IN THE COURT OF AHTSHAM MUQARRAB, CIVIL JUDGE,1ST CLASS, ISLAMABAD (EAST)

Civil Suit No: **23938 of 23**
Date of institution: 20.06.2023
Date of decision: 25.07.2026

Abdul Samad Jawad S/o Abdul Haque, R/O Office No.103, Ayub Manzail, Mohan Road, Opposite to Gove. College for Women, Shahrah e Liaquat, Urdu Bazar, Karachi (South).

....Plaintiff

Versus

Dr. Abdul Hai R/o House No.10-A, Street No.31, Block-F, Naval Anchorage, Islamabad.

.... Defendant

SUIT FOR RECOVERY OF RS.6,00,000/- AS PROFESSIONAL COUNSELING SERVICE FEE BY REPRESENTING THE DEFENDANT BEFORE HONORABLE COMMISSIONER IN LAND REVENUE KARACHI ALONGWITH ALL OTHER ANCILLARY EXPENSES OF THE SUIT

JUDGMENT:
25.07.2026

The plaintiff seeks a decree for recovery amount Rs.6,00,000/- against the defendant.

2. Brief facts of the case, as set forth in the plaint, are that the plaintiff, being an Advocate/Tax Counsel, was engaged by the defendant to represent him before the Federal Board of Revenue (FBR), Karachi, in respect of proceedings relating to Tax Years 2014, 2015, 2016 and 2017, wherein orders under Section 122(1) read with Section 122(5) of the Income Tax Ordinance, 2001, along with notices under Section 138(1), had been issued against the defendant raising a total tax demand of Rs.10,674,000/-. Upon engagement, the defendant duly executed a Vakalatnama in favour of the plaintiff, who, after obtaining Certified True Copies of the impugned orders, filed separate appeals before the learned Commissioner Inland Revenue (Appeals-V), Karachi. He appeared before the appellate authority on behalf of the defendant, rendered professional legal services, and successfully contested all four appeals, which were allowed by the learned Commissioner by annulling the impugned proceedings. At the time of engagement, it was mutually agreed that the plaintiff would be paid professional fee at the rate of Rs.150,000/- for each appeal, aggregating to Rs.600,000/- for all four appeals. Despite the successful disposal of the appeals in the defendant's favour, he failed to

pay the agreed professional fee. The plaintiff repeatedly demanded payment through personal requests, telephone calls and WhatsApp messages, but the defendant persistently avoided discharging his lawful liability. Consequently, the plaintiff, through his counsel, served a legal notice dated 13.03.2023 calling upon the defendant to pay the outstanding amount of amount Rs.600,000/- along with legal expenses within seven days. Although the notice was duly received by a family member of the defendant, neither any payment was made nor any reply was furnished. Thereafter, the plaintiff served a reminder legal notice dated 17.04.2023 reiterating the said demand. In response thereto, one of the defendant's sons contacted the plaintiff's counsel by telephone and was apprised of the entire matter; however, neither the defendant nor his family members paid the outstanding amount or responded positively to the plaintiff's lawful demand. The cause of action first accrued when the defendant engaged the plaintiff and agreed to pay the aforesaid professional fee, further accrued upon the successful conclusion of the appellate proceedings when the fee became due and payable, and continued thereafter upon the defendant's failure to honour repeated oral and written demands, including the legal notices dated 13.03.2023 and 17.04.2023. The cause of action is continuing, as the defendant has failed to discharge his contractual and legal obligation despite repeated demands hence, this suit.

3. The defendant has contested the suit by asserting that it is not maintainable in its present form and that the plaint is liable to be returned under Order VII Rule 10, CPC. It is pleaded that the defendant, a retired senior citizen, was introduced to the plaintiff through his cousin, Saleem Habibullah Soriya, in 2019 for legal assistance in tax matters relating to Tax Years 2014 to 2017. That plaintiff agreed to render professional services for a fee of Rs.200,000/- and advised the defendant to deposit amount Rs.12,84,000/- with the tax authorities through him, assuring that the amount would subsequently be refunded. The defendant claims to have paid both the professional fee and the said amount to the plaintiff in cash, whereafter the plaintiff allegedly handed over FBR challans representing that the tax had been deposited. It is alleged that, despite repeated requests, the plaintiff neither secured the promised refund nor deposited the tax amount, and that the challans were subsequently discovered to be forged when fresh tax demands were issued by the FBR. The defendant contends that, upon being confronted,

the plaintiff admitted his lapse, undertook to rectify the matter by filing appeals, and assured repayment of the amount. It is pleaded that, in 2021, the defendant paid an additional sum of Rs.250,000/- as professional fee for filing the appeals. The defendant alleges that the plaintiff has neither refunded the amount of Rs.12,84,000/- nor honoured his commitments and has instead instituted the present suit by concealing material facts, with mala fide intention to harass and pressurize the defendant. On these assertions, the defendant has prayed for dismissal of the suit, while reserving his right to initiate appropriate civil, criminal and professional misconduct proceedings against the plaintiff.

4. Out of divergent pleading of the parties, following issues were framed.

ISSUES

1. Whether plaintiff is entitled to get decree for recovery of amount Rs.6,00,000/- as professional service fee for filing four tax year Appeal as prayed for? OPP
2. Whether plaintiff has no cause of action or locus standi to file the instant suit? OPD
3. Whether the suit of the plaintiff is liable to be dismissed U/07 Rule 11 CPC? OPD
4. Whether plaintiff is estopped by his own words and conduct? OPD
5. Whether defendant is entitled to get special cost u/s 35-A CPC from plaintiff? OPD
6. Relief

5. To substantiate the claim as made in plaint, plaintiff namely Abdul Samad Jawad appeared before the court as PW-1, recorded his statement and corroborated the stance taken in plaint. In documentary evidence, he produced legal notice as Ex-P1, receipt as Ex-P2 & Ex-P3, copy of appeal as Ex-P4 to Ex-P6, FBR receipts as Ex-P8 to Ex-P12 and oral as well as documentary evidence was closed.

6. To invalidate the version of the plaint, defendant through duly constituted attorney Abdul Hai appeared before the court as DW-1, recorded his statement. and closed the oral as well documentary evidence of the defendant.

7. Mr. Talha Rashid Qureshi advocate, learned counsel for the plaintiff has advanced the arguments in support of the averments as made in the plaint. He has argued that plaintiff has succeeded to prove the case through cogent, coherent and confidence inspiring evidence, finally requested that suit may kindly be decreed in favor of plaintiff.

8. On the other hand, Ch. Mohsin Maqsood advocate, learned counsel for the defendant has advanced the arguments as launched in written statement. He has argued that plaintiff has not succeeded to prove the case through cogent, coherent and confidence inspiring evidence and requested that suit may kindly be dismissed.

9. Arguments have been heard and record perused; my issues wise findings are as under.

ISSUE NO.1

1. Whether plaintiff is entitled to get decree for recovery of amount Rs.6,00,000/- as professional service fee for filing four tax year Appeal as prayed for? OPP

10. Before discussing the merits of the issue, it is appropriate to examine the evidence adduced by the parties in respect of aforesaid issue. The plaintiff deposed that he is a practicing advocate who instituted the present suit for recovery of amount Rs.600,000/- as professional fee. He admitted that he had met the defendant in Karachi and represented him before the Commissioner Inland Revenue (Appeals). During cross-examination, however, he made several material admissions. He acknowledged that the alleged Power of Attorney executed by Abdul Hai had not been produced in evidence. He admitted that he had neither produced any litigation fee certificate, invoice, receipt, bill, ledger, nor any other documentary record evidencing the alleged professional charges. He conceded that no independent witness had been examined to establish either his engagement by the defendant or the alleged agreement regarding professional fee. The plaintiff admitted that documents Ex.P-8 to Ex.P-12 were unattested, that no invoice relating to the legal notice had been produced, that the defendant was a person of advanced age, and that the plaint bore his thumb impression. He denied the suggestion that he had fraudulently obtained Rs.12,84,000/- from the defendant on the pretext of depositing tax.

11. The testimony of the plaintiff, is not supporting the contents of plaint. The alleged Power of Attorney, which constituted the primary document to establish his authority and engagement, was withheld without any plausible explanation. Likewise, despite claiming professional charges of Rs.600,000/-, the plaintiff failed to produce any satisfactory evidence, such as a fee agreement, invoice, receipt, ledger,

billing record or acknowledging the agreed fee. For a practicing advocate, the complete absence of any documentary record relating to a substantial professional claim is a significant omission and renders his assertion regarding the agreed remuneration inherently doubtful. The plaintiff did not produce witness to prove either his appointment by the defendant or the alleged agreement regarding professional charges. Even though he claimed to have represented the defendant before the tax authorities, no official from the Federal Board of Revenue, no attesting witness, nor any other independent person was produced to support his version. The evidentiary value of the documents relied upon by the plaintiff is diminished by his admission that Ex.P-8 to Ex.P-12 are unattested. Similarly, the legal notice, unsupported by any invoice or contemporaneous record of demand, cannot by itself establish the existence of a contractual liability. The plaintiff denied the allegation that he had fraudulently obtained amount of Rs.12,84,000/- from the defendant, such denial does not advance his own case. It is incumbent upon him to affirmatively prove the alleged agreement for professional services and the agreed fee through cogent and convincing evidence, which he has failed to do. Accordingly, the plaintiff's testimony, standing alone and unsupported by reliable documentary or independent evidence, is insufficient to establish the alleged agreement regarding professional charges. His repeated admissions regarding the non-production of material documents and absence of corroborative evidence materially impair his credibility. Consequently, his testimony does not support the contents of as averred in plaint.

12. In rebuttal, the defendant appeared as DW-1 and deposed that he met the plaintiff at the office of his cousin, where the plaintiff introduced himself as a tax consultant. According to him, after receiving a tax notice, he handed it over to the plaintiff for necessary action. He denied having requested the plaintiff to deposit Rs.1,285,000/- with the FBR on his behalf or having agreed to refund the said amount. He stated that when another tax notice demand amount Rs.1,60,000/- was received, the plaintiff demanded Rs.1,00,000/- as his professional fee. Upon his refusal to pay the said amount, the plaintiff stopped communicating with him. The defendant stated that Muhammad Afzal, an estate dealer, was present when he first met the plaintiff. He admitted that he had not annexed FBR notice relating to Rs.1,285,000/- with his written statement and had failed to produce Saleem Habib, despite citing

him as a witness. He admitted that he had received the plaintiff's legal notice but had not replied to it. He conceded that the alleged payment of professional fee did not take place in the presence of either Saleem Habib or Muhammad Afzal. He denied that he had engaged the plaintiff to pursue appeals before the Commissioner Land Revenue (Appeals) for Tax Years 2014 to 2017 or that he was deposing falsely. The burden to prove this issue squarely rested upon the plaintiff. The real controversy is whether the parties had agreed upon professional charges of Rs.150,000/- per appeal, aggregating Rs.600,000/-, and whether the said amount remained payable. In a suit founded upon an alleged oral agreement, the plaintiff was required to establish the existence of the agreement, its essential terms, and the defendant's liability through cogent, reliable and convincing evidence.

13. The plaintiff appeared as PW-1 and deposed that he is a practicing advocate who represented the defendant before the Commissioner (Appeals) in four tax matters and that the parties had orally agreed upon a professional fee of Rs.150,000/- per appeal, aggregating Rs.600,000/-. He made several material admissions. He acknowledged that he had not produced the alleged Power of Attorney, the original Vakalatnama, any fee agreement, litigation fee certificate, invoice, receipt, bill, ledger, or any contemporaneous record showing that the defendant had agreed to pay the claimed amount. He admitted that no independent witness had been produced to prove either his engagement or the alleged agreement regarding professional charges. He conceded that documents Ex.P-8 to Ex.P-12 were unattested. Although he denied the defendant's allegation that he had obtained Rs.12,84,000/- on the pretext of depositing tax, such denial by itself does not establish his own claim.

14. The plaintiff failed to discharge the burden rest upon him. No written fee agreement, engagement letter, invoice, receipt, billing record, ledger or correspondence acknowledging the agreed fee has been produced. Even the documents constituting the best evidence of his engagement, namely the original Vakalatnama and the alleged Power of Attorney, were withheld without any satisfactory explanation. Their non-production attracts an adverse presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that, had they been produced, they would not have supported the plaintiff's case. Likewise, the plaintiff did

not examine any independent witness to corroborate either his appointment by the defendant or the alleged agreement regarding professional charges. His entire case rests upon his own interested testimony. Although filing appeals establishes that legal services were rendered, it does not by itself prove the agreed remuneration. In the absence of any documentary or independent evidence, the alleged fee of Rs.600,000/- remains unsubstantiated. The documentary evidence relied upon by the plaintiff is equally insufficient. Similarly, the legal notice only reflects a unilateral demand and cannot, by itself, create or prove a contractual liability. The plaintiff's admission that Ex.P-8 to Ex.P-12 are unattested further diminishes their evidentiary value.

15. On the other hand, the defendant appeared as DW-1 and denied having agreed to pay the alleged fee. He stated that the plaintiff had already received professional charges and that the subsequent dispute related to the alleged tax deposit. The defendant admitted that he had not produced certain supporting witnesses or documents and had not replied to the plaintiff's legal notice. These omissions may weaken the defence; however, it is a settled principle of civil law that a plaintiff must succeed on the strength of his own evidence and not on the weakness of the defence. Similarly, mere non-reply to a legal notice does not amount to an admission where the underlying liability is seriously disputed. Upon an overall appraisal of the evidence, He has, however, failed to prove through cogent, reliable and independent evidence that the parties had agreed upon professional charges of Rs.150,000/- per appeal or that the defendant became legally liable to pay the aggregate amount of Rs.600,000/-.

16. Consequently, the plaintiff has failed to discharge the burden placed upon him under Articles 117 and 118 of the Qanun-e-Shahadat Order, 1984. Accordingly, Issue No.1 is answered in the negative and against the plaintiff.

ISSUE NO.2

Whether the plaintiff has no cause of action or locus standi to file the instant suit? OPD

17. The burden to prove this issue rested upon the defendant. The expressions *cause of action* and *locus standi*, though often used

together, are conceptually distinct. A cause of action comprises the bundle of material facts which entitle a plaintiff to seek relief from the Court, whereas locus standi denotes the legal capacity or competence of a person to institute the proceedings. In the present case, the plaintiff has pleaded that he was engaged by the defendant as a tax consultant/advocate, rendered professional services before the Commissioner Inland Revenue (Appeals), and that despite repeated demands, he failed to pay professional charges amount of Rs.6,00,000/-. These averments, if assumed to be correct for the limited purpose of maintainability, undoubtedly disclose a cause of action requiring adjudication. Whether the plaintiff ultimately succeeds in proving these assertions is a matter entirely different from the existence of a cause of action. Similarly, the plaintiff, being the person who allegedly rendered professional services and claims entitlement to recover his professional fee, is the proper person to institute the present proceedings. The defendant has not produced any convincing evidence or cited any legal provision to establish that the plaintiff lacked the legal capacity to maintain the suit. It is well settled that failure to prove a claim on merits does not necessarily imply absence of a cause of action or locus standi. The plaintiff's suit has failed because he could not substantiate the alleged agreement regarding professional charges through reliable evidence, not because he was incompetent to institute the proceedings. Accordingly, the defendant has failed to discharge the burden of proof cast upon him. This issue is answered in the negative and against the defendant.

ISSUE NO.3

Whether the suit of the plaintiff is liable to be dismissed under Order VII Rule 11 CPC? OPD

18. The burden to prove this issue also rested upon the defendant. Order VII Rule 11 CPC empowers the Court to reject a plaint only where any of the statutory grounds expressly mentioned therein are attracted, such as where the plaint does not disclose a cause of action, where the relief claimed is undervalued and the deficiency is not rectified despite direction of the Court, where the plaint is insufficiently stamped and the deficiency remains uncorrected, where the suit appears from the statements contained in the plaint to be barred by law, or where any

other condition prescribed by the Rule exists. For deciding an application under Order VII Rule 11 CPC, the Court is confined to the averments contained in the plaint and the documents relied upon by the plaintiff. The defence set up in the written statement and the evidence subsequently adduced by the parties are wholly irrelevant for determining the applicability of the Rule.

19. In the present case, the plaint specifically pleads that the plaintiff rendered professional services to the defendant pursuant to an agreement regarding professional charges and that the defendant failed to pay the agreed amount despite service of legal notice. These averments disclose a complete cause of action for institution of the suit. Furthermore, the defendant has neither identified nor proved the existence of any statutory bar which would render the suit liable to rejection under Order VII Rule 11 CPC. Although, after recording evidence, this Court has found that the plaintiff failed to prove his entitlement to recover the claimed amount, such failure on merits cannot retrospectively attract the provisions of Order VII Rule 11 CPC. Rejection of a plaint and dismissal of a suit after full trial operate in entirely different fields. Where evidence has been recorded and the controversy adjudicated on merits, the appropriate consequence is dismissal of the suit and not rejection of the plaint. Accordingly, the defendant has failed to establish that the plaint was liable to rejection under Order VII Rule 11 CPC. This issue is answered in the negative.

ISSUE NO.4

Whether the plaintiff is estopped by his own words and conduct? OPD

20. The burden of proving this issue rested upon the defendant. The doctrine of estoppel, embodied in Article 114 of the Qanun-e-Shahadat Order, 1984, precludes a person from denying a state of affairs which he has intentionally caused another to believe and act upon to his detriment. To successfully invoke the doctrine, the defendant must establish: (i) a clear representation or conduct attributable to the plaintiff; (ii) reliance upon such representation by the defendant; and (iii) alteration of the defendant's position to his prejudice on the faith of that representation.

21. In the present case, the defendant has merely taken a general plea that the plaintiff is estopped by his own words and conduct. However, no specific representation, assurance, admission or conduct on the part of the plaintiff has been pleaded or proved from which an estoppel could legally arise. Likewise, no evidence has been produced to demonstrate that the defendant altered his position or suffered any detriment by acting upon any representation made by the plaintiff. The evidence produced by the defendant primarily relates to his denial of the alleged agreement regarding professional charges and his assertion that disputes arose regarding tax payments. Even if these assertions are accepted for the sake of argument, they do not constitute the ingredients necessary to attract the doctrine of estoppel. It is pertinent to observe that the dismissal of the plaintiff's suit is based upon his failure to prove the alleged agreement regarding professional remuneration through cogent and convincing evidence. Such failure to discharge the burden of proof cannot, by itself, give rise to estoppel. The concepts of failure of proof and estoppel operate in distinct legal spheres and cannot be conflated. The defendant has, therefore, failed to establish the essential ingredients of estoppel by producing reliable oral or documentary evidence. Accordingly, this issue is answered in the negative.

RELIEF

22. In view of the findings recorded on issues supra, the suit of the plaintiff is dismissed. In the circumstances of the case, the parties are left to bear their own costs. Decree sheet be prepared accordingly. File be consigned to the record room after due compliance.

Announced:
25.07.2026

Ahtsham Muqarrab,
Civil Judge Class-1st
Islamabad (East)

It is certified that this judgment consists of **10** pages, each of which have been dictated, corrected, read, and signed by me.

Announced:
25.07.2026

Civil Judge Class-1st
Islamabad (East)

DECREE IN ORIGINAL SUIT
(UNDER ORDER XX RULE 6,7 CPC)
IN THE COURT OF AHTSHAM MUQARRAB, CIVIL JUDGE,1ST CLASS, ISLAMABAD (EAST)

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....Plaintiff

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Plaint presented on **20.06.2023**

The above titled suit presented today before me (Ahtsham Muqarrab, Civil Judge 1st Class, Islamabad (East)) for the final disposal in presence of learned counsel for the parties.

2. **It is ordered that** the suit filed by the plaintiff is hereby **dismissed**. No order as to cost. Decree sheet be prepared accordingly. File be consigned to record room after its due completion.

MEMO OF COSTS

PLAINTIFF	COST OF FILE	DEFENDANT
3500.00	Stamp for the plaint.	00.00
05.00	Stamp for power.	05.00
500.00	Stamp for exhibits.	00.00
00.00	Pleaders Fee.	00.00
00.00	Subsistence for witnesses.	00.00
00.00	Commission Fee.	00.00
1050.00	Service of process.	00.00
00.00	Misc.	00.00
4550.00	**Total**	**05.00**

3. Given Under my hand and seal of this Court on **25-07-2026.**

Ahtsham Muqarrab,
Civil Judge Class-1st
Islamabad (East)