

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

R.A No.108 of 2026

[Gohar Ali vs. Sumair Memon]

Appellant	:	Gohar Ali S/o Noor-ul-Islam Muslim Through Mr. Faheem Dal advocate
Respondent	:	Sumair Memon S/o Iqbal Memon Through Mr. Ayaz Ali Mangi advocate
Date of hearing	:	31.08.2026
Date of decision	:	31.08.2026

ORDER

JAWAD AKBAR SARWANA J:- Gohar Ali S/o Noor-ul-Islam, applicant/plaintiff, is aggrieved by the Order dated 18.03.2026 passed by the VIIIth Additional District Judge, Hyderabad (“the trial Court”), in Summary Suit No.206 of 2025, whereby conditional leave to defend was granted to respondent/defendant Sumair Memon subject to furnishing surety in the sum of Rs.50,00,000 (Rupees Fifty Lacs).

2. Main contention of the counsel for the applicant/plaintiff, pleaded before this bench and also in the memo of this revision, is that the leave to defend application taken up by the trial Court was beyond the 10 days’ statutory time prescribed under Order XXXVII Rule 3 CPC. Counsel took the bench through the several diary sheets available on record from pages 33 to 37. In summary, the record shows that the respondent/defendant, Sumair Memon, entered appearance before the trial Court on 20.12.2025, yet filed the leave to defend application almost three months later, on 07.02.2026. Hence, the leave to defend application was time-barred. Before addressing the submissions/arguments of the applicant/plaintiff, it is noteworthy that the applicant/plaintiff has not challenged the basis of the quantum of the conditional leave to defend, particularly when the alleged claim based on a bounced cheque was for a higher amount. No one has placed a photocopy of the dishonoured cheque and/or memo of dishonour; hence, I will leave the issue of the quantum of the claim to be decided by the trial Court. When the applicant/plaintiff has not agitated this aspect in the grounds for challenge to the conditional leave granting order in this lis, I will, too, limit this Court’s reasoning to only those grounds which have been pleaded in this memo.

3. Counsel for the respondent/defendant has vehemently opposed the contentions raised by counsel for the applicant/plaintiff and submits that no case for interference by this Court is made out and the leave to defend application was, in fact, within time.

4. Heard learned counsel for the parties and perused the available record.

5. The provisions of Order XXXVII Rule 3 CPC are to be read holistically in light of the entire sub-clauses of that provision. Order XXXVII Rule 3 has three sub-clauses, and clause 3 allows the Court discretionary power to enhance or modify the period of limitation under Section 5 of the Limitation Act. This enabling provision allows the Court to consider “sufficient cause” as a criterion to extend the 10-day period of limitation for filing of leave to defend application, which otherwise is to be filed within the prescribed limit of 10 days. The perusal of diary sheets available at page-33 and 35 indicates that the time for filing leave to defend was extended to Sumair Memon, and no objection and/or any challenge was raised by the applicant’s/plaintiff’s counsel at the material time. The applicant/plaintiff could have raised such objections when the trial Court was adjourning the matter from time to time, giving opportunity to the respondent/defendant. Yet no such plea is recorded in the case diary. Even otherwise, the applicant/plaintiff could have put the Court on notice concerning Gohar Ali’s challenge by filing such objections and bringing his objection on record. Yet in the circumstances, there is nothing on record in terms of objection to the extension of time allowed to the respondent/defendant to file the leave to defend application. Hence, on each date when the diary sheets recorded that the matter was adjourned and the party was required to file leave to defend on the following date, such time stood extended in light of Order XXXVII Rule 3 CPC. There does not appear to be any express requirement under Order 37 Rule 3 CPC to file an application under Section 3 of the Limitation Act, 1908. The burden rests on the plaintiff to oppose adjournments, which may be interpreted as an enlargement of the extension of time, as in the absence of such opposition, the extension of time may arguably be with the consent of the parties, and it may be too late for the plaintiff to raise this plea at the stage of hearing of the leave to defend application. Of course, there cannot be any hard and fast rule, and this aspect depends on the facts and circumstances of each case. In the present case, for the reasons mentioned hereinabove, I am not impressed with the challenge to the leave-granting order raised by the applicant/plaintiff on the point of limitation.

6. Given the above, I do not find any ground to interfere in the impugned Order, and this revision application is dismissed accordingly.

JUDGE