

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
R.A.No.05 of 2024**

Junaid Ikhlas Batla Applicant
Vs.
Muhammad UsmanRespondent

Mr. Answar Kamal alongwith Mehjabeen Rajput, advocate for applicant.
M/s Mehmooda Suleman and Muhammad Rizwan Naich, advocates for
Respondent.

16.09.2024.

O R D E R

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MUHAMMAD IQBAL KALHORO J: Respondent filed a summary suit U/o XXXVII CPC against appellant for recovery of Rs.21,50,650/- on the basis of dishonored cheques issued by the appellant. After being summoned, the appellant filed application U/o XXXVII rule 3 CPC seeking leave to defend the suit. This application has been decided by the impugned order dated 20.12.2023, whereby leave to defend the suit has been granted but subject to furnishing security/solvent surety in the same amount viz. 21,50,000/- to be furnished by the appellant within 20 days.

2. Learned counsel for appellant submits that since the appellant went through heart surgery, he is unable to arrange the same amount otherwise he has got a good case to defend. By saying so, learned counsel has referred to the dishonored cheques and submits that the same were produced in the bank after a considerable time.

3. On the other hand, learned counsel for respondent has supported the impugned order.

4. I have gone through the impugned order which is well reasoned and findings are supported by solid justifications. In para 8, learned trial court has discussed the entire scenario and come to the conclusion whereby leave has been granted but subject to furnishing of the security/surety as above. Para 8 for the ready reference is reproduced hereunder:-

8. The factual aspect of the controversy between the parties reveals that defendant has admitted his business relation with the plaintiff in respect of transaction. The first transaction was the supply of 42 Drums of White Oil Chemical worth of Rs. 18,06,000/- for which cheque No.00000062 dated 18.02.2022 of Rs.1720,000/- was issued by the defendant through his account in HBL Niper Branch. The second transaction was 6 Drums of Sodium Lauryl Ether Sulphate worth of Rs. 430,650/- for which the defendant issued two cheques bearing No. 11787723 dated 17.11.2022 of Rs. 200,000/- and cheque No. 11787724 dated 23.11.2022 of Rs.230,650/-. All the cheques were dishonoured due to insufficient funds in drawer's account. The defence of the defendant is that first cheque bearing No. 00000062 dated 18.02.2022 was issued by him as a guarantee regarding payment of the amount Rs.18,06,000/-. The Section of 118 of negotiable instruments Act, 1881 provides that until the contrary is proved every negotiable instrument shall be presumed to have made or drawn for consideration. The said presumption was not rebutted by the defendant in his application for leave to defend. As per defendant he

paid the amount Rs. 18,06,000/- to the plaintiff, hence plaintiff was under obligation to return the cheque No. 00000062 to him. The defendant has not produced any receipt of payment of said amount nor any proof of payment of said amount through another mode other than the cash; therefore, his defence plea reveals sham or absurd defence lacking reasonableness. The defence plea also does not account for his remaining two cheques. He only claims to owe amount Rs. 230,000/-, which was still outstanding and remained unpaid due to his medical and health issues. The defence plea is therefore unreasonable. The case of defendant is lacking plausible defence which may raise any substantial question of fact or law.

5. In view of such reasons, I do not see any justification to intervene and upset the said findings. No valid proposition has been raised to justify taking a different view than one taken by the trial court. Merits of the case can only be considered after the condition is fulfilled by the appellant. Therefore, I see no merits in this revision application and dismiss it. However, appellant is given 10 days' time as a sheer indulgence to fulfill the condition. On his failure to do so, the trial court would be competent to pass order in accordance with law.

The Revision Application stands disposed of alongwith pending applications.

Judge