

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Appeal No. S-21 of 2025

Appellant : Munir Ahmed s/o Moula Bux, Umrani
Through Mr. Ghulam Abbas Akhter, Advocate

Respondent : Mr. Zulfiqar Ali Naich, Assistant A.G

Date of hearing : 08.09.2025
Date of order : 26.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Appellant Munir Ahmed has invoked appellate jurisdiction of this court against an order and decree dated 25.03.2025 passed by the court of Additional District Judge Moro, in a summary suit filed under order XXXVII rule 3 of the Code of Civil Procedure, 1908, wherein the service was affected on the defendant/appellant on 24.02.2025 and the leave to defend application was filed on 07.03.2025. This factual matrix reveals a delayed application for leave to defend filed, clearly exceeding the mandatory ten days period prescribed under Article 159 of the Limitation Act, 1908. The appellant has admitted that payment of Rs. 300,000/- has already been made in presence of witness, no condonation application was filed for the delay, and no affidavit was submitted regarding persons before whom the amount was allegedly paid in lieu of the cheque.

2. The impugned order dated 25.03.2025 passed by the Additional District Judge, Moro, demonstrates complete adherence to established legal principles and statutory requirements. The trial court correctly identified that the defendant was duly served with summons on 24.02.2025, and the application for leave to defend filed on 07.03.2025 exceeded the statutory period prescribed under Article 159 of the Limitation Act, 1908. The court properly noted that the defendant had not complied with the mandatory requirement of filing the application within the stipulated period, nor had he moved any application seeking condonation of delay.

3. Article 159 of the Limitation Act mandates that leave to defend applications in summary suits must be filed within ten days from the date of service of summons. This period is mandatory and cannot be extended by the court without a proper application for condonation of delay. The law on this point is well settled that unless sufficient cause is shown and condonation is sought, the delay cannot be excused. As established in judicial precedent,

delay under Section 5 of the Limitation Act cannot be condoned without an application, as the delay of each day must be explained.

4. The procedural framework governing summary suits represents a carefully crafted legislative scheme designed to balance commercial efficiency with procedural fairness. Summary suits operate under a fundamentally different paradigm compared to regular civil proceedings. In summary procedures, defendants do not have an automatic right to defend but must seek leave from the court within the prescribed period. The essence of Order XXXVII CPC is to eliminate undue interference by defendants who do not have a substantive defence and to aid in the rapid disposition of cases.

5. The distinction between summary and regular trial procedures is fundamental to understanding the correctness of the impugned order. Summary suits are designed for expeditious disposal of matters involving liquidated demands, negotiable instruments, and written contracts where the liability is clear. Unlike regular trials where plaintiffs must prove their case through comprehensive evidential proceedings, Order XXXVII shifts the burden to defendants to demonstrate a substantial defence. The procedure requires strict adherence to timelines, with Form No. 4 of Appendix B specifically informing defendants of the ten days limit.

6. Regular trials, in contrast, allow defendants an inherent right to file written statements and defend without seeking court permission within thirty days, compared to ten days for leave to defend applications in summary suits. Regular proceedings involve comprehensive evidence recording, cross-examination, and detailed proceedings, allowing broader scope for defence without the stringent substantial defence test applied in summary procedures.

7. The appellant's grounds of appeal reveal fundamental misconceptions about the nature of summary proceedings. The contention that the trial court acted on surmises and conjectures without applying judicial mind fails to recognize that summary procedures are specifically designed for cases where the defendant's liability is *prima facie* established. The allegation of misreading evidence is misplaced since in summary suits, the court's primary function at the leave to defend stage is to determine whether the application is filed within time and whether the defendant has disclosed facts indicating a substantial defence.

8. The appellant's claim that the trial court delivered the order in a cursory manner without hearing demonstrates a misunderstanding of

summary procedure requirements. The court was obligated to dismiss the time-barred application regardless of the merits of any potential defence. The assertion that the court passed an ex-parte order is factually incorrect, as both parties were represented by counsel and submissions were heard before the order was passed.

9. The elaborate factual narrative presented by the appellant regarding property agreements, cancellation arrangements, and payment of consideration amounts appears to be an attempt to convert a simple recovery suit based on a dishonoured cheque into a complex commercial dispute. This approach fundamentally misunderstands the purpose of summary procedures, which are designed to prevent such dilatory tactics. The appellant's admission of payment, combined with the absence of supporting documentation or witness affidavits, further weakens any potential defence.

10. The trial court's decision to decree the suit for Rs. 300,000/- along with bank markup rate is entirely justified under the circumstances. The respondent successfully established his prima facie case through the summary suit procedure, while the appellant failed to comply with the most basic procedural requirement of timely filing the leave to defend application.

11. The appellant's reliance on alleged concealment of facts and mala fide intentions of the respondent cannot override the mandatory statutory requirements governing summary suits. Even if these allegations had merit, which is doubtful given the appellant's admissions, they should have been raised through a properly filed and timely leave to defend application accompanied by appropriate documentary evidence and witness affidavits.

12. The present appeal lacks any sustainable legal foundation and appears to be a dilatory tactic designed to frustrate the legitimate rights of the respondent. The appellant has failed to identify any error of law or jurisdiction in the impugned order. The trial court correctly applied Article 159 of the Limitation Act and the provisions of Order XXXVII CPC in dismissing the time-barred application and decreeing the summary suit.

13. Courts have consistently emphasized that in time-barred proceedings, the defaulting party must explain the delay of each day, and sufficient cause must be shown by the person seeking condonation of delay. The appellant's counsel's argument that the delay of one day should be

condoned in the interest of justice fails to acknowledge that no condonation application was filed, making such consideration legally impermissible.

14. The dismissal of this civil appeal in limine is warranted as it seeks to challenge a legally sound order passed in strict accordance with statutory provisions. The appeal is frivolous and vexatious, failing to demonstrate any error of law or procedural impropriety in the trial court's decision. The summary procedure was correctly applied, maintaining the essential distinction between expedited recovery suits and regular civil trials that forms the foundation of commercial dispute resolution.

15. The expeditious disposal of this appeal reinforces the legislative intent behind Order XXXVII CPC to provide swift remedies for legitimate creditors while maintaining procedural fairness within the established legal framework. The impugned order dated 25.03.2025 stands as a proper application of law that deserves affirmation rather than interference through appellate proceedings. Accordingly, appeal stands dismissed in *liminie*, with no order as to costs.

J U D G E