# HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

**1st Appeal No.35 of 2026**

*[Sumed Shaikh vs. Mst. Sanober Iqbal]*

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| Appellant | : | Mr. Anjum Ahmed Siddiqui advocate |
| Respondent | : | Mr. Sameeullah Rind advocate |
| Date of hearing | : | 25.08.2026 and 14.09.2026 |
| Date of decision | : | 14.09.2026 |

## O R D E R

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**JAWAD AKBAR SARWANA J**:- This matter was listed today for hearing with the consent of both counsel who were in attendance on the last date of hearing; however, today none is present on behalf of Sumed Shaikh S/o Qamar Zaman Shaikh, the appellant/defendant, and no intimation has been received.

2. On the last date of hearing, when the counsel for the appellant/defendant was in attendance, he had argued that the impugned judgment and decree dated 18.03.2026 and 19.03.2026, respectively, passed by the 7th Additional District Judge Hyderabad ("the trial Court") in the summary suit No.115 of 2025 filed by Mst. Sanober Iqbal Shaikh w/o Israr Khanzada (respondent/plaintiff), which the trial Court decreed under Order XVII Rule 3 CPC, was contrary to law and liable to be set aside. Counsel argued that on 10.03.2026, while the appellant/defendant was admittedly called absent, his counsel attended and filed an application to withdraw his vakalatnama on behalf of the appellant/defendant, and the matter was adjourned to 14.03.2026. Thereafter, as per the Court diary of 14.03.2026, as available on record, the said date was declared a leave by the Government of Pakistan, yet the trial Court marked the appellant/defendant and his counsel's non-attendance on the very same date, which was declared as a leave by the Government of Pakistan and adjourned the matter to 18.03.2026, as acknowledged in the diary sheet, which has been produced before this Court by the Counsel for the respondent/plaintiff. On the very next date, when the matter was listed for cross-examination of the respondent/plaintiff, and the fresh/new Counsel did not appear on the first call and subsequently on the second call later in the day, the learned trial Court decreed the summary suit under Order XVII Rule 3 CPC. He argued that the appellant/defendant had been granted leave to defend, had filed a Written Statement, and had furnished solvent surety, too. In the circumstances, he ought to have been given the opportunity to cross-examine the respondent/plaintiff,

particularly as the appellant/defendant had engaged a fresh/new Counsel and there was no delay on his part when the case came up on 18.03.2026, which would have been the first date of hearing of the newly appointed Counsel, particularly as the earlier fixed date of 14.03.2026 was declared a leave by the Government of Pakistan.

3. Counsel for the respondent/plaintiff Mst. Sanober Iqbal Shaikh W/o Israr Khanzada is present and has vehemently opposed the aforesaid contentions raised by the appellant/defendant's counsel, yet he conceded that the Government of Pakistan declared 14.03.2026 a leave on account of the War in Iran, and the matter was adjourned to 18.03.2026.

4. Heard and perused the available record.

5. I have perused the diary sheets attached with the statement dated 25.08.2026 filed by the respondent/plaintiff counsel. As per the diary sheet, after the matter was listed for recording of evidence on several dates since 08.12.2025, when Issues were settled, the case continued lingering on for recording of evidence until 10.03.2026, when the appellant/defendant counsel withdrew his vakalatnama. Thereafter, the record reveals that on the very next date, 14.03.2026, when the defendant and his counsel were called absent, the Government of Pakistan had declared leave. It would be extremely harsh to penalise a newly appointed pleader for not being in attendance on a date which was declared a leave by the Government of Pakistan, and on the very next date, technically the first date of hearing for the newly appointed pleader, i.e. on 18.03.2026, to decree the suit against the appellant/defendant under Order 17 Rule 3 CPC.

6. No doubt the appellant/defendant was not in attendance on 18.03.2026, yet given the background of such non-attendance as described above, coupled with the fact that the appellant/defendant had submitted a solvent surety and also filed his Written Statement setting out his defence, the trial Court ought to have granted some grace to the newly appointed Counsel and refrained from passing decree against the appellant/defendant on technical grounds. The appellant/defendant secured the respondent/plaintiff's financial risk by furnishing a solvent surety at the time of the leave-granting order, and the summary suit ought to have been decided on merits by giving the parties the right of hearing, including the right to cross-examine the respondent/plaintiff.

7. In the circumstances of the case, it appears that a fair opportunity was not extended to the appellant/defendant. Accordingly, the impugned judgment dated 18.03.2026 and the decree dated 19.03.2026 passed in Summary Suit No.115 of 2025 are hereby set aside, and the matter is remanded for decision afresh within four-five months from today and/or earlier, after affording parties a full opportunity of hearing,

including leading evidence, subject to the trial Court's discretion to expedite hearing as deemed fit and proper during this period.

8. When I was dictating the Order, the respondent/plaintiff counsel informed that execution proceedings have already commenced against the appellant/defendant. In view of the setting aside of the impugned judgment and decree, and to remove any doubt, the execution proceedings are also deemed set aside as a result of the Order passed today. Office is directed to send a copy of the Order to the trial Court to issue notice to the Counsel and parties concerning recommencement of the trial.

JUDGE

Sajjad Ali Jessar