

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan

Mr. Justice Amjad Ali Sahito

First Appeal No.75 of 2026

Appellants : Sheikh Abdul Saleem S/o Abdul Raheem
through Mr. Mukhtiar Ali Sodhar,
Advocate

Respondents : Abdul Wasi S/o Abdul Raheem and
another, Present in person.

Date of Hearing : 13.08.2026

Date of Order : 13.08.2026

J U D G M E N T

Amjad Ali Sahito, J.- The appellant, by way of the instant First Appeal under Section 96, C.P.C. read with Section 151, C.P.C., has called in question the Order and Decree dated 29.05.2026, passed by the learned Additional District Judge-I/MCTC, Malir, Karachi, in Summary Suit No.67 of 2025, whereby the application for leave to defend preferred by the defendant/present appellant was dismissed and the suit instituted by the plaintiffs/present respondents was decreed in the sum of Rs.2,00,00,000/-.

2. Briefly stated, the case set up by the plaintiffs/present respondents is that, while residing and working in the United Arab Emirates, they had accumulated savings in the form of gold biscuits and gold ornaments, which, upon their return to Pakistan and during the construction of their house, were allegedly entrusted to the appellant for safe custody. It was further alleged that the appellant obtained a loan of Rs.17,00,000/- from respondent No.1 and, vide an agreement dated 15.04.2024, acknowledged receipt of the said amount as well as the gold entrusted to him. According to the respondents, the appellant subsequently issued Cheque No.HMS-14835104,

drawn on Habib Metropolitan Bank, for a sum of Rs.2,00,00,000/- towards discharge of his liability. Upon demand, however, the appellant allegedly failed either to return the gold or to discharge his monetary obligation. The aforesaid cheque, when presented for encashment, was dishonoured, which consequently led to the institution of the summary suit.

3. In his application for leave to defend, the appellant categorically denied the transaction relied upon by the respondents. He specifically denied having executed the alleged agreement dated 15.04.2024, asserting that the same was false, forged and fabricated. He likewise denied having issued the cheque in question and maintained that the said cheque had been stolen or otherwise unlawfully obtained from his possession. The appellant further denied having received any gold, ornaments or money from the respondents and, in support of his plea regarding the alleged theft, placed reliance upon an application stated to have been submitted to the police authorities on 30.04.2025. On the basis of the aforesaid pleas, he sought leave to contest the suit on merits.

4. The learned trial Court, however, declined to grant leave to defend, principally on the ground that the appellant had failed to produce documentary evidence or other supporting material substantiating his allegations of forgery and theft. Consequently, the suit was decreed in favour of the plaintiffs/present respondents for a sum of Rs.2,00,00,000/-, which order and decree have been assailed by the appellant through the instant appeal.

5. Learned counsel for the appellant contended that the learned trial Court had erred in law and on facts in refusing leave to defend, notwithstanding the appellant's specific and categorical denial of the execution of the agreement upon which the respondents' claim was principally founded, as well as the issuance of the cheque forming the basis of the alleged liability. According to learned counsel, the questions as to whether the agreement had genuinely been executed by the appellant and

whether the cheque had in fact been issued by him were disputed questions of fact which could only appropriately be adjudicated after affording the appellant an opportunity to lead evidence. He submitted that refusal of leave had resulted in the suit being decreed without trial on material and substantive issues requiring determination upon evidence. He accordingly prayed that the impugned order and consequential decree be set aside and conditional leave to defend be granted to the appellant.

6. Conversely, the respondents, Abdul Wasi and Mst. Maryam, appeared in person and supported the impugned order and decree. They submitted that the appellant had taken false, inconsistent and contradictory pleas and had failed to place on record any credible material substantiating his allegations of forgery or theft. According to them, the appellant had deliberately raised a sham defence with the sole object of delaying recovery of the amount lawfully due to them. They, therefore, contended that the impugned order and decree called for no interference and prayed for dismissal of the appeal.

7. We have heard learned counsel for the appellant as well as the respondents, who appeared in person, and have carefully examined the record with their able assistance.

8. The principal question requiring determination is whether, in the facts and circumstances of the present case, the appellant ought to have been afforded an opportunity to defend the suit. It is a settled principle 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 appreciation of evidence. Nevertheless, where the defence disclosed by the defendant raises a genuine, bona fide and substantial dispute touching upon the very foundation of the plaintiff's claim, the defendant ought ordinarily to be permitted to contest the suit so that such disputed questions may be adjudicated upon after recording the requisite evidence.

9. In the present case, the claim of the respondents is founded principally upon two documents, firstly, the alleged agreement

dated 15.04.2024 and the cheque for a sum of Rs.2,00,00,000/-. Significantly, the appellant has not merely disputed certain aspects of the respondents' claim; rather, he has categorically denied the execution of the agreement as well as the issuance of the cheque itself. These denials go to the very root of the respondents' cause of action. It would, therefore, be incumbent upon the learned trial Court to determine, upon proper evidence, whether the agreement was in fact executed by the appellant, whether the signatures appearing thereon are genuine and attributable to him, whether the cheque was issued by him in discharge of any legally enforceable liability, and whether the same was lawfully delivered to the respondents. These are substantive questions directly affecting the foundation and enforceability of the respondents' claim.

10. No doubt, the learned trial Court placed considerable reliance upon the conduct attributed to the appellant, including his alleged failure to promptly raise the plea of theft and the purported inconsistency concerning the number of cheques allegedly stolen. Such circumstances may undoubtedly carry evidentiary significance and may be examined at the stage of trial. However, in our considered view, they cannot, at the stage of considering an application for leave to defend, conclusively foreclose the appellant's right to contest the genuineness, execution and delivery of the foundational documents, particularly when their execution and issuance have been specifically and unequivocally denied. At this stage, the Court is required to exercise caution and refrain from conclusively determining disputed questions of fact which are capable of resolution only through evidence. The denial of the agreement and the cheque, when considered cumulatively, therefore discloses a defence which, in the peculiar facts and circumstances of the case, cannot be characterized as wholly illusory, sham or incapable of adjudication.

11. It is equally material to observe that the grant of leave to defend does not, in any manner, amount to an acceptance of the appellant's defence or an adjudication in his favour. The

respondents shall remain at liberty to establish their claim in accordance with law, whereas the appellant shall be under an obligation to substantiate the pleas raised by him through legally admissible evidence. The observations made herein are confined strictly to the question of grant of leave to defend and shall not prejudice either party in the adjudication of the suit on merits.

12. At the same time, having regard to the nature and quantum of the claim, the interests of justice would be adequately safeguarded by imposing an appropriate condition upon the grant of leave. Such condition would strike a reasonable balance between the appellant's right to defend the suit and the respondents' legitimate interest in securing their claim against unnecessary delay or frustration. Accordingly, leave to defend may appropriately be granted subject to furnishing of reasonable surety/security.

13. We further observe that the learned trial Court appears to have proceeded principally on the premise that the respondents' claim remained unrebutted owing to the appellant's absence/ex-parte proceedings. Such approach, in our considered view, does not accord with the settled principles governing proceedings under Order XXXVII, C.P.C. Before passing a decree in a summary suit, the Court is required to satisfy itself that the claim falls strictly within the ambit and parameters of the summary procedure prescribed under Order XXXVII, C.P.C. Mere absence of an effective defence, or the defendant's failure to appear, does not by itself dispense with the requirement of establishing the plaintiff's entitlement in accordance with law, particularly where the claim is founded upon documents whose execution and authenticity have been specifically disputed. The learned trial Court, therefore, appears to have overlooked material considerations governing the exercise of jurisdiction in summary proceedings.

14. In view of the foregoing discussion, we are of the considered opinion 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 refusal of leave to defend in the circumstances of the present case has, therefore, resulted in denial of a fair opportunity to contest the claim and occasioned miscarriage of justice. It is a settled principle that where the defendant discloses a bona fide defence raising genuine triable issues, leave to defend ought ordinarily to be granted, either unconditionally or subject to such reasonable terms as may be warranted by the facts and circumstances of the case. The present matter squarely falls within the said principle and consequently calls for interference by this Court in its appellate jurisdiction.

15. For the foregoing reasons, the instant First Appeal is allowed. Consequently, the impugned Order and Decree dated 29.05.2026 are hereby **set aside**. The application for leave to defend filed by the appellant is **allowed**, and the appellant is granted conditional leave to defend the suit, subject to furnishing solvent surety/security in the sum of Rs.1,00,00,000/- (Rupees Ten Million only) to the satisfaction of the learned Trial Court within a period of ten (10) days from the date of this order. In the event of failure on the part of the appellant to comply with the aforesaid condition within the stipulated period, the learned Trial Court shall be at liberty to proceed further in the matter in accordance with law.

16. The matter is accordingly **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 endeavour to conclude the proceedings within a period of **three months** from the date of receipt of this order. Neither party shall seek or be granted adjournment on flimsy, frivolous or avoidable grounds, and the learned trial Court shall proceed with the matter expeditiously in accordance with law.

17. It is clarified that the observations contained herein are tentative and confined solely to the determination of the appellant's entitlement to leave to defend and shall not prejudice the merits of either party's case before the learned trial Court.

JUDGE

JUDGE

KAMRAN/PS