

ORDER SHEET

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

1st Appeal No.S-43 of 2023.

DATE	ORDER WITH SIGNATURE OF JUDGE
	For hearing of C.M.A No.1867/23. For hearing of C.M.A No.1868/23. For hearing of C.M.A No.1869/23. For hearing of main case.

30.09.2026.

Mr. Muhammad Asif Shaikh, Advocate for Appellant.

JAWAD AKBAR SARWANA, J.:- Muhammad Saleem, the appellant/defendant, has filed this 1st Appeal against the impugned Judgment dated 04.03.2021 and Decree dated 06.03.2021, passed by the 8th Additional District Judge, Hyderabad ("the trial Court") in Summary Suit No.124 of 2019 filed by Owais Waqar Shaikh, the respondent/plaintiff.

2. The appellant/defendant is aggrieved by the Judgment dated 04.03.2021 on the ground that an opportunity of hearing was not extended to the appellant/defendant, who at the material time did not reside in the Province of Sindh. The impugned judgment clearly states that summons were issued to the appellant/defendant under Order 37 CPC, including by way of publication. Yet, despite publication, none entered appearance on behalf of the appellant/defendant, whereafter the defendant was debarred from filing leave to defend. The record reflects that the respondent/plaintiff's claim that the cheques issued by the appellant/defendant, attached with the plaint, were dishonoured, was accepted by the trial Court and the impugned Judgment and Decree was announced against the appellant/defendant. Heard Counsel.

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 unrebutted. 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. On 11.09.2026, the appellant/defendant had submitted that the parties had entered into a compromise and settled the matter out of Court. Today, 30.09.2026, the counsel for the appellant/defendant has filed a joint compromise dated 16.09.2026, which is taken on record subject to all just exceptions. The alleged joint compromise deed/application is not a certified copy, and despite notices issued and service effected in this 1st appeal on the respondent/plaintiff, none is in attendance, and no intimation is received on his behalf. This is the case despite the report submitted by the concerned District Judge that the respondent/plaintiff already stands notified of the 1st



appeal during the roster of this bench before the Circuit Court, Hyderabad. Given the observations in paragraphs 3 and 4 hereinabove, the order passed today will cause no prejudice.

6. 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.

7. For removal of doubt, the parties remain at liberty to settle the matter as deemed fit in the execution proceedings, notwithstanding the rights of challenge available to them as above.

8. This 1st Appeal is dismissed in the above terms along with pending application(s) with no order as to costs.

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JUDGE