

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Revision Application No.34 of 2025

<i>Date</i>	<i>Order with signature of Judge</i>
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- Fresh Case
1. For orders on CMA No.1654/2025
 2. For orders on CMA No.1655/2025
 3. For hearing of main case.
 4. For orders on CMA No.1656/2025

06.03.2024.

Mr. Tanveer Ali Abbasi, advocate for applicant.

1. Urgency disposed of.
2. Exemption granted subject to all just exceptions.

3&4. Through the instant Civil Revision Application the applicant has challenged the order dated 17.02.2025 passed by the VIth Additional District Judge, Malir at Karachi in Summary Suit No.37 of 2024 whereby application filed under Order XXXVII Rule 3 CPC to defend the suit by the defendant was allowed conditionally subject to furnishing surety by the defendant equivalent to amount of suit cheque. The entire case of the applicant is that leave to defend ought to have been granted either unconditionally or on meager surety, hence, this revision.

Learned counsel for the applicant contends that the impugned order is bad in law as well as facts of the case as the same has been without any cogent ground and substance. He further contends that the Trial Court failed to apply its judicious mind to the facts of the application and passed the impugned order arbitrarily and in a fanciful manner. He also contends that the surety amount is equivalent to the amount of suit cheques, which cannot be done without recording evidence, as such, the same is baseless and illegal. He further contends that the Trial Court has failed to consider the civil litigation regarding cancellation of subject cheques are pending and passed a harsh order in hasty manner. He lastly prays that the impugned order be set-aside and surety amount be reduced to less than Rs.500,000/-.

Before going into discussion it would be conducive to reproduce the relevant portions of the impugned order hereunder:

“5. Heard and perused. The plaintiff asserts that the suit cheques were issued in consideration of the amount advanced to the defendant for investment in the wheat business on a profit-sharing basis. The suit cheques viz. Cheque No.10033775 amounting Rs.24,00,000/- of dated 27-09-2022, Cheque No.10033776 amounting Rs.24,00,000/- and Cheque No.20127216

amounting Rs.50,00,000/-, are available on record, and it indicates that they were presented before the concerned bank but were dishonored. Furthermore, the Recovery of Partnership Business Agreement and the Mutual Agreement annexed with the plaint prima facie indicate a business relationship between the parties and the issuance of the suit cheques in connection thereto. Notably, the defendant has not disputed his signatures on the suit cheques. Instead, he has taken the plea that the cheques were stolen, and he had intimated the concerned bank and the police station regarding the same. However, upon perusal of the applications submitted to the concerned bank, no reference to the suit cheques being stolen is found. Additionally, in Civil Suit No. 1081 of 2022, filed by the defendant for cancellation of cheques and permanent injunction, the suit cheques in question are not mentioned. This omission significantly weakens the defendant's plea. In the absence of any substantial material supporting the defendant's claim of theft or prior intimation to the bank or police, his defense appears to be an afterthought and lacks merit.

6. *The defense presented by the defendant is vague and lacks clarity, making it unsatisfactory in terms of providing a comprehensive and specific response to the claim made by the plaintiff.*

7. *In view of above, the application in hand is hereby allowed subject to furnishing surety, by the defendant, equivalent to amount of suit cheque before this Court with 15 days of the date of this order.”*

A perusal of above order shows that the applicant before the Trial Court failed to establish his case and conversely he admitted that he has business relationship with respondent in respect of wheat and subject cheques were issued to the respondent in consideration of the amount advanced for investment in said business, which upon presentation in bank were dishonoured due to insufficient funds, which reflects that the applicant knowingly issued subject cheques to defraud the respondent of his huge amount.

It is settled law that the trial court is competent to grant leave to defend, conditional or otherwise at its discretion. The trial court appears to have exercised its jurisdiction and no infirmity in such regard is manifest. It is also settled law that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum¹.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned

¹ Naheed Nusrat Hashmi v. Secretary Education (Elementary) Punjab [PLD 2006 Supreme Court 1124]; Naseer Ahmed Siddiqui vs. Aftab Alam reported as PLD 2013 Supreme Court 323.

order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine* along with listed applications.

JUDGE

Naveed PA