

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

R.A.No. 135 of 2025

Rajesh Kumar Vs. Jahangir Jawaid

1. For hearing of CMA 2146/2025.
2. For hearing of main case.

Date of hearing: 10.11.2025
Date of Order: 10.11.2025

Applicant : Rajesh Kumar s/o Thakumal, Hindu through
Mr. Muneer Ahmed Channa, Advocate.

Respondent : Jahangir Jawaid s/o Jawaid Iqbal through
Mr. Muhammad Aleem Arian, Advocate.

O R D E R

JAWAD AKBAR SARWANA, J: At the outset, counsel for the applicant Rajesh Kumar-plaintiff and respondent Jahangir Jawaid-defendant have filed statements alongwith certain documents and exchanged copies. This Civil Revision arises out of an order dated 09.09.2025 passed by the learned 6th Additional District Judge, Hyderabad essentially granting unconditional leave to defend to the respondent/defendant. The applicant/plaintiff is aggrieved by such order and has argued that in the facts and circumstances of the case, the learned 6th ADJ Hyderabad ought to have granted "conditional leave". He contends that the respondent/defendant in his leave to defend application did not deny:-

- issuance of cheque,
- signature on the bounced cheque,
- the fact that the cheque on presentation was dishonoured and
- non-existence of any partnership.

Therefore, the 6th Additional District Judge, ought to have granted conditional leave.

2. Counsel relied on the judgment of the Peshawar High Court in 2020 CLC 286. He contended that similarly the impugned order was also erroneous because in Paragraph-7 of the impugned order, the learned 6th Additional District Judge had referred to the outcome in criminal proceedings as one of the grounds for granting unconditional leave to defend to the respondent/defendant, and this could not be made a ground for conditional leave in the impugned order.

3. Learned counsel for the respondent/defendant submitted that the respondent/defendant had raised a plausible defence raising substantial issues which required further scrutiny. Hence in the circumstances, the impugned order did not merit any intervention and unconditional leave to defend had been rightly made out by the respondent/defendant.

4. Heard counsel and perused the documents available on record.

5. At the outset, it is the trial Court's discretion whether or not to grant conditional or unconditional leave to defend. In the circumstances, the trial Court relied on the defence taken by the respondent/defendant as opposed to the claim of the plaintiff as the determining factor for consideration of grant of leave to defend. In a summary suit, in terms of the statutory provisions, the burden on establishing substantial bonafide and triable issue for grant of leave to defend rests on the respondent/defendant; whereas the requirement of such leave granting being conditional or unconditional is discretionary. Yet even "discretionary relief" must not be completely arbitrary or without reasons or stranger to admitted/common facts and circumstances of the case.

“Discretionary relief” requires anchoring. To this end the respondent/defendant denied (i) the issuance of cheque (Paragraph-4 of the leave to defend application) and (ii) his signature on the cheque (Paragraph-7 of the leave to defend application) and had further asserted in defence that there was no agreement/transaction between the parties. While this question remains to be proved viz. whether any agreement was in force based on any verbal agreement or not and the rent agreement did not refer to the applicant/plaintiff, yet this defence has to be finally adjudicated after trial and cannot be a determinative factor for deciding the issue of whether or not to grant “conditional” or “unconditional” leave to defend.

6. The learned 6th Additional District Judge also relied on the criminal proceedings inter se between the parties as one of the grounds of establishing a substantial bonafide and triable issue. In summary proceedings, the Special Court conducting special trial, ought to have refrained from referring to criminal proceedings as part of its consideration in deciding the fate of the leave to defend in summary proceedings. It is well established that summary proceedings are distinct from criminal proceedings and at the stage of leave to defend reliance on criminal proceedings may not be material consideration for grant of leave to defend unless exceptional circumstances can be inferred for consideration of the same. I am not impressed by the defence set up by the respondent/defendant in relation to the FIRs filed by him as a ground for granting “conditional” or “unconditional” leave to defend.

7. Notwithstanding the above, the defence raised by the respondent/defendant to the extent of leave to defend application

appears to be in order. I do not find any reason for interfering in the same.

8. I now turn to the issue of whether such leave to defend ought to have been “conditional” or “unconditional”. To this end, I do not find the imposition of “unconditional” leave to be arbitrary, without reason or removed from the admitted facts of the case. The applicant/plaintiff is at liberty to prove his case during trial within the contours of Order 37 before the trial Court. He will have clear and fair opportunity to prove his case before the 6th Additional District Judge and the impugned order is not fatal to his cause or case.

9. Given the above, this Revision Application is dismissed in the above terms alongwith all pending applications. The 6th Additional District Judge is directed to conclude the trial proceedings expeditiously within a period of five (05) months from the date of receipt of this order.

10. None of the observations made by me herein shall prejudice any of the parties case nor will it be relied upon by the 6th Additional District Judge in the final adjudication of the lis as the purpose of this order is purely to decide this revision.

JUDGE

Tufail