

## IN THE HIGH COURT OF SINDH, KARACHI

**R.A. No.31 of 2020**

Date	Order with Signature of Judge
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Appellant : Ghulam Mustufa,  
through Mr. Abdul Samad Khattak,  
advocate

***Versus***

Respondent No.1 : Nasir Ali Khan

Respondent No.2 : Vth Addl. District & Session Judge, Karachi,  
West.

Date of hearing : **14.02.2020**

**J U D G M E N T**

**NAZAR AKBAR, J--** This Revision Application is arising out of order dated **22.01.2020** passed by Vth Additional District Judge, Karachi (West) in Summary Suit **No.30/2019**, whereby the trial Court disposed of an application **U/O.XXXVII Rule 2 CPC** filed by the applicant.

2. Briefly the facts of the case are that applicant issued three cheques bearing No. (1) 10033505 of Rs.14,50,000/- (2) 10563073 of Rs.7,50,000/- and (3) 10563072 of Rs.7,25,000/- in favour of Respondent No.1/Plaintiff. The three cheques on presentation for encashment to the bank were dishonored due to insufficient funds. The Respondent No.1 filed summary suit **U/O.XXXVII Rule 1 & 2 CPC** for the recovery of **Rs.29,25,000/-**. On service of summons/notices the applicant filed application **U/O.XXXVII Rule 2 CPC** seeking unconditional leave to defend the summary suit and permission to file written statement. The trial Court keeping in view

the pleadings, after hearing the parties disposed of the application for leave to defend the suit in the following terms:-

The record prima facie shows that the defendant on different occasion issued the cheques in question to the plaintiff which on presentation before the bank dishonored due to insufficient funds. However, the version of the defendant further needs consideration as the actual amount as claimed by the plaintiff in his application to the police was Rs.14,75,000/- while in present suit he claimed Rs.29,25,000/-. The record however shows the defendant has pleaded that the cheques were not issued in consideration of purchased of any plot as alleged by the plaintiff.

In above scenario, the defendant is conditionally allowed leave to defend the suit subject to furnishing security/bank guarantee for an amount of Rs.14,75,000/-.

3. Learned counsel contended that applicant is providing services in the transaction of real estate properties as middle man. Respondent No.1 has neither paid an amount of Rs.29,50,000/- for any plot nor description or the specification of the plot has been mentioned. Learned counsel further contended that Respondent No.1 in his application to the police for lodgment of FIR so also in his Cr.Misc. Application No.414/2019 filed before Hon'ble District & Sessions Judge, Karachi has alleged to have paid an amount of Rs.14,75,000/- which version has been changed in the suit. It is further averred that applicant has also filed civil suit for cancellation of the said cheques before XVI Sr. Civil Judge, West Karachi. It is further contended that no cause of action has accrued against the applicant, however, applicant may be granted unconditional leave to defend the suit. Learned counsel for the applicant has relied upon the case law reported as ***Naveed Haider ..Vs.. Messrs Noman Abid Co. Ltd., (2009 CLD 1271).***

4. I have heard learned counsel for the applicant and perused the record.

5. Learned counsel for the appellant has assailed the order but he was unable to advance plausible defense at least to the extent of half of the amount of total claim of recovery. The trial Court has already given him relief to contest half of the claim unconditionally to defend the suit on the ground that in the application to police for FIR the respondent has claimed only an amount of Rs.14,50,000/- and not Rs.29,25,000/- whereas suit is for recovery of Rs.29,25,000/-. The mala fide of the applicant is also apparent from his conduct that he has filed suit for cancellation of cheques after the cheques were presented for encashment and dishonored to create a defense.

6. In view of above facts, the instant Revision application was dismissed alongwith listed applications by short order dated **14.02.2020** and these are the reasons for the same.

*JUDGE*

Karachi  
Dated:-15.02.2020

SM