also prepared different fake and forged agreement deeds. Plaintiff has never executed any deed. All the deeds were prepared with connivance of petition writer and others.

4. On filing of above suit, defendants were summoned who appeared and submitted written statement on 15.05.2015.

It was contended in the written statement that plaintiffs have no cause of action. Suit has been filed without lawful justification which is liable to be dismissed. Plaintiffs have concealed real facts of the case. Agreements are genuine which were executed in the presence of parties. Both the parties signed the agreement deeds in presence of witnesses. Plaintiffs have got received money Rs. 9,84,500/- as loan and has failed to pay back the same. Other factual contents of the plaint were also denied by the defendants. Lastly, it was prayed that instant

suit may kindly be dismissed with special costs.

5. Both the suits were about same documents and parties were also same, so were consolidated. In light of divergent pleadings of the parties issues were framed.

6. After framing issues, parties were directed by the Court to produce evidence in support of their respective versions. Both the parties produced evidence to prove their assertion which is part of file.

7. Arguments heard.

8. I have heard the arguments advanced by the learned Counsel for the parties. Record of the case is also examined.

In the case in hand, both the parties have produced evidence in support of their respective version. However, I am restrained to appreciate the evidence produced by the parties for the reasons stated herein after. It is obvious from perusal of plaint titled "*Chaudhary Muhammad Yaqoob versus Muhammad Nissar and others*", plaint filed by plaintiff is for recovery of 19,84,500/- on the basis of argument promissory note and dishonored cheque. For proper appraisal, relief claimed in prayer clause of the plaint is reproduced as under;-

"پس بحالات بالا استدعا ہے کہ بمنظوری دعویٰ بعد از تحقیقات ضابطہ ڈگری دلاپانے رقم مبلغ 1984500 روپے بروئے تحریر اقرار نامہ **Promissory Note and dishonor checque** معہ ہرجانہ مبلغ دس لاکھ روپے کل رقم 1984500/- ازاں مدعا علیہم دلاپانے کی ڈگری بحق مدعی صادر فرمائی جائے۔ بنظر انصاف مدعی جس دیگر یا متبادل دادرسی کا مستحق ہو بحق مدعی صادر فرمائی جائے، قرین انصاف ہوگا۔"

On the other hand, cross- suit filed by opposite party is about the same documents. Plaintiff, Chaudhary Muhammad Yaqoob in opening head of plaint has also mentioned the relevant provision governing institution of suit i.e., Order XXXVII of C.P.C. In this way, both the suits in hand have admittedly been filed under Order XXXVII of CPC. In such kind of cases filed under Order XXXVII of CPC, District Judges and Additional District Judges, have not been authorized for hearing and disposal of case. In this regard, Hon'ble High Court of Azad Jammu & Kashmir in case titled: "*Tahir Mehmood versus Anjum Saeed and others*", Civil Appeal No. 24/12, decided on: 27.09.2012, has declared as under:-

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*"I have heard the Advocates for the parties and gone through the record.*

*Without attending the merits of the case I am of the view that the judgment passed by the learned Additional District Judge Hajira is liable to be set-aside. The suit was filed by the plaintiffs/ respondents under Order 37 of the CPC which is meant for the suit to be filed on the basis of*

negotiable instruments and the proceedings have to be conducted in summary manner strictly in accordance with the procedure contained in the said Order. **The order is applicable to the High Court and the District Courts. The District Courts are empowered in Pakistan through Law Reforms Ordinance XII of 1972. In Punjab a further amendment has been made by the High Court in the procedure whereby some Civil Judges are also notified and conferred jurisdiction for disposal of such like cases.** Though the amendments made in the Code of Civil Procedure through Law Reforms Ordinance 1972 have been adopted in Azad Kashmir in 2003 **but the District Judges and the Additional District Judges have not been notified by the High Court and not conferred the jurisdiction for hearing and disposal of summary suits, therefore, the jurisdiction assumed by the learned Additional District Judge Hajira was illegal.**

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The upshot of the above discussion is that as the jurisdiction assumed by the learned Additional District Judge Hajira was illegal, hence, the judgment and decree awarded by him is also without lawful authority and the suit filed by the

*respondents would be deemed to have been returned under Order 7 Rule 10 of CPC. This order, however, will not refrain the plaintiffs/respondents to approach the appropriate forum.”*

In view of above said guiding principle, it is obvious that this Court has no jurisdiction to decide this case. As stated earlier both the suits have admittedly been filed under Order XXVII of C.P.C, so both the suits are hereby returned to the plaintiffs under Order VII, Rule 10 of C.P.C.

**ORDER ANNOUNCED.**

**(Sheikh Rashid Majeed)**  
District Judge, Muzaffarabad