

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

First Appeal No.90 of 2026

Appellant : Farooq Azam S/o Mirza Talib Hussain
through Ms. Neelam Javed Arain,
Advocate

Respondent : Fariha Naz W/o Muhammad Saeed Uz
Zaman

Date of Hearing : 18.09.2026

Date of Order : 18.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through the instant First Appeal, the Appellant has called in question the impugned order dated 06.08.2026 passed by the learned VIth Additional District Judge, Karachi East, in Summary Suit No.172 of 2025, whereby his application filed under Order XXXVII Rule 4 read with Section 151 CPC, seeking setting aside of the ex-parte judgment and decree dated 06.03.2026, was dismissed. Consequently, the application filed by the Appellant under Order XXXVII Rule 3 CPC seeking leave to defend the suit was also dismissed as having rendered infructuous. The Appellant has, therefore, also sought setting aside of the consequential ex-parte judgment and decree dated 06.03.2026.

2. Briefly stated, the facts giving rise to the present appeal are that the Respondent instituted Summary Suit No.172 of 2025 under Order XXXVII CPC against the Appellant for recovery of an amount of Rs.23,50,000/-, on the basis of three dishonoured cheques allegedly issued towards repayment of the investment amount. The record reflects that summons in the prescribed form were duly served upon the Appellant. Despite having entered appearance before the learned trial Court, the Appellant

failed to file an application for leave to defend within the prescribed period and, consequently, vide order dated 07.11.2025, he was debarred from filing the same.

3. Thereafter, the Appellant filed an application under Section 151 CPC, along with an application under Section 5 of the Limitation Act, seeking recall of the order dated 07.11.2025 and permission to file an application for leave to defend. Both applications were dismissed by the learned trial Court vide order dated 07.01.2026. Subsequently, as the Appellant had failed to obtain leave to defend, the learned trial Court proceeded with the suit and, upon consideration of the material available on record, passed an ex-parte judgment and decree dated 06.03.2026, whereby the suit was decreed to the extent of the amount covered by the three dishonoured cheques, aggregating to Rs.23,50,000/-.

4. After passing of the judgment and decree, the Appellant once again approached the learned trial Court by filing an application under Order XXXVII Rule 4 read with Section 151 CPC, seeking setting aside of the ex-parte judgment and decree, along with an application under Order XXXVII Rule 3 CPC seeking leave to defend the suit. It was pleaded that the Appellant was facing severe financial difficulties and, for such reason, was unable to engage an Advocate and file the application for leave to defend within the prescribed period. It was further asserted that the amount forming the subject matter of the suit had already been repaid to the Respondent and that the cheques in question were subsequently misused by the Respondent. The Respondent contested the said applications. However, after hearing learned counsel for the parties, the learned trial Court, vide impugned order dated 06.08.2026, held that the Appellant had failed to establish any special circumstances warranting exercise of jurisdiction under Order XXXVII Rule 4 CPC and, accordingly, dismissed the application. Aggrieved by the said order, the Appellant has preferred the instant First Appeal.

5. Learned counsel for the Appellant contended that the impugned order has been passed without proper appreciation of the facts and circumstances of the case. She submitted that the Appellant had a substantial and bona fide defence on merits; however, owing to severe financial hardship, he was unable to engage an Advocate and file the application for leave to defend within the prescribed period. She further contended that the amount claimed by the Respondent had already been repaid and that the bank receipts and other documents placed on record duly demonstrated repayment of the invested amount. Learned counsel also referred to the criminal proceedings pending between the parties and submitted that the Respondent had made material contradictions in her statement recorded before the learned Judicial Magistrate, while the documents produced in those proceedings also supported the Appellant's plea regarding repayment.

6. Learned counsel further submitted that the Appellant had a bona fide defence on merits and that the Respondent had approached the Court after suppressing and concealing the material facts. She contended that the cheques relied upon by the Respondent had allegedly been returned to the Respondent and her son and were thereafter misused. In support of his submissions, learned counsel also relied upon the alleged agreement dated 18.02.2023, bank statements, cash receipts and other documents available on record. She maintained that allowing the ex-parte judgment and decree to remain operative would cause grave and irreparable prejudice to the Appellant. She, therefore, prayed that the impugned order, as well as the consequential judgment and decree, be set aside and the Appellant be granted leave to defend the summary suit.

7. We have heard learned counsel for the Appellant and have carefully examined the material available on record.

8. The principal question arising for determination in the instant appeal is whether the Appellant has succeeded in establishing the existence of such special circumstances as would justify setting aside of the ex-parte judgment and decree in

exercise of jurisdiction under Order XXXVII Rule 4 CPC and, consequentially, whether he is entitled to an opportunity to defend the summary suit. For determination of this question, it is necessary to examine not only the explanation furnished by the Appellant for his failure to obtain leave to defend within the prescribed period, but also the course of proceedings before the learned trial Court and the opportunities admittedly available to him.

9. Order XXXVII Rule 4 CPC confers a discretionary jurisdiction upon the Court to set aside an ex-parte decree where special circumstances are shown. The provision, however, does not contemplate reopening of a summary decree merely upon the defendant expressing a subsequent desire to contest the claim or putting forward a defence which was available to him at the earlier stage of the proceedings. The expression “special circumstances” requires the defendant to place before the Court circumstances of such nature as satisfactorily explain his failure to avail the statutory opportunity of obtaining leave to defend and justify restoration of that opportunity after the decree has already been passed. The jurisdiction is, therefore, to be exercised upon a judicial assessment of the circumstances which resulted in the defendant's failure to contest the suit, viewed in the backdrop of the proceedings as a whole.

10. In this regard, it is material that the Appellant was not proceeded against without notice or knowledge of the proceedings. The record shows that summons in the prescribed form were duly served upon him and that he appeared before the learned trial Court. Thus, the Appellant was fully aware of the institution and pendency of the summary suit. Despite such knowledge and appearance, he failed to file an application for leave to defend within the prescribed period. Consequently, vide order dated 07.11.2025, he was debarred from filing the application for leave to defend. The failure, therefore, was not occasioned by want of notice or absence of knowledge of the proceedings.

11. The subsequent conduct of the Appellant assumes further significance. After the order dated 07.11.2025, the Appellant did not remain without recourse. Rather, he consciously invoked the jurisdiction of the learned trial Court by filing an application under Section 151 CPC seeking recall of the said order, along with an application under Section 5 of the Limitation Act. Both applications were heard and were dismissed vide order dated 07.01.2026. The record thus demonstrates that the Appellant had already sought restoration of his right to defend the suit and had an opportunity to place before the learned trial Court the circumstances which, according to him, had prevented him from filing the application for leave to defend within time. His attempt, however, did not succeed.

12. The plea of financial hardship, which has again been advanced before us as the principal explanation for the Appellant's failure to defend the suit, does not, in the circumstances of the present case, furnish a satisfactory explanation for such failure. The learned trial Court specifically noted that the Appellant had appeared before it and had sought time for filing the application for leave to defend. Despite the opportunity available to him, he failed to take the requisite steps within the prescribed period. No material has been brought on record demonstrating that the alleged financial difficulties rendered it impossible for him to approach the Court or take the necessary procedural steps despite his admitted knowledge of the proceedings. Mere financial difficulty, without establishing its direct and compelling nexus with the failure to defend the suit, cannot by itself be treated as a special circumstance warranting exercise of jurisdiction under Order XXXVII Rule 4 CPC.

13. We are mindful of the submission that the Appellant has a defence on merits and that, according to him, the amount claimed by the Respondent had already been repaid. However, the existence of a proposed defence and the existence of special circumstances constitute distinct considerations. The merits of the defence cannot, by themselves, cure or override the failure to establish the circumstances which prevented the defendant from availing the opportunity to defend the suit at the prescribed

stage. In other words, the Court may examine the proposed defence in determining whether restoration of the proceedings would serve the ends of justice, but such examination does not dispense with the foundational requirement of demonstrating special circumstances contemplated by Order XXXVII Rule 4 CPC.

14. The material relied upon by the Appellant in support of his alleged defence, including bank receipts, bank statements and documents said to have been produced in the criminal proceedings between the parties, does not alter this position. The Appellant asserts that the amount had already been repaid and that the cheques relied upon by the Respondent were subsequently misused. He has also sought to rely upon alleged contradictions in the statement of the Respondent recorded before the learned Judicial Magistrate. These matters may constitute aspects of a proposed defence requiring adjudication in appropriate proceedings; nevertheless, they do not explain why the Appellant, despite having knowledge of the summary suit, appearance before the learned trial Court and opportunity to seek leave to defend, failed to avail the remedy available to him within the prescribed period.

15. The sequence of proceedings further militates against the Appellant's contention. The application presently before us substantially seeks restoration of the very right which the Appellant had earlier sought to secure through his applications under Section 151 CPC and Section 5 of the Limitation Act. Those applications were dismissed on 07.01.2026. The learned trial Court, while considering the subsequent application under Order XXXVII Rule 4 CPC, specifically noted that no fresh circumstance or new fact had been brought forward which was not already available to the Appellant when his earlier applications were considered. The subsequent invocation of Order XXXVII Rule 4 CPC, therefore, cannot be treated as an automatic or alternative means of reviving a right which the Appellant had previously failed to secure.

16. Learned counsel for the Appellant has relied upon the proposition that the Court, while considering an application under Order XXXVII Rule 4 CPC, should not altogether disregard the merits of the proposed defence. There can be no cavil with the proposition that the nature of the defence may be relevant to the exercise of discretionary jurisdiction. However, such consideration cannot be divorced from the statutory requirement of establishing special circumstances. The existence of a potentially arguable defence does not, in itself, constitute a special circumstance within the contemplation of Order XXXVII Rule 4 CPC. The defendant must first satisfactorily account for his failure to avail the opportunity afforded by law. Only thereafter does the question arise whether, in view of the defence proposed, the decree ought to be reopened in the interests of justice.

17. In the present case, the learned trial Court examined the circumstances relied upon by the Appellant, including his plea of financial hardship, his assertion regarding repayment, the documents relied upon by him and the material arising from the criminal proceedings. Upon such examination, it concluded that the Appellant had failed to demonstrate circumstances which satisfactorily explained his failure to obtain leave to defend within the prescribed period. The finding recorded by the learned trial Court is supported by the sequence of proceedings reflected in the record. We find no material demonstrating that such exercise of discretion was arbitrary, capricious or based upon irrelevant considerations.

18. It is also necessary to bear in mind that the proceedings under Order XXXVII CPC are intended to provide a summary mechanism for adjudication of claims falling within the scope of the Order, subject to the defendant's statutory right to seek leave to defend. Once such opportunity is duly afforded and is not availed within the prescribed period, and the defendant thereafter fails to establish the special circumstances necessary for reopening the decree, the mere assertion of a defence on merits cannot, by itself, furnish a ground for setting aside the decree. To hold otherwise would substantially dilute the

procedural consequence attached to failure to obtain leave to defend within the time prescribed by law.

19. In the circumstances discussed above, we are of the considered view that the Appellant has failed to establish any special circumstance sufficient to invoke the jurisdiction contemplated by Order XXXVII Rule 4 CPC. The learned trial Court, after considering the previous proceedings and the circumstances put forward by the Appellant, rightly declined to reopen the ex-parte judgment and decree.

20. For the foregoing reasons, we find no illegality, irregularity or infirmity in the impugned order dated 06.08.2026 warranting interference by this Court in its appellate jurisdiction. The Appellant has failed to demonstrate the existence of special circumstances justifying setting aside of the ex-parte judgment and decree dated 06.03.2026. Accordingly, the instant First Appeal is **dismissed** in limine. The impugned order dated 06.08.2026 passed by the learned VIth Additional District Judge, Karachi East, in Summary Suit No.172 of 2025 is **maintained**, along with the consequential ex-parte judgment and decree dated 06.03.2026. These are the reasons for our short order dated 18.09.2026.

JUDGE

JUDGE

Kamran/PS