

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1. Ist. Appeal No.55 of 2013.

2. R.A. No.128 of 2013.

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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19.02.2018.

Syed Zakir Hussain, Advocate for the appellant in Ist. Appeal No.55 of 2013.

Mr. Pirbhulal U. Goklani, Advocate for the respondent.

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Learned counsel for the appellant who is also applicant in R.A. No.128/2013, states that original cheque in the matter was not brought up and that territorial jurisdiction in the matter was not available. He further contends that the appellant / applicant was acquitted in criminal proceedings arising from the same dishonouring of the cheque. It is further contended on part of the learned counsel for the appellant that the leave was granted with the condition of deposit of security which was only limited for three days and as such the revision was filed and after the suit was dismissed the appeal has been preferred. It is also contended that the respondent has effected their appearance only after suspension of the decree in the year 2014. In support of his contention he relies upon the cases of **Hussain Baksh Awan v. Anjum Farooq (2013 MLD 769)**, **United Bank Ltd. v. Azmat Trading Co. (Pvt.) Ltd. (2001 CLC 1172)**, **Abrar Ahmed v. Zahoor Ahmed (2009 CLC 32)**, **Bashir Ahmed v. Skyline Lahore (Pvt.) Company (2012 CLC 1546)** and **Muhammad Asghar v. Muhammad Hussain (2010 CLC 22)**.

2. Learned counsel for the respondent states that the pleas as are now being raised cannot be considered as the same were taken available at the time of granting of leave. It is further contended on part of the learned counsel that the revision application has become infructuous, as the subject suit already stood decreed. It is also contended on part of the learned counsel for the respondent that contention as to the leave to defend was not availed by the appellant / applicant and as such the same is not liable to be considered.

In support of his contention, he relies upon the cases of **Syed Nazar Hussain Shah v. Muhammad Ameer (2010 MLD 910)** and **Muhammad Ramzan v. Ghulam Qadir (2011 SCMR 659)**. Learned counsel for the respondent has given a proposal that instead of considering the case or any other aspect the matter can be decided on one point as to issuance of the relevant cheque / through cheque book from the concerned Bank and in case the same was not available to the appellant / applicant in the year 2007 the decree in suit may not be directed, otherwise his proceedings be dismissed. Learned counsel for the respondent requires time in order to acquire consult from his client in this regard.

The matter is adjourned to 26.02.2018, wherein respondent has the option of coming up to reply as to the proposal made above, failing which the learned counsels having been heard, the matters may be considered for decision.

JUDGE