ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Ist Appeal No.07 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objections.
2. For orders on CMA-359/2026.
3. For hearing of main case.

29.09.2026.

Mr. Masud Ahmed Leghari, advocate for the appellant.

*****

1. The appellant/defendant, Muhammad Yaqoob son of Muhammad Yousuf, by caste Bekaneri, is aggrieved by the judgment dated 07.01.2026 passed by the IInd Additional District Judge, Tando Allahyar ("the trial Court) in Summary Suit No.24 of 2025 filed by Imtiaz Ali (respondent/plaintiff).

2. Counsel for the appellant/defendant has argued that the IInd Additional District Judge, Tando Allahyar/trial Court, failed to consider that the appellant/defendant had filed an application to extend the time to submit surety after the appellant/defendant had been granted conditional leave to defend(paragraph-4); no opportunity of hearing was provided to the appellant/defendant (paragraph-5); failed to consider the evidence brought on record and misread the same (paragraphs-7, 8 & 9); and misapplied the law (paragraph-10). Today, the Counsel for the appellant has also filed photocopies of the trial Court diaries in support of his contention, which have been taken on record. Finally, on conclusion of submissions, today, counsel for the appellant/defendants submits that he would not press this 1st appeal, subject to the Executing Court considering the solvent surety in the sum of Rs.10 lacs, which is already furnished by him in Criminal Bail Application No.178 of 2025 pursuant to an order dated 11.10.2025 as a co-existing solvent surety before the Execution Court.

3. This Court has issued notices to the respondent/plaintiff on several dates, including through the 2nd Additional District Judge, Tando Allahyar; however, no one has attended. The Court has received no intimation from the respondent/plaintiff.

4. Heard Counsel. The background of this matter is well recorded in paragraph-5 of the impugned judgment wherein it appears that the Court had granted conditional leave to defend to the appellant/defendant, but he failed to

furnish the surety in the sum of Rs.10 lacs within the time stipulated, i.e. 14 days from the date of the order dated 10.12.2025. Instead, the record reveals that although applications for adjournments were filed, as on 07.01.2026, when the Court passed judgment, no such surety had been submitted to the Court.

5. It is now a trite proposition of law, enunciated by the Superior Courts across Pakistan, 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. Given the reported case law on this point, the appellant/defendant had no vested right to record evidence and/or claim any hearing in the facts and circumstances of the case when he did not fulfil the condition of the leave-granting order. Such right of hearing accrues after the passing of the decree under Order 37 Rule 4 CPC, including, but not limited to, the challenges available to the judgment-debtor against the enforcement of the decree under Order 21 CPC. As per the submissions of Counsel for the appellant/defendant, the respondent/plaintiff has filed execution proceedings against the appellant/defendant, and the appellant/defendant is also seeking favourable orders for the solvent surety submitted in the criminal case arising out of the bounced cheque to stay the execution proceedings. The appellant/defendant is at liberty to make such request before the Executing Court subject to its legal implications. Clearly, such matters at this appellate stage remain beyond the scope of this Court in the 1st appeal.

6. With regard to the impugned Judgment and Decree, given the aforesaid discussion concerning appellant/defendant's plea of denial of right of hearing, I do not find any irregularity and/or illegality in the impugned judgment based on the reported case law mentioned above. Accordingly, I dismiss the 1st Appeal in the above terms, along with the listed application.

JUDGE

Irfan