IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Ist Appeal No.31 of 2019

Appellant	:	Asad Ali son of Muhammad Sabir Shaikh (Nemo)
Respondent	:	Attaullah son of Karim Bux Khuhro (Nemo)
Date of hearing	:	21.09.2026.
Date of order	:	21.09.2026.

ORDER

Jawad Akbar Sarwana, J. Asad Ali, son of Muhammad Sabir, by caste Shaikh, applicant/defendant in Summary Suit No.10 of 2018, is aggrieved by the judgment dated 03.08.2019 passed by the 2nd Additional District Judge, Shaheed Benazirabad filed by Ataullah, the respondent/plaintiff. Although this first appeal was instituted on 30.08.2019, neither the applicant nor any intimation has been received on the last several dates of hearing, including 23.02.2024, 16.01.2025, 18.02.2025, 19.08.2026, 07.09.2026 and today, i.e. 21.09.2026. Based on the above, I have perused the contents and documents available in this first appeal. At the outset, it is apparent that neither any stay nor interim relief was granted to the applicant/defendant at the time of institution of this lis. Further, as per the compliance report dated 03.09.2026 submitted by the District Judge, Shaheed Benazirabad, no execution proceedings have been initiated by Attaullah son of Karim Bux, respondent/plaintiff, so far, most likely for the reason that the R&P has been lying with the (High) Court since 06.09.2019 till date.

2. The dispute between the parties concerns a bounced cheque for Rs. 32,00,000/-, duly supported by a memo of dishonour. As per the pleadings, after the applicant/defendant entered appearance in the summary suit on 02.03.2019 and filed leave to defend application on the very next date, i.e. 09.03.2019, the applicant/defendant did not proceed with the hearing of the said leave to defend application on the subsequent several dates of hearing. It may not be out of place to mention that, for the most part, the summary suit was adjourned on account of the appellant/defendant. Accordingly, as none was in attendance on behalf of the applicant/defendant on 03.08.2019, the learned Additional District Judge dismissed the leave to defend application for non-

prosecution and, after hearing arguments of the respondent/plaintiff, on the same date also passed judgment and decree in favor of the respondent/plaintiff.

3. It is now a trite proposition of law, which has been enunciated by our Courts, including 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 leave to defend application is rejected and/or it's the conditions set out therein are not met, no further rights are created in favour of the defendant in the event that the defendant does not comply with the conditions of the leave-granting order. In the present case, the leave to defend was dismissed for non-prosecution, which, given the facts and circumstances of the case, falls within the discretionary powers of the Addl. District Court. Once the leave to defend application stood dismissed, the Court was at liberty to proceed to decide the matter summarily based on documents available.

4. I do not find any illegal infirmity and/or irregularity in the 2nd Additional District Judge, Shaheed Benazirabad, allowing the plaint and passing judgment and decree in favour of the respondent/plaintiff. Accordingly, this first appeal stands **dismissed** in the above terms.

5. The office is directed to return the R&P to the concerned District Court along with a copy of this Order without delay, whereafter the concerned Court will issue notice to the parties concerning further proceedings, if any.

JUDGE

Shahid