

IN THE HIGH COURT OF SINDH, KARACHI
I.A. No.44 of 2022
[Tariq Shafi v. Muhammad Kamran Aftab and another]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Mohammad Abdur Rahman

1. For order on office objection/reply at A.
2. For hg of main case
3. For hg of CMA No. 1229/2022

12.08.2025.

Mr. Atif Hanif, advocate for appellant.
Mr. Hidayat Ali Leghari, advocate for respondent No.1.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: A summary suit was filed by respondent against appellant for recovery of Rs.20,00,000/- (Twenty Lacs) based on two cheques of Rs.10,00,000/- each. After service, appellant filed an application under Order 37 Rule 3 CPC seeking leave to defend the suit which has been dismissed by the impugned order by learned trial Court holding that the application is time barred.

2. Appellant was served on 26.11.2021, whereas, he filed application for leave to defend on 23.12.2021 after the prescribed time of ten days. The case of the appellant is that summons, received by appellant on 26.11.2021, was not in the prescribed form Appendix B Schedule I of CPC and the copy of plaint was also not attached with the summons. Until the appellant appeared before the trial Court, he was not aware of nature of the suit filed against him. He has relied upon 2012 YLR 1694, PLD 1998 Lahore 163, 2010 CLC 1184, 2001 MLD 1759, PLD 1984 Karachi 252, 1993 CLC 2217 and 2003 YLR 2583 in support of his arguments.

3. His arguments have been rebutted by learned counsel for respondent No. 1 stating that against the appellant a criminal case was

also registered, in which, he had appeared on 06.12.2021 and a copy of the plaint was supplied to him by respondent's counsel, hence the argument that he had not received the copy of the plaint is not correct.

4. We have weighed arguments of both parties. It is an admitted position that the summons received by the appellant were not in the prescribed form as mandated by law. Even in the summons, the mandatory period of ten days, in which the appellant was required to file application for leave to defend is not mentioned. The statement to which the counsel for respondent has referred to in his arguments for establishing that the copy of the plaint was received by the appellant is also vague in that it does not show that the action of receiving a copy of the plaint by the appellant was verified by any Court Officer or even such action took place in his presence. Be that as it may, it is not a law that if the defendant in the summary suit is given a copy of the plaint when he appear in criminal case, it would be held as a good service. The law on this point is very clear that the summons shall be in the prescribed form, as explained above, and with the summons a copy of the plaint shall be attached to show nature of the suit enabling the defendant to file an application for leave to defend the suit within the prescribed period of ten days.

5. This procedure has apparently been not followed in the present case. We, therefore, feel that although the summons were served upon the appellant on 26.11.2021 but till the time he appeared in the Court on 22.12.2021 and 23.12.2021 and filed application for leave to defend the suit, officially and on record the copy of the plaint was not handed over to him. Therefore, the impugned order rejecting his request for leave to defend the suit does not seem to be equitable.

6. More so, on 30.04.2024, when this appeal was taken up for hearing, the appellant was ordered to deposit the decretal amount of Rs.20,00,000/- with Nazir of the Court which he has complied with. We feel that the claim of the respondent is, therefore, secured and it would

be in the interest of justice to allow the appellant to contest the matter on merits.

7. We, therefore, set aside the impugned order, grant leave to defend the suit to the appellant conditionally in the sum of Rs.20,00,000/-, which he has already deposited with Nazir of the Court. Trial Court is directed to decide the matter expeditiously, preferably within three months from the date of receipt of this order.

The appeal is accordingly disposed of in above terms along with pending application.

JUDGE

JUDGE

HANIF