

IN THE HIGH COURT OF SINDH AT KARACHI

Revision Application No. 123 of 2024

Salman Fareed Applicant

Versus

Mst. Asma Farooq Respondent

Mr. Muhammad Asif Malik, Advocate for the Applicant.

Mr. Hussain Bux Saryo, Advocate for the Respondent.

Dates of hearing : 18.03.2025, 07.04.2025 & 20.05.2025.

Date of announcement : 21.07.2025.

JUDGEMENT

Muhammad Jaffer Raza, J: - The Instant Revision Application has been preferred by the Applicant impugning the order dated 02.08.2024, passed in Summary Suit No.15/2024 preferred by the Respondent. It is noted that the above Summary Suit was preferred by the Respondent and subsequently leave to defend application was preferred by the Applicant which was granted, however, subject to deposit of solvent surety in the sum of Rs.2 million vide Impugned order.

2. Counsel for the Applicant has submitted that there is a triable dispute between the parties and therefore his leave to defend application preferred in the above Summary Suit was granted. He has further argued that he is not aggrieved with the grant of the said application, however, he is only aggrieved with the condition stipulated therein i.e. deposit of solvent surety of Rs.2 million. He has submitted that he has made out a case for unconditional leave to defend, and deposit of surety is tantamount, in his peculiar financial condition, as dismissal of the leave to defend application submitted by him. He therefore prayed that the leave to defend application preferred by him, may be allowed unconditionally and he may be allowed to defend the above Summary Suit.

3. Conversely, learned counsel for the Respondent has argued that the Impugned order requires no interference of this Court as the same is legally sound and the leave to defend application preferred by the Applicant has been allowed. Therefore, it is contended that the Applicant ought not to be aggrieved by the Impugned order as he has only been directed to deposit the solvent surety. It is further contended by the learned counsel that the absence of the deposit of surety will make the Summary Suit redundant and there is possibility that the Applicant will not be able to satisfy the decree in case the suit is decreed in favour of the Respondent.

4. I have heard both the learned counsels for the parties and perused the record. The condition on which leave to defend application has been allowed have been very clearly elaborated in the following cases: -

- **Muhammad Ali Nawaz and 3 others vs. Sh. Muhammad Aslam¹**
- **Pakistan Water and Power Development Authority (WAPDA) vs. Messrs Sea Gold Traders through Partners and 2 others²**

5. In the case of **Pakistan Water and Power Development Authority (WAPDA)** (supra) it was held as under: -

“Where there arose triable issues for adjudication, leave normally is granted unconditionally and where defence is patently dishonest or unreasonable, when it could not reasonably be expected to succeed, the leave can be granted conditionally. The issue for grant or not to grant leave, and whether to grant or not to grant conditional leave can be summarized in the light of decisions of various Courts right from Fine Textile Mills case reported in PLD 1969 SC 163 as under:

- (i) Leave to defend in a suit instituted under Order XXXVII, Civil Procedure Code shall be granted by Court where the facts disclosed by the defendant on affidavit make out a case of shifting of onus on plaintiff.*
- (ii) Leave may also be granted on any other ground or facts which the Court considers sufficient to support the application for grant of leave.*
- (iii) Refusal to grant leave is a rare phenomena confined to cases where no defence at all is disclosed by the defendant.*
- (iv) No hard and fast rule can be laid down for grant of conditional or unconditional leave.*
- (v) Where facts disclosed in affidavit are such that it becomes necessary for the plaintiff to prove consideration of the instrument leave to defend may be granted unconditionally.*

¹PLD 2010 Lahore 219

²2003 CLD 392

- (vi) Leave can be granted unconditionally where execution of the negotiable instrument is denied and from material on record it is not possible for Court to record a positive finding at the stage of consideration of application.*
- (viii) There can be other circumstances in which unconditional leave can be granted.*
- (ix) Where defence disclosed found by the Court illusory or lacking bona fides. Leave can be granted conditionally.”*

6. I have perused the Impugned order and the leave to defend application submitted by the Applicant. The Applicant has categorically denied any monetary transaction with the Respondent and has further averred that prior to filing of the above-noted Summary Suit the Applicant had issued a legal notice to the Respondent and subsequently filed a suit for cancellation of cheques, which is pending adjudication. Further, it has been contended by the Applicant that the relevant bank was informed prior in time not to encash the subject cheques. It is specified that the grounds raised herein may not be construed as grounds on which the leave to defend application may be granted in all cases. The same are peculiar to the instant case and further deliberation in this regard is specifically withheld as the same may impact the final judgment to be passed by the learned trial court.

7. It is held that the Applicant in the instant case has made out the case for shifting of the onus entirely upon the Plaintiff (Respondent) in the summary suit. The defence taken by the Applicant is neither vague nor illusory. In this regard the learned trial Court has erred in imposing the condition for grant of such leave.

8. In light of what has been held above the Impugned order is set-aside. Leave to defend application filed by the Applicant is granted unconditionally. The learned trial court shall proceed with the matter expeditiously, preferably within 60 days from today, without being influenced by any finding in the instant order.

9. Instant Civil Revision Application is allowed in the above terms along with listed application.

JUDGE