

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

1st Appeal No. S-52 of 2026.

<i>DATE</i>	<i>ORDER WITH SIGNATURE OF JUDGE</i>
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	For orders on office objections. For orders on C.M.A No.1573/26. For hearing of main case.
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28.09.2026.

Mr. Atta Hussain Gaddi Pathan, Advocate for Appellant.

JAWAD AKBAR SARWANA, J.:- Muhammad Faisal son of Umar Din, the appellant/ efendant, has preferred this First Appeal against the Judgment dated 27.04.2026 and Decree dated 04.05.2026, passed by the 6th Additional District Judge / MCAC-II, Hyderabad ("the trial court") in Summary Suit No.181 of 2025 filed by Tanzeel Ahmed son of Abdul Samad (respondent/plaintiff).

2. Counsel for the appellant/defendant contends that after leave to defend had been granted, the appellant/defendant had filed an application seeking to modify the leave to defend granting order dated 20.12.2025; however, pursuant to the order dated 06.01.2026, such request was declined, and the matter proceeded for trial ex parte against the appellant/defendant. The appellant/defendant claims the right to a hearing and has argued that the Judgment and Decree were passed without giving the appellant/defendant an opportunity to cross-examine the respondent/plaintiff.

3. It is now a trite proposition of law, enunciated by our courts, including this High Court of Sindh at Circuit Court, Hyderabad, in several judgments/orders passed this year (2026), relying on the judgment of Pestonji Shapurji Narelwalla Vs Jamshedji Nowroji Gamadia (AIR 1926 Bombay 250) and the Supreme Court of Pakistan in the decision reported as Umer Khan Vs. Haji Musa Jan (2009 SCMR 1101), that once the Court has directed the defendant to file the written statement, no further rights are created in favour of the defendant if the defendant does not comply with the conditions of the



leave-granting order. As per the impugned judgment, no documentary evidence was/is available to rebut the claim put up by the plaintiff/respondent, and the summary suit based on the dishonoured cheque, supported by the bank memo, went un rebutted. Thus, in the circumstances, the learned Additional District Judge-VI, Hyderabad, passed the judgment and decree.

4. Given the principles laid down in the above-mentioned case law, very limited grounds are available to the appellant/defendant aggrieved by an ex parte judgment passed by the trial Court in summary proceedings when the leave to defend has not been allowed and/or the conditions of the leave to defend were not fulfilled, and the summary suit proceeded ex parte against the appellant/defendant. In such cases, the appellant/defendant remedy in summary proceedings is limited to, inter alia, Order 37 Rule 4 CPC, which states that, after decree has been passed, as in the instant lis, the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit. Or alternatively, such opportunity of challenge (grounds for challenge) may be available under Order 21 CPC.

5. For the above reasons, no case is made out for setting aside the impugned Judgment and Decree passed by the trial Court in the above-mentioned Summary Suit. There is neither any irregularity nor illegality therein. Consequently, this First Appeal is dismissed for the above reasons along with pending application(s), if any, with no order as to costs.

JUDGE

Ali.