ORDER SHEET

# IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD.

1st Appeal No. 16 of 2025

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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1. For hearing of CMA 340/2025.
2. For hearing of main case.

24.11.2025.

Mr. Saeed Ahmed Janwari, Advocate for appellant.

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This 1st Appeal has been filed in the High Court's Circuit Court Hyderabad, by the appellant/defendant, Noor Mohammad Khaskheli, against the judgment dated 15.01.2025 passed by the learned 09th Additional District Judge, Hyderabad, in Summary Suit No.157 of 2014 filed by the respondent/plaintiff, Allah Bachayo Mallah. When this matter was instituted on 30.01.2025 in this (High) Court, the appellant/defendant obtained an ad-interim order for suspension of the judgment and decree subject to the deposit of the solvent surety of Rs.28,00,000 within 15 days. Yet the order passed by this (High) Court has not been complied with. Despite several dates of hearing, no progress has been made; the appellant/defendant has not submitted any solvent surety to the Additional Registrar of this Court.

2. The central defence taken by the appellant/defendant, as articulated during the course of submissions today, was that Noor Muhammad Khaskheli, who was the father of one Mir Muhammad Khaskheli, had no dealings with Allah Bachayo Mallah. Counsel submitted that it was the appellant/defendant's son, Mir Muhammad Khaskheli, who had business dealings with Allah Bachayo Mallah. There was neither any business nor commercial dealings between the appellant/defendant, Noor Muhammad Khaskheli, and the respondent/plaintiff, Allah Bachayo Mallah. Therefore, Counsel contended that as there was no underlying agreement between the applicant/defendant and the respondent/plaintiff, a summary suit involving a dishonoured cheque could not be maintained/sustained as there was no apparent "consideration" for the cheque between the litigating parties. Finally, appellant/defendant submitted that he was not given the opportunity of a hearing/defence, and had been condemned unheard. Hence, the impugned judgment was contrary to law and liable to be set aside.

3. Heard Counsel and perused the record as available in the file. Regarding the right of hearing, it appears from the perusal of the record that on 19.12.2024, a conditional leave was granted by the IXth Additional District Judge, and time was extended to the defendant to do the needful. As on 06.01.2025 and again on 11.01.2025, time was extended, but the conditional leave amount was again not deposited by the appellant/defendant. Finally, exparte proceedings were initiated against the appellant/defendant on 15.01.2025. Furthermore, at no point did the applicant/defendant submit to the trial Court any “special condition” for his inability to appear and submit a solvent surety. Ultimately, even though the cheque dishonoured went unrebutted during the trial, as the applicant/defendant’s leave to defend application is/was available on record, in the facts and circumstances of the case, it cannot be said that he was condemned unheard. The applicant/defendant must now face the consequences of his inaction and/or conduct, as discussed above.

4. The appellant/defendant’s contention that he had no relationship with his son’s business partner, i.e. the respondent/plaintiff, and hence, the cheque had no consideration, does not inspire confidence. Clearly, the appellant wrote a cheque for his son. This cheque was drawn on the father’s bank account. There was no reason for the father to issue the cheque favoring the respondent/plaintiff unless he had some cause to do so. In the facts and circumstances of the case, this (“reason”) was the inter se relationship between the parties themselves, which included the appellant/defendant, his son and his son’s business partner, the respondent/plaintiff. As per the plaint, the appellant/defendant’s cheque was the action of a supportive father to help out his son from his (son’s) alleged liability and to facilitate the compromise in the criminal proceedings, which proceedings eventually led to the acquittal of the appellant/accused. This was never expressly denied in the applicant/defendant’s leave to defence application, and as the defence of the applicant/defendant remained unchallenged because he neither furnished any solvent surety in terms of the leave granting order passed by the trial Court nor submitted any “special conditions” for this Court to consider, and meanwhile the cheque issued by the applicant/plaintiff as part of the compromise in the criminal proceedings, bounced, the respondent/plaintiff succeeded in his claim against the appellant/defendant. Even if there were no written agreement, the Appellant

cannot wriggle out of his liability for the dishonoured cheque triggered under Order 37 CPC, as based on the whole facts and circumstances available on record, the handing over of the cheque which ultimately bounced, was based on relationship which may be reasonably inferred from these facts and circumstances admitted to this effect by the appellant/defendant. Further, the appellant/defendant had also not denied his signature on it.

5. The perusal of the impugned judgment does not disclose any defect. It appears that the cheque was dishonoured on the grounds of insufficient funds, which information has been brought on record during evidence, and the claim falls squarely within the contours of Order 37 Rule 3 C.P.C.

6. Given the above reasons, I do not find any merit in this 1st Appeal and the same is dismissed along with the listed application.

JUDGE

Tufail