

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Revision Application No.39 of 2025

Date

Order with signature of Judge

Fresh Case

1. For orders on CMA No.1895/2025
2. For orders on CMA No.1896/2025
3. For hearing of main case.
4. For orders on CMA No.1897/2025

11.03.2025.

Mr. Zahid Hussain Shar, 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 29.01.2025 passed by the XIth Additional District Judge, Karachi-South whereby application filed under Section 12(2) CPC in Summary Suit No.122 of 2022 as well as application under Section XXXVII (4) CPC in Execution Application No.01/2023 seeking set-side of judgment decree dated 16.12.2022 were dismissed.

The facts of the case in nutshell are that the respondent invested an amount of Rs.500,000/- in the business of the applicant, who promised to pay an amount of Rs.80,000/- to Rs.100,000/- as profit to the respondent. In this regard written agreement dated 19.02.2020 was executed and for satisfaction of the respondent the applicant issued a cheque bearing No.53471063 drawn at UBL, Safoora Chowk branch for an amount of Rs.500,000/- but when the applicant failed to pay profit and did not return the principle amount, the respondent presented said cheque in bank, which was dishonored due to insufficient funds consequently, the respondent lodged FIR No.277/2021 under Section 489-F PPC at P.S. Boat Basin, Karachi whereupon the applicant approached to the respondent and issued another Cheque No.70324964 of Rs.200,000/-, which on its presentation was also dishonored due to insufficient funds, as such, another FIR No.938/2021 was also lodged against the applicant.

Furthermore, the respondent filed Summary Suit No.36/2021 in the Court of Additional District Judge-XI, Karachi South where conditional leave to defend was granted subject to furnishing surety of disputed amount of Rs.700,000/- with the Nazir of the District Court but applicant neither furnished surety nor appeared in the matter to pursue the same, as such, leave to defend granting order was recalled and suit was proceeded exparte. The summary suit was decreed for the amount of dishonored cheque viz. Rs.700,000/- without interest being declared

un-Islamic by the Federal Shariat Court. Thereafter, the respondent filed Execution Application bearing No.01 of 2023. Then the applicant filed two applications viz. one application under 12(2) CPC in Summary Suit and another application under Section XXXVII Rule 4 CPC in Execution Application for setting aside the judgment and decree, which both were dismissed through impugned order. Hence, the applicant has filed present Revision Application.

Learned counsel for the applicant contends that the Trial Court has failed to analyze the facts and evidence, which resulted in a serious miscarriage of justice and the impugned order is based on mechanical application of law rather than a proper evaluation of the circumstances. He further submits that the Trial Court has also failed to consider that the applicant is an HIV patient, which severely affected his ability to appear before the Court during pendency of summary suit / proceedings. He further submits that the Trial Court overlooked the material contradiction in the respondent's claim and also failed to scrutinize how the respondent obtained the ex-parte decree through suppression of the material facts and misrepresentation. He also submits that the Trial Court erroneously dismissed both applications of the applicant without applying judicious mind and taking into consideration material available on record, as such, the impugned order is liable to be set-aside.

A perusal of judgment dated 16.12.2022 passed in the Summary Suit reflects that the defendant (present applicant) was served with summon and on 03.10.2022 Mr. Syed Yousuf Mehdi Zaidi, advocate filed power on his behalf. Thereafter, counsel filed application for leave to defend and vide order dated 17.11.2022 leave to defend was conditionally allowed subject to furnishing surety of Rs.700,000/- within the Nazir of the Court within ten days from the date of order without fail and in case of failure, the order shall stand recalled. The applicant failed to comply with the order and chosen to remain absent from the Court, the leave granting order was recalled and suit was ordered to be proceeded ex parte against the applicant. Consequently, suit was decreed with directions to pay sum of Rs.700,000/- without interest. All the aspects of the matter reflect that applicant / defendant was given opportunities to participate in the proceedings, who willfully and deliberately failed to appear or comply with the order of the Court whereby conditional leave was granted to him. Moreover, the applicant after passing of the judgment and decree came in picture again by filing two applications viz. under Section 12(2) CPC in Summary Suit No.122 of 2022 as well as application under Section XXXVII (4) CPC in Execution Application No.01/2023, which were dismissed through impugned order. Before going into further discussion it would be conducive to reproduce the relevant portions of the impugned order hereunder:

“6. Firstly, the Applicant/judgment debtor's claim of having paid a sum of 200,000/- to the Plaintiff/decreed holder is factually incorrect and irrelevant to the present dispute. The payment made

by the Applicant/judgment debtor to the Plaintiff/decree holder was in respect of a separate liability, evidenced by a cheque (Cheque No. 70324962), this cheque was not part of the present summary suit, which concerns the dishonoured cheque dated 05.11.2020 (Cheque No. 53471063) and dated 29.04.2021 (Cheque No. 70324964). Therefore, the payment referenced by the Applicant/judgment debtor cannot be used to dispute the amount claimed in this case.

7. Secondly, the Applicant/judgment debtor's contention regarding his medical condition, specifically that he was suffering from HIV/AIDS and unable to attend the proceedings due to his health, is not substantiated by the medical reports provided. The medical records submitted by the Applicant/judgment debtor from Aga Khan Hospital clearly indicate that the Applicant/judgment debtor is not suffering from HIV/AIDS, contrary to the claim made in his application. Consequently, the assertion that the Applicant/judgment debtor was unable to participate in the legal proceedings due to this condition lacks credibility. Moreover, there are contradictions in the claim of applicant/judgment debtor because the first plea emphasizes the Applicant's absence and lack of participation due to medical reasons, while the second plea implies that the matter was settled outside of court.

8. Furthermore, the Court notes that the Applicant/judgment debtor was given multiple opportunities to participate in the proceedings, including filing & written statement and cross-examining the Plaintiff/decree holder's evidence. However, the Applicant/judgment debtor willfully failed to appear or comply with the orders of the Court, resulting in the matter being proceeded ex parte. The judgment and decree passed by the Court on 16-12-2022 were based on the failure of the Applicant/judgment debtor to engage with the proceedings and present a defense, despite having been granted leave to defend the suit.

9. The Applicant/judgment debtor's argument that the Plaintiff/decree holder's Gaim of Rs. 700,000/- is inflated is also without basis. The amount claimed by the Plaintiff/decree holder was in relation to the dishonoured red cheque, and there is no credible evidence provided by the Applicant/judgment debtor to refute this claim. Moreover, the Applicant/judgment debtor's failure to pursue his defense and cross-examine the Plaintiff/decree holder's evidence contributed to the passage of the decree.

10. In light of the facts presented, including the Applicant/judgment debtor's failure to appear and provide adequate defenses the Court finds that the judgment and decree were lawfully passed and are in accordance with the established legal principles. The application under Section 12(2) CPC and Order XXXVII Rule 4, CPC is thus dismissed as unsubstantiated and without merit."

A perusal of above order shows that the applicant had been duly served and was fully aware of the summary suit having been filed, but through sheer negligence failed to take appropriate measures to properly defend the same, and instead adopted to disappear and he ignored the proceedings until after the culmination thereof in terms of the Judgment and Decree. Further, the medical ground taken by the applicant that he was suffering from HIV/AIDS and was unable to attend the proceedings due to his health condition has been discussed elaborately in the impugned order.

The provisions of Section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when the court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. Mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction¹. For the Applicant to succeed under Section 115, C.P.C., he has to show that there is some material defect in procedure or disregard of any rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine the matter and erroneous action of a court in exercise of such jurisdiction. It is settled principle of law that erroneous conclusion of law or fact can be corrected in appeal and not in Revision.

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 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 the circumstances, this revision is found to be misconceived and devoid of merit, hence, the same is dismissed *in limine* along with listed applications.

JUDGE

Naveed PA

¹ *Abdul Hakeem v. Habibullah and 11 others* [1997 SCMR 1139], *Anwar Zaman and 5 others v. Bahadur Sher and others* [2000 SCMR 431] and *Abdullah and others v. Fateh Muhammad and others* [2002 CLC 1295].