

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

1st Appeal No.S-52 of 2021

[Mumtaz Ali through legal heirs and others. Tarique Mansoor Ahmed and another]

Appellants : Mumtaz Ali and two others
By Mr. Muhammad Sulleman Unar and Asad Ali Jatoi advocates

Respondent 1 : Tarique Mansoor Ahmed
In person

Respondent No.2: Zahid Hussain Mughal @ Agha
Nemo

Date of hearing: 02.10.2026

Date of decision: 02.10.2026

ORDER

JAWAD AKBAR SARWANA J:- Mumtaz Ali – appellant No.1/defendant No.1, Farhan Ali – appellant No.2/defendant No.2 and Farman Ali – appellant No.3/defendant No.3 all resided in same house i.e C-25 Old Wahdat Colony Hyderabad. Appellant No.1/Defendant No.1 is the father of appellants No.2 and 3/defendants No.2 and 3 and since died, as such is represented through the LRs. All three appellants/defendants are aggrieved by the judgment dated 24.08.2021 and decree dated 27.08.2021 passed by the IIIrd Additional District Judge Hyderabad (“**trial Court**”) in Summary Suit No.36 of 2018 filed by Tarique Masroor Ahmed S/o Naseer Muhammad – respondent No.1/plaintiff.

2. Counsel for the appellants/defendants submit that the service of summons in the summary suit was defective. He contends that the appellants/defendants had filed the leave to defend application within the statutory period of 10 days but trial court did not consider the same in the case of appellant No.2/defendant No.2 Farhan Ali. Additionally, the CNIC mentioned by the Bailiff on the notice is actually not Farhan Ali’s CNIC. He argued that the leave to defend could not be barred by time vide Order dated 03.05.2021 and the trial Court ought to have given the appellants / defendants opportunity to defend the Summary Suit and not have proceeded to pass the impugned ex-parte judgment and decree dated 24.08.2021.

3. Respondent No.1/plaintiff present in person contends that all three appellants/defendants were residing in the same house and they had knowledge of the proceedings and as such the service of summons was not manipulated and was duly effected on all of them.

4. Heard parties.

5. On the last date of hearing R&Ps were called and I have perused the same today. As per R&Ps of the summary suit, appellant No.2/defendant No.2 Farhan Ali was effected summons by the Bailiff on 29.04.2018. As per note available on the reverse side of the notice of summon the Bailiff has intimated that he had obtained the signature of Farhan Ali on the same date. I have compared the said signature with the signature available on the affidavit filed in support of present 1st appeal and found that they are same. As per this service of summon it is mentioned therein that the matter was listed for hearing on 30.04.2018. On 30.04.2018 the matter was adjourned to 12.05.2018. Accordingly, the statutory period for filing leave to defend in the case of appellant No.2/defendant No.2 Farhan Ali stood expired on 10.05.2018.

6. In case of appellant No.1/defendant No.1 Mumtaz Ali and appellant No.3/defendant No.3 Farman Ali the trial Court passed order on 30.04.2018 to repeat notice on them. Record reveals that the Bailiff effected service of summons on said appellants/defendants (Mumtaz Ali and Farman Ali) on 05.05.2018 and as per diary of the trial Court the matter after 30.04.2018 was listed in Court on 12.05.2018. As such in the case of these two appellants/defendants (Mumtaz Ali and Farman Ali) the statutory period for filing leave to defend application expired on 15.05.2018, whereas the case was listed for hearing on 12.05.2018.

7. When the case came up for hearing on 12.05.2018 all three appellants/defendants filed leave to defend application on the same date, i.e 12.05.2018. In the circumstances it is abundantly clear that the leave to defend application in the case of appellants No.1 and 3 (Mumtaz Ali and Farman Ali) filed on 12.05.2018 was within time as the 10 days' time expired on 15.05.2018. Therefore, the observation made by the trial Court in respect of these two appellants/defendants that the leave to defend is time barred is entirely misconceived and contrary to the record.

8. As far as appellant No.2/defendant No.2 Farhan Ali is concerned, the leave to defend application in respect of said appellant/defendant (Farhan Ali) was required to be filed within 10 days from 29.04.2018, however, the record reveals that the same was filed after a delay of about 03 days as the statutory period expired on 10.05.2018 whereas the next hearing after 30.04.2018 come up on 12.05.2018.

9. During the course of arguments respondent No.1/plaintiff argued that the appellants/defendants had not filed an application for condonation of delay, therefore, the leave to defend was barred by time. While this

argument may not be applicable in the case of appellants No.1 and 3 (Mumtaz Ali and Farman Ali) who filed their leave to defend within time, arguably appellant No.2/defendant No.2 Farhan Ali admittedly had filed his leave to defend application beyond the 10 days period. Given the reported case laws under Order XXXVII Rule 3 CPC, the said appellant/defendant had recourse for seeking condonation of delay by filing leave to defend application but he did not. Yet the said provision also enables late filing on the ground of “sufficient cause”. Therefore, no hard and fast rule can be laid down as late filing can also be condoned on demonstrating “sufficient cause”. Even Courts can extend time for filing leave to defend. Such powers are discretionary.

10. Given the facts and circumstances of the case, while it is admitted by this Bench that appellant No.2/defendant No.2 Farhan Ali did not file application for condonation of delay, the trial Court also had the discretion to condone such delay as the matter should be decided on merits and not technicalities. Further, the leave to defend application was filed by Farhan Ali on the first hearing date of the case after service had been effected on him. In the facts and circumstances this bench finds “sufficient cause” is/was made out in favour of the appellant No.2/defendant No.2 Farhan Ali. The trial Court ought to have considered the leave to defend application of appellant Farhan Ali too and the remaining appellants/defendants. But this did not happen. Instead the trial Court passed ex-parte judgment.

11. In view of the above, the impugned judgment dated 24.08.2021 and decree dated 27.08.2021 passed by the trial Court in Summary Suit No.36 of 2018 are hereby set aside and the matter is remanded back to the trial Court to be decided afresh including consideration of the leave to defend applications filed by the appellants which are already available on record. As this matter pertains to the year 2018, the stage of leave to defend application should be decided expeditiously. Office to immediately return the original R&Ps to the trial Court for further proceedings.

12. Instant first appeal stands disposed of in the above terms.

JUDGE