

IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

Civil Revision Application No.S-448 of 2024

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Applicant: Muhammad Amir son of Muhammad Bashir,
Through Mr. Rana Raheel, Advocate.

Respondent No.1: Shahbaz son of Ghulam Mustafa,
Through Mr. Farhan Ahmed Bozdar, Advocate.

Respondent No.2: Shoaib Malik son of Ghulam Mustafa,
Called absent.

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Date of hearing **13.01.2026**

Date of order **13.01.2026**

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ORDER

Muhammad Hasan (Akber), J-: The instant Civil Revision Application is directed against the impugned order dated 09.10.2019 passed by the learned District Judge, Mirpurkhas, whereby the application under Order XXXVII Rule 3 C.P.C for leave to defend was allowed in Summary Suit No.28/2018.

2. Brief facts of the case are that the applicant/plaintiff filed Summary Suit No.28/2018 under Order XXXVII C.P.C seeking recovery of Rs.20,00,000/- from the respondents/defendants. The applicant is an authorized Jazz Cash agent of Mobilink Micro Finance Bank and in that capacity transferred a total amount of Rs.20,00,000/- to the respondents' Jazz franchise in October 2017 through verified Jazz Cash transactions. The respondents operate a Jazz Point franchise, with respondent No.1 as proprietor and respondent No.2 as manager. When the applicant demanded repayment, the respondents issued two cheques of Rs.10,00,000/- each in April 2018, both of which were repeatedly dishonoured due to insufficient funds. Despite multiple demands, the respondents refused to pay and allegedly harassed the applicant. The applicant approached regulatory authorities without success and subsequently lodged FIR No.103/2018 under sections 489-F, 420 and 34 P.P.C resulting in the arrest of respondent No.2. The applicant asserts that

the respondents committed fraud and forgery, unlawfully retained Rs.20,00,000/-, and are jointly and severally liable to repay the outstanding amount. Hence the applicant filed the above suit with the following prayers:-

- a) Direct the respondent/defendants jointly and severally to pay the outstanding amount of Rs.20,00,000/-; in case of failure, the same may be recovered by selling their movable and immovable property through this Honourable Court.
- b) Direct the respondent/defendants jointly and severally to pay mark-up at the court-prescribed rate till realization.
- c) Any other relief.

3. The respondent/defendant appeared and filed application under Order 37 Rule 3 C.P.C for leave to defend the suit which was allowed conditionally vide order dated 09.10.2019 subject to furnishing surety in the sum of Rs.5,00,000/-, which is impugned in this revision application.

4. Learned counsel for the applicant contended that the impugned order is illegal and suffers from material irregularity as the learned Court below failed to appreciate and apply the mandatory provisions of Order XXXVII C.P.C and wrongly exercised its discretion by entertaining and allowing a time barred application for leave to defend without any lawful justification or application for condonation of delay.

5. Conversely, learned counsel for the respondent No.1 supported the impugned order.

6. I have heard learned counsel for the parties and perused the record with their assistance.

7. It is settled proposition of law that the object of Order XXXVII C.P.C is to provide an expeditious remedy in suits based on negotiable instruments. Leave to defend can only be granted where the defendant discloses a substantial defence or raises issues and such application is required to be filed within the statutory period prescribed under law. The learned trial Court while allowing the

application for leave to defend did not frame or decide the question as to whether such application was barred by limitation. The issue of limitation goes to the root of the matter and directly affects the competence of the Court to entertain such application. However, keeping in view the limited and supervisory scope of Revisional jurisdiction under Section 115 C.P.C, this Court is of the settled principle that interference is warranted only to correct jurisdictional errors and material irregularities and not to substitute its own discretion for that of the Court below. Accordingly, in order to ensure that the matter is decided strictly in accordance with law, the impugned order dated 09.10.2019 is maintained subject to the condition that the learned trial Court shall frame the issue "*whether leave application was barred by limitation*" along with other relevant issues, after affording due opportunity of hearing to the parties and thereafter proceed to decide the suit expeditiously in accordance with law.

8. The Civil Revision Application is disposed of in the above terms. These are the reasons of short order dated 13.01.2026.

JUDGE

"Faisal"