

IN THE HIGH COURT OF SINDH, KARACHI

I.A No.106 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

28.04.2025

Mr. Shahzeb Akhtar Khan, advocate for the appellants a/w Khawaja Bilal advocate.

Muhammad Haroon Shaikh, respondent present in person.

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JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Respondent, who is a professional advocate, filed a Summary Suit No.67 of 2023 for recovery of professional fee amounting to Rs.25,00,000/- against appellants, his clients, on the basis of cheque of the even amount issued by later. On being summoned, appellants appeared, filed an application for leave to defend the suit which was allowed conditionally subject to furnishing a solvent surety in the sum of Rs.25,00,000/- within 15 days. It appears that within 15 days the condition was not fulfilled and hence on application under section 148 CPC further time was granted to the appellants to make good of the condition. On failure to abide by the same, their application was dismissed and the suit was decreed in terms of impugned order dated 09.08.2024.

2. Learned counsel for the appellants has argued that the cheque was issued to respondent on condition of grant of bail to the appellants. The respondent was superseded by him and he proceeded with the bail application, hence the conditional cheque had become redundant and on the basis of which the suit could not have been decreed.

3. Be that as it may, we are of a view that the arguments put forward by learned counsel for the appellants have a genesis in merits of the case which are to be considered only in the wake of leave to defend application, the appellants are allowed to participate in the proceedings and file their response. It did not happen due to fault of the appellants and the suit was decreed ultimately.

4. We have seen that there is an endorsement on the back of the cheque, the reason deter for filing the suit, which suggests that amount of the cheque was to be issued to the respondent only in the after math of grant of bail through him. This fact even the respondent has not disputed in his arguments. Since the leave to defend application was dismissed due to fault of appellants to abide by the time line, the effect of such endorsement could not be considered by the trial Court, without which no just decision could be made.

5. In the circumstances, we allow this appeal and consequently application for leave to defend the suit subject to furnishing a solvent surety of the equal amount i.e.Rs.25,00,000/- before the trial Court within 15 days. After the such condition is fulfilled, the trial Court shall proceed with the case on merits and decide it as expeditiously as possible. The surety furnished before Nazir of this Court in terms of order dated 09.09.2024 is consequentially discharged and be returned to the surety on his due verification and identification.

The 1st Appeal is disposed of accordingly alongwith pending application.

JUDGE

JUDGE

Imran