

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Civil Revision Application No. 143 of 2025
a/w Civil Revision Application No. 134 of 2025

Date	Order with Signature of Judge
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- 1.For order on office objection a/w reply at A
- 2.For hearing of CMA No.6579/2025
- 3.For hearing of CMA No.6471/2025
- 4.For hearing of main case

21.01.2026

Mr. Junaid Alam Khan, advocate for applicant in Revision 143/2025 and respondent No.1 in revision 134/2025

Mr. Muhammad Younus, advocate for respondent 2 in Revision 143/2025 and respondent No.4 in revision 134/2025

Ammar Shahid/respondent No.1 in Revision 143/2025 and applicant in Revision 134/2025

M/s. IS Building & Developers, Muhammad Rana Shahryar and Irfan Mangnejo/defendants, are aggrieved by the order dated 04.09.2025 passed by the 1st Additional District Judge, Malir, Karachi (hereinafter referred to, interchangeably as the “1st ADJ” or trial Court” as the case may be), granting conditional leave to defend in Summary Suit No.74/2024 subject to furnishing solvent surety or bank guarantee certificate in the sum of Rs.42,000,000/-, whereas, Ammar Shahid/plaintiff of the said summary suit, is aggrieved by the same order on the ground that the Court should not have granted conditional leave to defend, and ought to have straightaway passed judgment and decree against the defendants.

2. The brief facts of the case are that Ammar Shahid had initially entered into an oral agreement whereby he had obtained certain share in a partnership, which partnership was ultimately dissolved vide agreement dated 18.01.2023. As per the said agreement, sums of money were acknowledged as outstanding and payable by Muhammad Rana Shahryar and Irfan Mangnejo. One of the terms of this agreement required Muhammad Rana Shahryar and Irfan Mangnejo to issue cheques. Accordingly, four cheques were issued by the association of persons (AOP)/partnership firm, M/s. IS Builders & Developers, whose cheques were co-signed by Muhammad Rana Shahryar and Irfan Mangnejo. Out of those four cheques, three cheques were payable to Ammar Shahid, whereas one of the cheques was payable to one “Hamna Properties”. All four cheques were returned on 01.07.2023 due to insufficient funds. It may be noted that all four cheques totalled a sum of Rs.11,485,488/-¹ and three cheques out of four, which were payable to Ammar Shahid, totalled Rs.8,452,116/-. Be that as it may, Ammar Shahid filed Summary Suit No.74 of 2024 for the recovery of Rs.42,000,000/-.

¹ Copy of four (04) bounced cheques and Note from bank is available on pages 51-53 of R.A.143/2025.

3. The trial Court, after hearing the parties, allowed Leave to Defend Application conditionally, subject to the defendants' furnishing their solvent surety and/or Bank Guarantee of Rs.42,000,000/- on or before the next date. Aggrieved by this order, the parties have filed Civil Revision Applications listed and heard by me today. It may also be noted that this Court, on 22.09.2025, passed an order that no coercive action shall be taken in pursuance of the impugned order, whereafter, as per the submission of counsel, the summary proceedings are still in abeyance and at a standstill for the last four (04) months.

4. Heard learned counsel, Ammar Shahid (in person) and perused the record available in the two revisions. It is apparent on the face of the record that Summary Suit No.74/2024 was filed by Ammar Shahid alone personally. The title of the plaint filed in the Summary Suit does not disclose any other entity or business concern, such as "Hamna Properties", having agitated any claim against the defendants. Indeed, while one of the beneficiaries of the bounced cheques was "Hamna Properties", the summary suit was not filed on its behalf, i.e., "Hamna Properties". Further, a perusal of the contents of the plaint also does not mention that Ammar Shahid was/is doing business in the name of "Hamna Properties". In view of the foregoing, as one of the four bounced cheques is issued in the name of "Hamna Properties", a plausible case has been made out by the defendants with regard to said cheque payable to "Hamna Properties". This issue, which is triable, will now be subject to the recording of evidence before the learned 1st ADJ in the summary suit, and Ammar Shahid will have the opportunity to prove his claim against the defendants through "Hamna Properties". In the facts and circumstances, the nexus between the plaintiff, Ammar Shahid, and "Hamna Properties" remains subject to proof, and a plausible defence has been made out by the defendants, viz. "Hamna Properties", the benefit of doubt is to be extended to the defendants at this interlocutory stage of the leave to defend granting order that the trial Court ought to have taken into consideration viz., in determining the quantum of the security amount in the order for granting conditional leave. As a colliery, the cheques payable to "Hamna Properties", which bounced, ought not to have been included in the total sum of the amount mentioned in the conditional leave-granting order. To this extent, the cheque payable to "Hamna Properties" ought to have been excluded from the security amount, and, in the facts and circumstances, the trial Court, while granting the conditional leave to defend, ought to have exercised its discretion allowing leave for the total amount payable in respect of the three bounced cheques payable to "Ammar Shahid" only.

5. There is another aspect which requires consideration viz., the subject of the claim being pursued by Ammar Shahid in summary proceedings. A perusal of the record reveals that Ammar Shahid has prayed for the following reliefs in his plaint:-

- “A) *That since that defendants have committed fraud against the plaintiff by misrepresenting the properties, they initially clammed ownership of Plot 83 and 35 in Jinnah commercial, however, through fraudulent means they executed an agreement for plots 36 and 37, furthermore, they have misappropriated funds by diverting the plaintiffs investment into these two plots, therefore, it is respectfully prayed that an injunction order be issued against plots 35-A, Jinnah commercial and 83-H, Jinnah commercial restraining any sale, transfer, or encumbrance until the recovery of the plaintiffs amount is secured.*
- B) *To pass judgment and decree, in favour of plaintiff for payment of Rs. 4,20,00,000/- under contemplation of this suit.*
- C) *To the plaintiff together with its markup/profit according to prevailing circumstances ad 25% increased per annum with the capital and actual amount.*
- D) *To direct the defendants to pay 100% damages to the plaintiff, due to the above mentioned facts and circumstances.*
- E) *To award cost of the suit.*
- F) *Any other relief or relives, which this Honorable court may deem fit and proper under the circumstances of the case cost of the suit”.*

6. The aforementioned prayer clauses demonstrate that in the summary suit filed under Order 37 CPC, Ammar Shahid, in addition to his claim for the entire amount of the bounced cheques, has also claimed, *inter alia*, a restraining order concerning the two properties as stated therein, claim for settlement of accounts due to alleged misappropriation, etc. It is a trite principle that summary proceedings are in respect of negotiable instrument(s) alone and under the framework of Order 37 CPC, the ancillary claims are beyond its scope. The appropriate forum for settlement of contractual and/or civil disputes, damages, etc. may be claimed in the ordinary civil jurisdiction. As such, the entire claim of recovery of Rs.42,000,000/- ought not to have been made part of the conditional leave-granting order.

7. In the instant case, in the facts and circumstances and discussion hereinabove, the claim for settlement of accounts, damages, etc., which fell outside the scope of the bounced cheques, is/was not amenable to summary proceedings. It cannot be made part of the quantum of the security mentioned in the leave to defend granting order. In the circumstances, directions by the trial Court to the defendants to furnish solvent security should have been to the extent of the claim for the three bounced cheques in the sum of Rs.8,452,116/- and not the total claim made by the plaintiff of Rs.42,000,000/. For the above reasons, the amount mentioned in the conditional leave to defend granting order as security to be furnished by the defendants is amended to read as Rs.8,452,611/-.

8. During the course of the arguments, Ammar Shahid contended that according to 1st ADJ in paragraph 9 of the impugned Order, the attorney of the IS Building & Developers/defendants and its partners were found to be not

authorised through the attorney to file the leave to defend application. Therefore, he submitted that there was no reason to grant leave to defend, as admittedly none appeared on behalf of the defendant Nos.1 to 3. The trial Court should have assumed no application for leave to defend was filed. He contended that the summary suit should have been dismissed. Although the 1st ADJ has tentatively observed that the attorney has no right to file the leave to defend application, this does not preclude the Court from exercising its discretion and passing leave granting order articulating its own reasoning independently of whatever points have been raised by the parties and their Counsel. At the end of the day, the learned 1st ADJ has identified the defence(s) raised by the defendants. It did not matter if the defendants were being represented by a duly competent attorney. The defences need not be pleaded expressly for the Court to take them up, as the Court also exercises its own wisdom. The 1st ADJ was statutorily obliged to pass Orders viz., the leave to defend application in accordance with the law, giving his reasons for allowing or dismissing the leave to defend application. These are mentioned in the impugned Order, and, in his wisdom, support the conclusion reached by him. For the above reasons, at this stage, I do not find any ground to interfere in the impugned Order because of the competency of the attorney of the defendants, or pass any remarks in relation thereto or to find that the trial Court was barred in any way to come up with defences for curating a conditional leave-granting order, even if none appeared on behalf of the defendants (because the attorney lacked competency). The issue of the authority of the attorney and its impact on the summary suit may be determined during the trial.

9. Learned counsel for the respondent No.4/Sardar Iftikhar Ahmed contended that he is neither a partner of M/s. IS Builders & Developers, nor did he sign the cheque, and hence he is not liable to submit any solvent surety. The issue of Sardar Iftikhar Ahmed's association/relationship with the drawer of the three bounced cheques, i.e., IS Building & Developers/defendants and to the bank account on which the cheques were drawn remains subject to trial in the summary suit. Additionally, Sardar Iftikhar Ahmed has not raised any objection and/or challenged the conditional leave to defend granting order by way of filing a separate revision. The submissions raised by his counsel may be decided by the trial Court at the appropriate time. I am not inclined to interfere in the impugned Order as to Sardar Iftikhar Ahmed's liability at this interlocutory stage of granting leave to defend. Suffice it to say that once the solvent security is submitted to the trial Court, the condition of the leave-granting order stands satisfied to the benefit of defendant nos.1 to 3. There is nothing in the impugned order passed by the trial Court for respondent No.4 to be aggrieved.

10. In view of the above, the impugned Order dated 04.09.2025 passed by the 1st ADJ is set aside, and the quantum of the security is modified to the extent of

the three bounced cheques payable to Ammar Shahid, which total Rs.8,452,116/-. The leave to defend application filed by defendant Nos.1 to 3 in the summary suit no.74/2024, is allowed conditionally, subject to furnishing solvent surety/bank guarantee certificate in the said summary suit in the sum of Rs.8,452,116/- within two weeks from the court motion notice sent to the parties by the 1st ADJ, with copy of this Order. In case the requisite surety is not furnished within the stipulated period, the leave to defend granted by the 1st ADJ, as amended by the Order passed herein, shall stand automatically recalled. Office is directed to send a certified copy of this Order to the 1st ADJ to facilitate further proceedings.

11. For removal of doubt, none of the observations made by me shall prejudice the rights of any party, claims and defence(s) taken in the summary proceedings.

12. Accordingly, these civil revision applications are disposed of in the above terms.

J U D G E

Ashraf