

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.S-98 of 2026.

DATE	ORDER WITH SIGNATURE OF JUDGE
	For hearing of C.M.A No.1393/26. For hearing of C.M.A. No.2363/26. For hearing of main case.
<u>07.10.2026.</u>	Mr. Asif Ali Bughlo, Advocate for Applicant. Mr. Muhammad Aamir Qureshi, Advocate for Respondent. *****

JAWAD AKBAR SARWANA, J.- Ikram Danish s/o Hassan Ali Khan (Applicant-defendant) is aggrieved by the order dated 09.09.2026 passed by me in the above-titled Revision dismissing the said revision filed by the Applicant-defendant wherein he challenged the conditional leave to defend order dated 05.05.2026 passed by the IXth Additional District Judge, Hyderabad ("the trial Court") in Summary Suit No.147/2025 filed by Muhammad Javeed Khan s/o Haji Muhammad Siddique Khan (respondent-plaintiff).

2. On 23.09.2026, this bench issued notice of the review application (CMA No.2363/2026, which was waived by the Counsel for the respondent-plaintiff, who received the copy of the said application on the same date. Thereafter, the matter was heard on 30.09.2026, and, once again, today, i.e. 07.10.2026.

3. Counsel for the Applicant-defendant has contended that the main challenge in the dismissed Revision, which was also raised in the leave to defend application concerning the point of limitation, viz. the two negotiable instruments were time-barred, has been completely overlooked by the trial Court in the conditional leave-to-defend-granting order dated 05.05.2026. He argued that the Summary Suit filed by the respondent-plaintiff was based on a promissory note dated 20.09.2021 in the sum of Rupees Thirteen (13) million and a cheque dated 20.04.2022 made out to one Muhammad Arif Bhatti in the sum of Rupees Three (3) million. As per Articles 73 & 75 of the Limitation Act, 1908, the period of limitation for filing a summary suit based on a negotiable Instrument is three years; however, the Summary Suit filed by the



Respondent-plaintiff is/was instituted beyond the period of limitation of three (3) years and barred by time. Counsel contended that this crucial aspect was not considered by this bench while deciding the now-dismissed Revision. He contended that this aspect was also ignored by the IXth Additional District Judge, Hyderabad, and was the principal ground for his challenge to the conditional leave-to-defend-granting-order because the trial Court had proceeded to grant conditional leave subject to furnishing solvent surety in the sum of Rupees Three (3) Million, whereas, as per counsel's contention, he was entitled to unconditional leave to defend, as such case had been made out based on his pleadings, which is why he had filed the now-dismissed Revision. He has pleaded before this bench that a case for review is made out and the revision may be re-heard and decided afresh with the assistance of Counsel.

4. Counsel for the Respondent-plaintiff contended that no grounds for review have been made out as the impugned order dated 09.09.2026 passed by this bench was in accordance with law. However, he argued that, in the alternative, if this bench concludes that a case may be made out for review, the trial Court exercised its discretion fairly and reasonably, and the conditional leave-to-defend-granting Order dated 05.05.2026 does not call for any interference by this bench. In support of his contentions, he submitted that the trial Court had fixed the quantum of the solvent surety based on the alleged cheque, which was in the sum of Rupees Three Million, had bounced and was supported by the memo of dishonour issued by the Bank. Therefore, no grounds were made out to challenge the leave-to-defend-granting order dated 05.05.2026.

5. Heard counsel afresh and perused the documents available on record with their assistance.

6. On 09.09.2026, at the time of hearing of this now-dismissed revision, none of the Counsel were in attendance on behalf of the parties except for the Respondent-plaintiff, who was present in person. On perusal of the record with the assistance of Counsel, certain materials, which were available on record and are important for the complete and proper adjudication of this revision, and were not within the knowledge of the bench at the material time, are now identified, which were inadvertently overlooked when the order



dated 09.09.2026 dismissing the revision was passed. Accordingly, the review is allowed, and the order dismissing the revision is set aside. I now proceed to re-hear the matter on merits and decide the revision application afresh with the assistance of Counsel and record.

7. By now, it is well established that in Summary Suit proceedings, the trial Court has the discretion to grant leave to defend conditionally or unconditionally depending on the facts and the circumstances of each case, and that grant of leave to defend is not a matter of course or of right; rather, the defendant must show/disclose a plausible defence that may give rise to a triable issue, and if he succeeds, it is well within the discretion of the trial Court to grant leave to defend either conditionally or unconditionally subject to such leave not being arbitrary and/or capricious; and, is cogent, fair, bona fide, reasonable; and, also disclosed in the affidavit in support of the leave to defend application. The Applicant-defendant in the leave to defend Application, which is duly supported by an affidavit filed by him, has raised the issue concerning time bar and limitation viz. the two negotiable instruments. While the grounds raised by the Applicant-defendant in his leave to defend application may be mixed questions of fact and law, they are still legal and relevant. Before the trial Court, the burden was on the Applicant-defendant to make out a case for grant of leave to defend in terms of order 37 Rule 3 CPC. To that end, the Applicant-defendant had to provide and disclose facts to the trial Court that would make it incumbent on the holder (i.e., the Respondent-plaintiff) to prove consideration, or other facts the Court may deem sufficient to support the leave-to-defend application. As per case law, this aspect may also be balanced with other considerations, including, inter alia, the right of hearing, etc. At the end of the day, the burden is/was entirely on the Applicant-defendant to make out a case for grant of leave to defend, whether conditional or unconditional. Even so, when considering matters involving the exercise of judicial discretion in civil matters, the Superior Courts adopt a cautious approach, as discretion depends on the facts and circumstances of each case, and no hard-and-fast rule can be laid down.

8. I have perused the impugned leave to defend order, and the entire thrust of the arguments in Court (before this bench) and in the leave to defend



application, which was before the trial Court, concerns the point of limitation, and this plea is missing from the impugned conditional leave-to-defend granting order dated 05.05.2026. As a corollary, the impugned order in this revision does not discuss the two allegedly time-barred negotiable instruments. Clearly, in summary suits, after granting leave to defend, the Court allows the defendant to file a written statement and thereafter settles issues on points of fact and law on which the parties are at variance. While the trial Court settles issues based on the plaint and the written statement on record, in summary suits, this exercise commences with the defendant's filing of the leave to defend application and its hearing. It is axiomatic that, if the leave to defend is granted (whether it is conditional or unconditional), then even prior to the settlement of issues afterwards, the basic triable issues are tentatively identified in the leave to defend granting order. Indeed, as per Order 37 Rule 3 CPC, one of the reasons d'être for granting leave to defend is that triable issues have emerged between the parties and require evidence. In the case in hand, the issue of limitation remains unaddressed. It is well acknowledged now that the issue of limitation goes to the root of the lis and strikes at the heart of the maintainability of the lis. Hence, the trial Court often frames maintainability as the first issue, in terms of priority – numero uno, and this often involves the point of limitation. Thereafter, the trial Court settles remaining issues, chronologically, as deemed fit and appropriate to adjudicate the suit. In the present case, the reasons given by the trial Court in the summary suit, in paragraph 7 of the impugned order, for granting conditional leave to defend application deal with the related subject-matter in dispute between the parties, but not the main issue, i.e. limitation. The only discussion of limitation is not in relation to the dates mentioned in the two negotiable instruments (the heart of the summary suit) but, surprisingly, concerns the limitation on filing the leave to defend application (para-8 of the impugned order dated 05.05.2026). Based on Counsel's submissions before this bench, this issue is not contested; i.e., no one's case is that the leave to defend application filed by the Applicant-defendant was barred by time. Therefore, the issue of limitation goes to the heart of the summary suit, but the conditional leave to defend order dated 05.05.2026 does not discuss it.



9. Given the above, the Application for Review is/was allowed, as discussed by me hereinabove, and after re-hearing Counsel, I have set aside my Order dated 09.09.2026. Further, for the reasons discussed hereinabove, I also set aside the Impugned Order dated 05.05.2026, and grant unconditional leave to defend to the applicant-defendant.

10. It is clarified that the observations made by me hereinabove are tentative. The discussion was for the purpose of deciding this review and rehearing the revision afresh and cannot be relied upon by the parties and/or the trial Court. The matter will be decided after recording of evidence and final arguments.

11. Although these are summary proceedings, it is expected that the trial Court will conclude the matter speedily.

12. The revision stands allowed in the above terms.