

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Civil Revision Application No. 155 of 2021

Date	Order with Signature of Judge
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1. For hearing of CMA No.5441/2021
2. For hearing of main case

22.01.2026

None are present on behalf of the applicant/plaintiff, Moula Bux, nor the respondents. No intimation is received.

The civil revision application arises out of the impugned Order dated 30.09.2021, passed by the learned 11nd Additional District Judge, Thatta, in Summary Suit No.25 of 2021, granting unconditional leave to respondent no.1/defendant no.1, Noor Hassan Ali Khuwaja; and, removing respondent no.2/defendant no.2, Abdul Khalil Memon, from the array of defendants from the said Summary Suit.

I have perused the record, and the matter concerns the dishonour of two cheques issued by the respondent no.1/defendant no.1, Noor Hassan Ali Khuwaja, which subsequently bounced. While granting unconditional leave to the respondents/defendants, the impugned Order does not contain any specific/express observation(s) made out in the leave to defend application, which may potentially raise a plausible defence. For instance, the point of limitation, viz., the filing of the leave to defend application, is decided in the favor of the defendant/respondent in the following terms:

“. . .it is nowhere mentioned that the copy of plaint was also handed over to him [defendant] for his defence; resultantly he could not prepare. . .”.

The plaint could not have mentioned anything concerning its service, as service of summons occurs after the filing of the plaint. Statutory limitation and compliance with the provisions of Order 37 as to service is a matter of law, and at the stage of granting leave to defend application, the onus is on the respondent/defendants to meet the challenge as to maintainability of the leave to defend application. Therefore, the observation of the learned 11nd Addl. District Judge to side-step limitation for the reasons articulated herein above, is misconceived. The learned 11nd Addl. District Judge needs to reconsider and revisit the issue of limitation, when granting leave to defend application, which issue is not addressed in the impugned Order.

Furthermore, the impugned Order, as part of its reasons, holds that, "the record reflects the claim of the plaintiff is questionable and appears to be based on fabricated story, which requires full-fledged trial and evidence. . . ." In the same paragraph, the learned IInd Addl. District Judge, Thatta, proceeds to cite the record, once again, to reflect that the plaintiff has kept changing "his instance on handing over the alleged cheques as well as the alleged payment made by him to the defendants". Yet, there is no identification of the precise documents available on record that put the plaintiff's claim for a bounced cheque in the category of a questionable claim that merits unconditional leave. Indeed, at the stage of a leave to defend application granting order, the burden to make out a case for leave granting is on the defendant. The first port of call of defence in a summary suit is usually the "bounced cheque". It is for the defendant, who usually issues the cheque in question, which has bounced, to raise a plausible defence as to its dishonor. Yet, the focus of the learned IInd Addl. District Judge, Thatta, in the impugned Order appears to be entirely on the plaintiff's claim; instead of the defence taken by the defendant. No doubt the plaint has to stand on its own feet, yet, at the same time, given the nature of the summary proceedings under Order 37, the onus to make out a plausible defence is based essentially on doubt creation emerging from the defendant's leave to defend application. In the instant case, none is found in the impugned Order, and this aspect requires articulation. The impugned Order remains want of such information.

Given the above, the impugned Order is set-aside, and the matter is remanded to the IInd Addl. District Judge, Thatta, to re-hear and decide the leave to defend application, afresh by passing a speaking Order after issuing notice to the parties. The arguments on the leave to defend application may be decided within 45 days from receipt of the certified copy of this Order by the IInd Addl. District Judge, Thatta. Office is directed to ensure compliance.

Accordingly, the civil revision application stands disposed of in the above terms.

J U D G E

Ashraf