

Order Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Revision Application No. 04 of 2025

[Abdul Majeed v. Muhammad Rashid]

Applicant : Abdul Majeed s/o Sandal Khan, Qaimkhani  
Through Mr.Muhammad Iqbal KK, Advocate

Respondent : Muhammad Rashid s/o Dr. M. Yaqoob Khan  
In person

Date of hearing : 27.04.2026

Date of decision : 27.04.2026

ORDER

ARBAB ALI HAKRO, J.- The applicant has invoked the revisional jurisdiction of this Court under section 115 C.P.C, assailing the order dated 18.01.2025 whereby the learned Additional District Judge, Khipro, while entertaining an application under Order XXXVII Rule 3 C.P.C, granted the applicant leave to defend the summary suit, albeit subject to furnishing security in the sum of Rs.3,500,000/-.

2. Learned counsel for the applicant contended that the defence raised in the leave application was substantial, rested upon a detailed factual narrative involving alleged misuse of cheque books, family disputes and prior police proceedings and therefore warranted unconditional leave. It is urged that the condition imposed was onerous, arbitrary and amounted to a material irregularity.

3. The respondent No.1, appearing in person, controverted these submissions and maintained that the cheque was issued against a genuine liability, that the defence was concocted and that the Trial Court had exercised its discretion strictly in accordance with law.

4. Heard and perused the record. The impugned order reflects that the Trial Court applied its mind to the pleadings and material placed before it, and having found that "there is legal and factual controversy between the parties which could not be resolved without production of evidence by both parties", proceeded to grant

leave to defend. The only question, therefore, is whether the condition imposed while granting such leave constitutes an illegality or material irregularity warranting interference under section 115 C.P.C.

5. The legal position is now settled beyond cavil. In the case of Muhammad Noman<sup>1</sup>A Division Bench of this Court has reaffirmed that the discretion vested in the Trial Court under Order XXXVII Rule 3(2), C.P.C., to grant leave conditionally or unconditionally is a judicial discretion and interference by an appellate or revisional Court is permissible only where such discretion is exercised arbitrarily, whimsically, perversely or upon irrelevant considerations. The judgment further clarifies that the touchstone for the grant of leave is the plausibility of the defence, not its credibility and that even a credible defence does not automatically entitle a defendant to unconditional leave. The revisional Court cannot substitute its own discretion for that of the Trial Court merely because another view is possible.

6. Tested on this standard, the impugned order does not suffer from any jurisdictional defect. The Trial Court recognized the existence of triable issues and granted leave; the imposition of security equivalent to half of the claimed amount is neither excessive nor arbitrary in the context of a suit founded upon a dishonoured cheque. The defence raised by the applicant, though arguable, is not of such unimpeachable strength as to compel unconditional leave. The condition imposed is proportionate, rational and squarely within the parameters delineated by Order XXXVII Rule 3(2), C.P.C. The applicant has failed to demonstrate that the Trial Court acted illegally, exercised jurisdiction not vested in it, or committed any material irregularity in the exercise of its discretion. In the absence of any perversity, arbitrariness or misdirection, this Court cannot, in revisional jurisdiction, supplant the discretion of the Trial Court with its own.

7. Resultantly, the Civil Revision Application stands dismissed.

JUDGE

\*Adnan Ashraf Nizamani\*

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<sup>1</sup> Muhammad Noman v. Muhammad Arif (PLD 2024 Sindh 476)