

IN THE HIGH COURT OF SINDH, KARACHI

Ist Appeal No. 124 of 2024

[Muhammad Amir Ahmed Khan Vs. Mst. Naila Rana]

PRESENT:

Mr. Justice Arshad Hussain Khan

Mr. Justice Amjad Ali Sahito .

Appellant: Through Mr. Qamar Iqbal, Advocate.
Respondent: Through Ms. Naheed A. Shahid, Advocate.
Date of Hearing: 27.04.2026
Date of Decision: 27.04.2026

JUDGMENT

ARSHAD HUSSAIN KHAN, J.- The present appeal was previously dismissed for none-prosecution on 06.05.2025. Subsequently, the appellant filed CMA No.951/2025 for restoration. Upon due consideration of the grounds set forth in the restoration application, the order dated 06.05.2025 is hereby recalled and the Appeal is restored to its original position as it stood on 06.05.2025. Now we proceed to adjudicate the matter on its merits.

Through the instant First Appeal under Section 96, C.P.C., the appellant has challenged the Judgment and Decree dated **06.09.2024**, passed by the learned XIV-Additional District Judge, Karachi-East, in Summary Suit No. 120 of 2023, whereby the suit, filed by the respondent under Order XXXVII, C.P.C. for recovery of Rs.1,97,74,860/- was decreed in the sum of Rs.1,65,48,000/-.

2. Succinctly, the facts of the case as narrated in the plaint by the respondent/plaintiff are that the defendant/appellant is working as Sales Manager in M/s. Yaksar Pvt. Limited, who deals in import and sale of chemicals and the respondent/plaintiff had invested an amount of Rs.29.80 million into M/s. Yaksar Pvt. Limited through appellant/defendant from the month of March 2021 till May 2022 on the basis of profits. It was further stated in the plaint that from the month of March, 2022 the appellant/defendant failed to pay the profit against the investment of the respondent/plaintiff and when the respondent/plaintiff enquired from official of M/s. Yaksar Pvt. Limited, she came to know that the appellant/defendant only invested 50% amount of her investment

in the said company and usurped the remaining 50% amount of the respondent/plaintiff. Thereafter, the respondent/plaintiff demanded her amount back, the appellant/defendant issued six Cheque bearing No.A-37647250 amounting to Rs.20,00,000/- dated 06.05.2022, Cheque bearing No. A-37647254 amounting to Rs.10,00,000/- dated 06.07.2022, Cheque bearing No.A-376447251 amounting to Rs.32,00,000/- dated 16.06.2022, Cheque bearing No.A-37647252 amounting to Rs.49,48,000/- dated 07.06.2022, Cheque bearing No.A-37647256 amounting to Rs.32,00,000/- dated 15.08.2022 and Cheque bearing No.A-37647257 amounting to Rs.22,00,000/- dated 06.07.2022 issued by the appellant/defendant in favour of the respondent/plaintiff. Upon presentation of the aforementioned cheques for their encashment, the same were dishonored for “funds insufficient”.

Upon service, the appellant entered appearance and sought leave to defend, which was allowed conditionally vide order dated 23.12.2023. However, despite sufficient opportunity, the appellant/defendant failed to furnish the required surety; consequently, the matter proceeded *ex parte*. The respondent led *ex parte* evidence in support of her claim, and the learned trial court, after hearing the parties, decreed the suit, vide the impugned judgment and decree. Being aggrieved, the appellant has preferred the present Appeal.

3. Learned counsel for the appellant, while reiterating the contents of the memo of appeal, contends that the impugned judgment and decree are liable to be set-aside as the learned trial court has totally ignored the real controversy between the parties; that the judgment and decree are not speaking in accordance with law; and are against the principle of natural justice. It is contended that the ingredients of summary suit were not attracted upon the appellant and the learned trial court failed to consider the same. He has argued that the amount was deposited into company's account directly by respondent and had not given cash to the appellant, while the fact is that the said cheques were never issued to the respondent and there is no amount payable by the appellant and the said cheques were obtained from the appellant at gun point in presence of police officials. He has further argued that the suit of the plaintiff was not maintainable under the law and liable to be dismissed; that the summary suit is not triable by the learned trial court, the same is barred

under Order XXXVII Rule 2(1) CPC. It is also argued that after grant of leave to defend, the matter ought to have proceeded on merits, and non-furnishing of surety should not have resulted in ex-parte proceedings. Lastly, it is prayed that the impugned judgment and decree be set aside and the matter be remanded to the learned trial court for fresh decision on merits.

4. On the other hand, learned counsel for the respondents, while supporting the impugned judgment and decree, contends that the same has been passed strictly in accordance with law and does not call for any interference by this Court. It is submitted that the appellant, having failed to comply with the order whereby conditional leave to defend was granted, rightly attracted the consequences thereof, and the learned trial court was fully justified in proceeding against him and decreeing the suit. He further submits that the present Appeal is devoid of merit and liable to be dismissed with costs.

5. We have heard learned counsel for the parties and perused the material available on the record.

From the record, it transpires that vide order dated 23.12.2023, the learned trial court granted conditional leave to defend, subject to furnishing security equivalent to the cheques amount within one month. Admittedly, despite sufficient opportunity, the appellant failed to comply with the said condition. Consequently, vide order dated **06.09.2024**, the learned trial court proceeded *ex parte* against the appellant.

6. It is observed that the primary purpose of *Order XXXVII, C.P.C.* is to facilitate the expeditious disposal of cases involving commercial transactions and negotiable instruments. In such summary proceedings, the defendant does not possess an inherent right to defend the suit; rather, such a right is contingent upon obtaining leave from the court. In the instant case, the learned trial court exercised its discretion by granting *conditional leave* to the appellant, subject to the furnishing of security equivalent to the cheques amount. This condition is a standard judicial safeguard to ensure that the recovery of documented debt is not frustrated by protracted litigation. The appellant's failure to comply with this condition, despite being afforded an opportunity, attracted the consequences under *Rule 3(6) of Order XXXVII*, whereby the allegations in the plaint are deemed to have been admitted and the plaintiff becomes

entitled to a decree¹. Even in appeal, such disability continues and the defendant cannot claim any better right to contest the case on merits merely by filing an appeal.

7. In the circumstances, the appellant cannot now be permitted to raise the plea that there is no malafide on his part and/or the cheques in question were issued under coercion and not in discharge of any legally enforceable liability of Rs.16,548,000/-, particularly when such plea was neither substantiated nor pursued after grant of conditional leave to defend, which stood forfeited due to non-compliance, as such, defences could only have been agitated upon compliance with the conditional order and by availing leave to defend. His failure to do so entails the presumption under Section 118 of the Negotiable Instruments Act, 1881, in favour of the holder, and the averments in the plaint are deemed to be admitted. Guidance is sought from the judgment of the Supreme Court of Pakistan in the case of *Muhammad Ramzan and others v. Ghulam Qadir* (2011 SCMR 659), wherein it has been authoritatively held that a defendant who fails to comply with a conditional order granting leave to defend cannot subsequently assail the decree on merits.

8. In view of the above, no illegality or perversity is found in the impugned judgment and decree warranting interference in the appellate jurisdiction. The only scope available to the appellant was to demonstrate a legal error in passing the decree despite non-compliance of the conditional order; however, no such ground has been made out. Consequently, the instant appeal, being devoid of merit, is hereby dismissed.

JUDGE

JUDGE

*Jamil**

¹ *Haji Ali Khan & Company, Abbottabad and 8 others v. M/s. Allied Bank of Pakistan Limited, Abbottabad*, [PLD 1995 SC 362], *Naeem Iqbal v. Mst. Zarina* [1996 SCMR 1530] and *Col. (Retd.) Ashfaq Ahmed and others v. Sh. Muhammad Wasim* [1999 SCMR 2832].