

IN THE HIGH COURT OF SINDH, KARACHI

Ist Appeal No. 137 of 2025

[Sudhamo S/o Leela Ram Vs. Ghirdhari Lal Chag S/o Peero Mal]

PRESENT:

Mr. Justice Arshad Hussain Khan

Mr. Justice Amjad Ali Sahito

Appellant Through Mr. Shahzad Ali, Advocate.

Date of Hearing: 29.04.2026

Date of Decision: 29.04.2026

ORDER

ARSHAD HUSSAIN KHAN, J.- Through the instant First Appeal under Section 96, C.P.C., the appellant has challenged the Judgment and Decree dated **11.09.2025**, passed by the learned Xth Additional District Judge, Karachi-South, in Summary Suit No. 285 of 2024, whereby the suit filed by the respondent under Order XXXVII, C.P.C. for recovery was decreed in the sum of Rs.96,60,000/-.

2. Briefly stated the facts of the case are that in the month of August 2023 the appellant/defendant had purchased 8 Buffaloes along with their feed and 12 Cows for a total sale consideration amount of Rs.96,60,000/- towards the sale consideration, the appellant / defendant issued a cheque bearing No. 01795405 dated 15.09.2023, Bank Islami Pakistan Limited Baqai University Branch, Karachi, amounting to Rs.96,60,000/-. Subsequently, the respondent/plaintiff presented the said cheque before the Allied Bank Limited, Branch Lucky Star, Karachi, for clearance in his Account No. 00100019375540015. The said cheque was bounced on 26.09.2023 with the reasons given by the bank as “Drawer’s signature differ from specimen”. Despite repeated demands, the amount remained unpaid, whereupon the respondent/plaintiff also lodged FIR No.334/2024 under Section 489-F, P.P.C., and thereafter instituted the subject summary suit for recovery.

Upon service, the appellant entered appearance and sought leave to defend, which was allowed conditionally, vide order dated **13.02.2025**. However, despite sufficient opportunity, the appellant failed to furnish the required surety; consequently, the matter proceeded *ex parte*. The respondent led *ex parte* evidence in support of his claim, and the learned trial court, after hearing the parties, decreed the suit, vide the impugned judgment and decree. Hence, the present appeal.

3. Learned counsel for the appellant, while reiterating the contents of the memo of appeal, contends that the impugned judgment and decree are unsustainable and based on misreading and non-reading of material evidence. It is further contended that the dispute arises out of purchase of 8 buffaloes and 12 cows, involving contested questions of fact and, therefore, was not amenable to summary procedure under Order XXXVII, C.P.C. It is also argued that after grant of leave to defend, the matter ought to have proceeded on merits, and non-furnishing of surety should not have resulted in ex-parte proceedings. Lastly, it is urged that the decree exceeds the admitted amount, resulting in unjust enrichment. Hence, it is prayed that the impugned judgment and decree be set aside and the matter be remanded to the learned trial court for fresh decision on merits.

4. On the other hand, learned counsel for the respondents, while supporting the impugned judgment and decree, contends that the same has been passed strictly in accordance with law and does not call for any interference by this Court. It is submitted that the appellant, having failed to comply with the order whereby conditional leave to defend was granted to him to defend the suit, rightly attracted the consequences thereof, and the learned trial court was fully justified in proceeding against him and decreeing the suit. Learned counsel further submits that the present First Appeal is devoid of merit and liable to be dismissed with costs.

5. Heard learned counsel for the parties and perused the material available on the record.

From the record, it transpires that vide order dated **13.02.2025**, the learned trial court granted conditional leave to defend subject to furnishing security equivalent to the cheque amount within one month. Admittedly, despite sufficient opportunity, the appellant failed to comply with the said condition. Consequently, vide order dated 11.09.2025, the learned trial court proceeded ex- parte against the appellant.

6. It is observed that the primary purpose of *Order XXXVII, C.P.C.* is to facilitate the expeditious disposal of cases involving commercial transactions and negotiable instruments. In such summary proceedings, the defendant does not possess an inherent right to defend the suit; rather, such a right is contingent upon obtaining leave from the court. In the instant case, the learned trial court exercised its discretion by granting *conditional leave* to the appellant, subject to the furnishing of security equivalent to the cheque amount. This condition is a standard judicial safeguard to ensure that the recovery of documented debt is not frustrated by protracted litigation. The appellant's failure to comply with this condition, despite being afforded an

opportunity, attracted the consequences under *Rule 3(6) of Order XXXVII*, whereby the allegations in the plaint are deemed admitted and the plaintiff becomes entitled to a decree¹. Even in appeal, such disability continues and the defendant cannot claim any better right to contest the case on merits merely by filing an appeal.

7. In the circumstances, the appellant cannot now be permitted to raise the plea that the cheque in question was issued as a guarantee or as a blank instrument, and not in discharge of any legally enforceable liability of Rs.96,60,000/-, as such, defences could only have been agitated upon compliance with the conditional order and by availing leave to defend. His failure to do so entails the presumption under Section 118 of the Negotiable Instruments Act, 1881, in favour of the holder, and the averments in the plaint are deemed to be admitted. Guidance is sought from the judgment of the Supreme Court of Pakistan in the case of *Muhammad Ramzan and others v. Ghulam Qadir* (2011 SCMR 659), wherein it has been authoritatively held that a defendant who fails to comply with a conditional order granting leave to defend cannot subsequently assail the decree on merits.

8. In view of the above, no illegality or perversity is found in the impugned judgment and decree warranting interference in appellate jurisdiction. The only scope available to the appellant was to demonstrate a legal error in passing the decree despite non-compliance of the conditional order; however, no such ground has been made out. Consequently, the instant appeal, being devoid of merit, is hereby dismissed.

JUDGE

JUDGE

jamil

¹ *Haji Ali Khan & Company, Abbottabad and 8 others v. M/s. Allied Bank of Pakistan Limited, Abbottabad*, [PLD 1995 SC 362], *Naeem Iqbal v. Mst. Zarina* [1996 SCMR 1530] and *Col. (Retd.) Ashfaq Ahmed and others v. Sh. Muhammad Wasim* [1999 SCMR 2832].