

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.57 of 2026

Appellant : Amanullah Khan S/o Inayatullah Khan
through S. Gulzar Hussain Shirazi,
Advocate

Respondent : Hamdullah Jadoon S/o Nidullah Jadon
through Barrister Bahadur Bokhari

Date of Hearing : 25.09.2026

Date of Order : 25.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- The Appellant, through the instant First Appeal under Section 96, C.P.C., has called in question the judgment and decree dated 17.03.2026, passed by the learned Additional District Judge-VI, Malir, Karachi, in Summary Suit No.37 of 2024, whereby the suit filed by the Respondent for recovery of Rs.98,00,000/- under Order XXXVII, C.P.C., was decreed in his favour.

2. Briefly stated, the Respondent/Plaintiff's case is that he is the brother-in-law of the Appellant and, owing to their close relationship, the Appellant and his father approached him for investment. According to the plaint, the Respondent initially arranged Rs.10,00,00,000/- and subsequently a further sum of Rs.13,00,00,000/- for investment in the alleged business of wheat against an assurance of profit. It was alleged that the Appellant failed to return the principal amount along with the agreed profit and, upon repeated demands, issued three cheques which were dishonoured on account of insufficient funds. The Respondent further pleaded that agreements dated 23.12.2022 and 17.11.2023 were thereafter executed towards repayment, but the commitments contained therein were also not honoured.

Consequently, FIRs were lodged and the Respondent instituted the instant summary suit for recovery of Rs.98,00,000/-.

3. In his application for leave to defend, the Appellant controverted the very foundation of the claim. He pleaded, *inter alia*, that the parties were close relatives and that the Respondent used to visit his office. Taking advantage of such relationship and access, the Respondent allegedly obtained/stole cheques from the Appellant's office and subsequently misused them by initiating various proceedings against him. The Appellant specifically denied having entered into any genuine business transaction with the Respondent. He also questioned the Respondent's financial capacity to advance such substantial amounts, particularly in view of his employment as a police constable, and maintained that no satisfactory money trail, business record, banking transaction or other independent documentary material had been produced to substantiate the alleged investment.

4. During pendency of the suit, the learned Trial Court initially granted leave to defend subject to furnishing surety. In compliance therewith, the Appellant furnished property documents as surety. The Respondent raised objections to the property so offered, whereupon the Appellant furnished another surety, which was again objected to by the Respondent. The record further reflects that reports were obtained from the concerned registration authorities regarding verification of the properties and documents furnished by the Appellant, including material indicating that the relevant documents formed part of the official record and were genuine. The learned Trial Court, thereafter, proceeded to dispose of the summary suit and decreed it in favour of the Respondent for recovery of Rs.98,00,000/-. Aggrieved thereby, the Appellant has approached this Court through the instant appeal.

5. Learned counsel for the Appellant contended that the learned Trial Court erred in proceeding to decree the suit without affording the Appellant an effective opportunity to contest the claim. According to learned counsel, the Appellant had raised serious and bona fide questions concerning the alleged

transaction, issuance and possession of the cheques, the purported business arrangement and the source of the substantial amount claimed by the Respondent. It was submitted that the Respondent, admittedly serving as a police constable, claimed to have advanced an exceptionally large amount, thereby making the source and mode of acquisition of such funds a material matter requiring examination through appropriate financial and documentary evidence. Learned counsel maintained that no satisfactory money trail, bank record or independent material had been produced to establish the alleged advancement. It was further contended that the Respondent had initiated criminal proceedings on the basis of the disputed cheques, whereas the Appellant had consistently maintained that the cheques had been taken from his office and misused. According to learned counsel, these disputed matters could not properly be determined without recording evidence.

6. Learned counsel further submitted that the Appellant had made bona fide efforts to comply with the condition imposed for grant of leave to defend by furnishing surety. However, each time surety was offered, objections were raised by the Respondent in respect of the property furnished, necessitating the submission of another surety. It was argued that the reports obtained from the concerned registration authorities supported the genuineness of the documents furnished by the Appellant, yet the learned Trial Court proceeded to decree the suit, thereby depriving him of an effective opportunity to contest the claim on merits. Learned counsel accordingly prayed that the impugned judgment and decree be set aside, the matter be remanded to the learned Trial Court and the Appellant be permitted to defend the suit subject to furnishing appropriate security. He further submitted that the Appellant was willing to deposit cash as well as car documents towards security for an amount of Rs.98,00,000/- before the learned Trial Court.

7. Conversely, learned counsel for the Respondent supported the impugned judgment and decree and submitted that the Appellant had failed to comply with the condition subject to which leave to defend had been granted. It was contended that

the Appellant was required to furnish proper and acceptable surety but failed to do so. According to learned counsel, the objections raised by the Respondent regarding the properties offered as surety were bona fide and could not be construed as an attempt to deprive the Appellant of his right of defence. Learned counsel maintained that the Respondent had duly pleaded the transaction, produced the relevant cheques and supporting documents and initiated proceedings following their dishonour. It was, therefore, argued that the learned Trial Court had committed no illegality or irregularity in proceeding to decree the summary suit. Dismissal of the appeal was accordingly sought.

8. It was further argued on behalf of the Appellant that the Respondent's case was that the cheques had been stolen from the Appellant's office, whereas the Respondent was serving merely as a police constable and had not satisfactorily explained the source from which he allegedly arranged Rs.10,00,00,000/- and thereafter Rs.13,00,00,000/-. It was also pointed out that the Respondent was not an active filer with the FBR. When these aspects were put to learned counsel for the Respondent, no satisfactory explanation was forthcoming.

9. We have heard learned counsel for the parties and, with their able assistance, have carefully examined the record.

10. The principal question requiring determination is whether, in the peculiar facts and circumstances of the case, the Appellant has disclosed a bona fide and substantial defence warranting an opportunity to contest the suit and whether his failure to furnish the required surety, in the circumstances emerging from the record, could, by itself, justify sustaining the decree without adjudication of the disputed matters on merits.

11. At the outset, it may be observed that the Respondent's claim is not founded upon an admitted liability. The Appellant has specifically disputed the alleged business transaction and questioned the circumstances in which the substantial amount is stated to have been advanced. He has also raised a specific plea regarding the cheques relied upon by the Respondent,

alleging that the same were stolen from his office and subsequently misused. Whether the cheques were voluntarily issued by the Appellant in discharge of a legally enforceable liability or were obtained/stolen and thereafter misused, as alleged, is a matter which cannot be conclusively determined at the stage of considering an application for leave to defend.

12. Another significant aspect relates to the financial capacity and source of the substantial amount allegedly advanced by the Respondent. The transaction pleaded by him involves a considerable sum, while he is admittedly serving as a police constable. This circumstance, by itself, does not establish that the Respondent was incapable of possessing or advancing such amount. Nevertheless, in the particular circumstances of the case, the questions as to the source from which the funds were generated, the manner in which they were allegedly advanced, the banking or other channels through which the transaction was effected, and whether the same was reflected in the Respondent's financial and tax record are matters requiring examination.

13. During the course of hearing, learned counsel for the Appellant submitted that the Respondent had failed to produce any money trail or bank statement before the learned Trial Court demonstrating that the alleged amounts of Rs.10,00,00,000/- and Rs.13,00,00,000/- had been transferred to the Appellant. It was further contended that no adequate business details or supporting record had been produced and that the documents relied upon by the Respondent were disputed as fabricated and manufactured. The Appellant also maintained that no genuine business relationship existed between the parties and reiterated his plea that the cheques had been taken from his office and subsequently misused. It was emphasized that the Respondent, being a police constable and allegedly not an active filer with the FBR, had not satisfactorily explained the source of such substantial funds. When confronted with these aspects, learned counsel for the Respondent was unable to furnish a satisfactory response.

14. We, however, are not inclined, at this stage, to record any finding that the Respondent had no lawful source of funds or that the alleged transaction did not take place. Nevertheless, the questions raised by the Appellant concerning the source and documentary trail of the substantial amount cannot be brushed aside as irrelevant or imaginary, particularly when the transaction itself has been specifically denied and remains to be established through evidence.

15. It is settled that while considering an application for leave to defend under Order XXXVII, C.P.C., the Court is not required to conduct a full-fledged trial or undertake an elaborate appraisal of the evidence. At the same time, where the defence disclosed by the defendant raises genuine and substantial questions going to the very foundation of the plaintiff's claim, an opportunity to contest the suit ought ordinarily to be afforded so that such disputed matters may be determined upon recording the requisite evidence.

16. In the present case, the Appellant has not confined his defence to a bare denial. He has disputed the alleged business relationship and transaction, questioned the source of the substantial amount claimed by the Respondent, specifically challenged the manner in which the cheques came into the Respondent's possession and relied upon the surrounding circumstances to dispute the alleged liability. Whether the Respondent actually advanced the amount claimed, whether the alleged business transaction took place, whether the cheques were voluntarily issued by the Appellant, whether the agreements relied upon by the Respondent were executed in the circumstances asserted by him, and whether the Respondent can establish the requisite money trail are matters having potential evidentiary significance and capable of proper determination only after the parties have been afforded an opportunity to lead evidence.

17. We are also mindful that the learned Trial Court had initially granted leave to defend subject to furnishing surety. The record demonstrates that the Appellant made efforts to comply with the said condition and furnished property documents as

surety. The Respondent objected to the first property, following which another surety was furnished, to which objection was again raised. The matter thereafter necessitated verification by the concerned registration authorities, and the record contains official correspondence/reports relating to verification of the documents so furnished.

18. In these circumstances, the Appellant's inability to ultimately furnish a surety acceptable to the Respondent cannot, without examining the surrounding circumstances, be treated as an absolute impediment to his right to defend the suit. The object of imposing a condition upon grant of leave to defend is to safeguard the legitimate interest of the plaintiff and not to render the defendant's right of defence illusory. Where substantive questions requiring adjudication have been raised and the defendant has made efforts to comply with the condition imposed by the Court, the matter must be considered in a manner that balances the plaintiff's legitimate security interest with the defendant's right to a fair opportunity of defence.

19. It is equally necessary to clarify that grant of leave to defend does not amount to acceptance of the defence advanced by the Appellant. The Respondent shall remain at liberty to establish his claim in accordance with law, including the alleged advancement of the amount, the business transaction, issuance of the cheques and execution of the agreements relied upon by him. Correspondingly, the Appellant shall be required to substantiate his pleas concerning the disputed transaction, cheques and other documents through legally admissible evidence. The observations made herein are confined strictly to the question of leave to defend and shall not prejudice either party in the adjudication of the suit on merits.

20. In view of the foregoing discussion, we are of the considered view that the Appellant has raised substantial, bona fide and triable questions which cannot appropriately be determined without affording the parties an opportunity to adduce evidence. The circumstances surrounding the alleged transaction, the source and documentary trail of the substantial amount claimed,

the disputed cheques, and the successive sureties furnished by the Appellant require proper adjudication upon evidence. In these circumstances, denial of an effective opportunity to contest the claim has deprived the Appellant of a fair opportunity to defend the suit. The matter, therefore, warrants interference by this Court in appellate jurisdiction.

21. For the foregoing reasons, the instant First Appeal is allowed and the impugned judgment and decree dated 17.03.2026, passed by the learned Additional District Judge-VI, Malir, Karachi, in Summary Suit No.37 of 2024, are hereby set aside. The Appellant's application for leave to defend is allowed, subject to furnishing security in the sum of Rs.98,00,000/- to the satisfaction of the learned Trial Court within fifteen (15) days from the date of receipt of this judgment. Of the aforesaid amount, the Appellant shall deposit Rs.50,00,000/- in cash and furnish solvent surety for the remaining amount of Rs.48,00,000/- to the satisfaction of the learned Trial Court. In the event of failure to comply with the aforesaid condition within the stipulated period, the conditional leave granted herein shall cease to have effect and, consequently, the judgment and decree dated 17.03.2026 shall stand revived and become enforceable in accordance with law.

22. Subject to compliance with the condition stipulated above, the matter is remanded to the learned Trial Court for adjudication afresh, strictly in accordance with law, after affording both parties a fair and reasonable opportunity to lead evidence in support of their respective claims and defences. The learned Trial Court shall proceed with the matter expeditiously and endeavour to conclude the proceedings within a period of three months from the date of compliance with the aforesaid condition. Neither party shall seek, nor shall the learned Trial Court ordinarily grant, adjournments on flimsy, frivolous or avoidable grounds.

23. It is clarified that the observations made herein are tentative in nature and confined solely to the question of the Appellant's entitlement to leave to defend. Nothing stated herein

shall be construed as an expression of opinion on the merits of the respective claims or defences of the parties. The learned Trial Court shall adjudicate the suit independently, on the basis of the evidence brought on record and strictly in accordance with law.

JUDGE

JUDGE

Kamran/PS