

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Civil Revision Application No.114 of 2024
(Rizwan Sadiq & another Vs. Zohaib Hussain & Another)

Civil Revision Application No.115 of 2024
(Kamran Sadiq Vs. Zohaib Hussain & Two Others)

Date	Order with Signature of Judge
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Civil Revision Application No.114 of 2024
Hearing / Priority
1. For orders on office objection.
2. For hearing of CMA No.7160 of 2024.
3. For hearing of main case.

Civil Revision Application No.115 of 2024
1. For orders on office objection as at A.
2. For hearing of CMA No.7217 of 2024.
3. For hearing of main case.

13.01.2026

Mr. Sarmad Khan Azad, Advocate for the applicants.
Mr. Noor Ahmed Domki, Advocate for respondent No.1
a/w respondent No.1.

CONSOLIDATED ORDER

Jawad Akbar Sarwana, J: These Civil Revision Application Nos.114 and 115 of 2024 arise out of the impugned orders dated 25.05.2024 and 13.07.2024 passed by the First Additional District Judge, Malir (“the trial Court”) in Summary Suit No.46/2023. The counsel for applicant No.1, Rizwan Sadiq (son), and applicant No.2, Sadiq Hussain (father) in civil revision application no.114/2024, contends that the applicants are neither the issuer of the bounced cheques, which are the subject matter of the summary suit, nor are they the drawer of the said cheques, nor their signatory. He contends that on that ground, the First Additional District Judge, Malir, Karachi, ought not to have passed (i) impugned Order dated 25.05.2024 granting conditional leave in the summary suit as the above-mentioned father and son applicants are/were also not in any way liable to deposit any security in the sum of Rupees fifteen million; and (ii) for the same reason impugned Order dated 13.07.2024 to proceed ex parte against them could also not be sustained.

2. Counsel for the applicant, Kamran Sadiq, in civil revision no.115/2024, who also represents the brother of Kamran Sadiq, i.e. Rizwan Sadiq, and his father, Sadiq Hussain in civil revision no.114/2024, contends in civil revision no.115/2024, that Kamran Sadiq was incarcerated and was not affected service in terms of Form No.4 in Appendix B of Order 37 Rule 2 of the Civil Procedure Code (“CPC”), therefore, the trial Court, at the very outset ought not to have passed ex parte proceedings against Kamran

Sadiq, on this score. Counsel for the applicant in civil revision no.115/2024, further contended that the consideration for the MOU was the basis of a compromise in the criminal matters and, therefore, it did not constitute valid consideration, and hence the dishonoured cheques lacked consideration under the Negotiable Instruments Act, 1881. Finally, he contends that an adequate opportunity to defend the proceedings was also not extended to the applicant/defendant, Kamran Sadiq.

3. Counsel for plaintiff/respondent No.1, Zohaib Hussain, contends that the Memorandum of Understanding ("MOU") was witnessed by Rizwan Sadiq,¹ and, therefore, the summary suit filed against both Rizwan Sadiq and Kamran Sadiq is/was maintainable against the brother and father of Kamran Sadiq.

4. According to the record, civil revision application no.115 of 2024 was filed on 15.08.2024 by Kamran Sadiq against the two impugned orders dated 25.05.2024 and 13.07.2024; whereas Rizwan Sadiq and his father, Sadiq Hussain, filed civil revision application no.114 of 2024 on 13.08.2024 against the same two orders. Meanwhile, this (High) Court in Civil Revision Application No.114 of 2024, passed orders on 10.09.2024, that the trial Court shall not announce the judgment against the applicants, Rizwan Sadiq and Sadiq Hussain, till the next date of hearing. This order remains in effect to date.

5. Heard the counsels and perused the documents available on record.

Rizwan Sadiq and his father, Sadiq Hussain's civil revision no.114/2024

6. It is common ground between counsel that all the alleged cheques listed in the table on page 9 of the memo of the revision application were drawn on the bank account of "K.R.S. International"; and, signed by Kamran Sadiq, alone.² It is also apparent on perusal of the dishonoured cheques in question, as available in this revision, that the face of the cheques at the bottom left side underneath the bank account number mentions the name of the account holder as "K.R.S. International." Additionally, the right portion of the cheque, the place of signature of the account-holder, admittedly evidences both a signature and stamped endorsement, describing the account-holder, on whom the cheque is drawn, as "K.R.S. International, Proprietor". Prima facie, this suggests that the bounced cheques signed by "Kamran Sadiq" were drawn on "K.R.S. International," and that he was doing business in the name of a sole proprietorship, namely "K.R.S. International".

¹ Available on pages 91 – 101 of civil revision no.114/2024

² See pages 99-101 and pages 103-203 of civil revision 114 of 2024.

Further, the manual stamp endorsed on the face of the cheque, made by him (Kamran Sadiq), tentatively suggests that “Kamran Sadiq” was the exclusive owner of the bank account on which the cheque was drawn and subsequently bounced. Given the foregoing, in terms of the summary suit filed under Order 37 CPC, Kamran Sadiq’s brother, Rizwan Sadiq and his father, Sadiq Hussain, tentatively do not appear to have anything to do with the bank account on which the cheque was dishonoured. Yet, while granting leave, the learned First Addl. District Judge, Malir, has coupled Kamran Sadiq’s defence with the defence taken by his brother and father. The defences raised by the defendants inter se were different and distinguishable and ought to have been considered separately. There is no discussion concerning the defence taken by Kamran’s brother and father in the impugned Order dated 25.05.2024 to the extent that they had nothing to do with the bounced cheque. The issue could not have been avoided in the impugned Order dated 25.05.2024, particularly when such a defence had been raised at the stage of leave granting and expressly mentioned in the leave to defend application dated 13.01.2024 filed by the Sadiq family joint Counsel supported by three affidavits by Kamran Sadiq’s spouse, his brother and father,³ and subsequently in the rejoinder affidavit dated 14.03.2024.⁴ Counsel for the Sadiq family, once again, raised the same defence in his Written Arguments dated 31.05.2024.⁵ Instead of addressing this material issue, the learned First Addl. District Judge, Malir, took up another issue, namely, the MOU. Here, Kamran Sadiq’s brother, Rizwan Sadiq was a witness to the said MOU. Consequently, the First Addl. District Judge linked both Kamran’s brother and his father to the MOU, which MOU mentioned/listed the bounced cheques. Yet, this was a summary suit, and the consideration of the MOU at this interlocutory stage of the summary suit in deciding the defence raised by Rizwan Sadiq and Sadiq Hussain was an ancillary consideration as part of the learned Addl. District Judge exercising his discretion as to whether to grant either conditional or unconditional leave. The MOU issue was a triable one. The material defence raised by Rizwan and his father, Sadiq, was that the plaintiff had not placed any documentary evidence to suggest that Rizwan and his father had any nexus to the bank account and/or the bounced cheque. The entire focus of a leave-granting order in a summary suit is on the bounced cheque, and the defence taken by the defendants, viz., the bounced cheque, was most material and could not have been overlooked by the trial Court. In the circumstances, Rizwan Sadiq and Sadiq Hussain, having no nexus to the bounced cheques, a plausible defence was made by them at the time of the grant of leave to defend the

³ Available on pages 243-259 of civil revision no.114/2024

⁴ Available on pages 283 - 295 of civil revision no.114/2024

⁵ Available on pages 297 – 305 of civil revision no.114/2024

application, and in the facts and circumstances of the case, they, Rizwan and his father, Sadiq Hussain, were entitled to unconditional leave to defend.

7. Given the above discussion, in the facts and circumstances of the case, the impugned Orders dated 25.05.2024 and 13.07.2024 passed by the First Addl. District Judge is set aside, and both Rizwan Sadiq and Sadiq Hussain are granted unconditional leave to defend in summary suit no.46/2023 to enable them to contest the suit without any precondition of submitting solvent security.

Kamran Sadiq's civil revision no.115/2024

8. Counsel for Kamran Sadiq has contended that the applicant was not effected service within the framework of Order 37. Counsel for the respondent has invited me to the trial Court's Order dated 06.01.2024, available on page 239 of the civil revision no.115/2024. The said Order, followed by subsequent ones, clearly indicate that both sufficient notice and opportunities were afforded to Kamran Sadiq to defend the proceedings from time to time, and even if he may have been incarcerated at the material time, his counsel had entered an appearance on his behalf, in the summary suit since January 2024 and continued to defend the case notwithstanding that he also dilly-dallied in the summary suit proceedings. Without prejudice to the contentions of Kamran Sadiq, the impugned Order dated 25.05.2024 has set out reasons for granting conditional leave to defend. The cheques which bounced were issued by Kamran Sadiq. He did not deny issuing them. His defence that the cheques were based on an "MOU" and not an agreement does not constitute a cause to grant unconditional leave. Indeed, the learned First Addl. District Judge has applied his mind and, exercising his discretion out of a claim for 39 bounced cheques each in the sum of Rs.600,000 raised by the plaintiff in the MOU, has accepted the claim for 25 bounced cheques in the sum of Rs.600,000. The 25 bounced cheques total Rs.15 million which is the basis of the solvent security. I do not find any arbitrariness in the impugned Order dated 25.05.2024 in granting conditional leave, and in determining the solvent security amount to be Rs.15 million. Therefore, no grounds are made out to interfere with the impugned Order of 25.05.2024, which is in the nature of an interlocutory order in the summary proceedings. No cause is made out to modify the quantum of the conditional security of Rs.15 million. The points raised by Counsel of Kamran Sadiq concerning valid consideration are triable, and, in the facts and circumstances of the case, ancillary to the question of deciding conditional or unconditional leave, which is in the discretion of the trial Court, and whereas, conditional leave is already granted in the summary suit, at present, I am not inclined to consider Counsels contentions at this stage. They are best dealt with during trial, now.

Indeed, even if the summary suit proceeds ex parte against Kamran Sadiq, he may, subject to timely intervention on the part of his counsel, cross-examine the plaintiff's witnesses in support of his defence. Finally, the First Addl. District Judge, Malir, is still obliged to pass judgment and decree in accordance with the law. Therefore, contrary to the submissions of the Counsel for Kamran Sadiq, not all is lost if this revision is dismissed.

9. I now turn to the second order impugned in this revision, i.e. the impugned Order dated 13.07.2024, wherein the defendants, i.e. Kamran, his brother, Rizwan and his father, Sadiq Hussain, had sought an extension of two months to furnish the security of Rs.15 million. Almost eighteen (18) months have passed since the impugned Order. Sufficient time has lapsed. Kamran Sadiq could have offered to submit a solvent surety before this (High) Court, but he has not done so. In the circumstances, at this stage, after 18 months from the passing of the impugned Order, no case is made out to set aside the subsequent Order under challenge, dismissing the request of the defendants in the summary suit requesting an extension of time of two months. Once again, for this reason, I am not inclined to interfere in the impugned leave-granting Order. For the above reasons, no case is made out in support of civil revision no.115/2024, and the same is dismissed.

10. Given the above, I do not find any defect in the impugned Orders, and the two (2) revision applications are disposed of in the above terms along with the listed applications by way of this Consolidated Order.

11. None of the observations made by me herein shall be relied upon by the parties and/or the First Additional District Judge, Malir, Karachi, as these observations are purely for deciding these revision applications only.

J U D G E

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