

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**1st Appeal No.S-79 of 2024.***[Basharat Ali Khan Vs. Muhammad Azhar]*

Appellant : Basharat Ali Khan **through** Mr. Saad Salman Ghani, Advocate.

Respondent : Muhammad Azhar **(NEMO)**.

Date of Hearing : 01.12.2025.

Date of Decision : 02.12.2025.

Date of Reasons : 17.10.2026.

ORDER

Jawad Akbar Sarwana, J :- The Appellant/defendant Basharat Ali Khan son of Moazam Ali Khan is aggrieved by Judgment dated 15.11.2024 and Decree dated 20.11.2024 passed by Additional District Judge-II Hyderabad (“**trial court**”) in Summary Suit No.85 of 2023 filed by respondent/plaintiff Muhammad Azhar son of Muhammad Anwar Taak.

2. The counsel for the appellant / defendant has contended that he has been denied a right of hearing and when an order on leave to defend was passed he was not given an opportunity to rebut the claims of the plaintiff-respondent.

3. Heard counsel and perused the record.

4. It appears that the respondent / plaintiff had filed a Summary Suit based on four cheques and such four cheques were duly supported by the memo of dishonourment disclosing that the said cheques had bounced on account of Account closed / Insufficient Funds. The appellant-defendant filed leave to defend application after a lapse of one year and three months and hence, the same was dismissed for non-prosecution and the appellant-defendant declared ex-parte.

5. It is now a trite proposition of law by relying upon the Judgment of *Pestonji Shapurji Narelwalla Vs. Jamshedji Nowroji Gamadia (AIR 1926*

Bombay 250) and the Supreme Court of Pakistan in the decision reported as Umer Khan Vs. Haji Musa Jan (2009 SCMR 1101), that once the Court directs the defendant to file the written statement, no further rights are created in favour of the defendant if the defendant fails to comply with the conditions of the leave-granting order.

6. Given the principles laid down in the above-mentioned case law, very limited grounds are available to the appellant/defendant aggrieved by an ex parte Judgment passed by the trial Court in summary proceedings when the leave to defend has not been allowed and / or the conditions of the leave to defend were not fulfilled, and the summary suit proceeded ex parte against the appellant/defendant. In such cases, the appellant/defendant remedy in summary proceedings is limited to, inter alia, Order 37 Rule 4 C.P.C, which states that, after Decree has been passed, as in the instant lis, the Court may, under special circumstances, set aside the Decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the court so to do, and on such terms as the Court thinks fit. Or alternatively, raise challenge to the Decree as may be available under Order 21 C.P.C.

7. For the foregoing, there being no material illegality or irregularity in the impugned Judgment dated 15.11.2024 and Decree dated 20.11.2024 passed by Additional District Judge-II Hyderabad (“**trial court**”) in Summary Suit No.85 of 2023 filed by respondent/plaintiff Muhammad Azhar son of Muhammad Anwar Taak. I had dismissed this 1st Appeal on 02.12.2025 and these are the reasons for the same.

J U D G E

Ali.