IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A No.113 of 2026

Applicant	:	Waqar Ahmed Ansari son of Fayyaz Ahmed Through Mr. Ghulam Murtaza Laghari, Advocate
Respondent No.1	:	Muhammad Zahid Ansari son of Muhammad Hanif Ansari, Through Ms. Fatima Zahara Ansari, Advocate
Respondent No.2	:	Shakeel Ahmed son of Saleem Ahmed (Nemo)
Date of hearing	:	23.09.2026.
Date of order	:	23.09.2026.

ORDER

Jawad Akbar Sarwana, J.: The applicant/defendant no.2, Waqar Ahmed, son of Fayyaz Ahmed Ansari, is aggrieved by the leave-granting order dated 17.04.2026 passed by the Civil Appellate Court-II/VIth Additional District Judge, Hyderabad ("the trial Court"), in Summary Suit No.137 of 2025 filed by Muhammad Zahid Ansari, respondent no.1/plaintiff. Meanwhile, respondent no.2/defendant no.1, Shakeel Ahmed s/o Saleem Ahmed, despite notices issued to the said respondent on 02.06.2026, has not entered appearance, and no one has appeared on his behalf to date. Clearly, this bench cannot wait indefinitely for the missing respondent; accordingly, I have proceeded to decide the matter based on the arguments/submissions of Counsel and the record.

2. Learned Counsel for the applicant/defendant no.2, Waqar Ahmed Ansari, contends that the applicant/defendant no.2 was neither involved in any business transaction with the respondent no.1/plaintiff nor has he signed the bounced cheque, nor has he had any connection with it (the bounced cheque). He argues that he is merely a witness to the agreement initially executed between respondent no.1/plaintiff, Muhammad Zahid Ansari, and Shakeel Ahmed, respondent no.2/defendant no.1. He has argued that, given this background, there was no reason for the trial Court to grant conditional leave to defend to him. He has argued that even otherwise, the trial Court in the impugned leave-granting order has not discussed by the applicant/defendant no.2 is liable to deposit even the reduced surety of Rs.60,00,000, half of the total claim of Rs.12,200,000/=, when no case can be made out against the applicant/defendant

no.2. He argues that in the circumstances, the trial Court ought to have granted unconditional leave to defend.

3. Learned Counsel for the respondent No.1/plaintiff, Muhammad Zahid Ansari, has vehemently opposed the contentions of the applicant/defendant no.2. He has argued that even if it is presumed that the applicant/defendant no.2, Waqar Ahmed Ansari, who is/was not the signatory of the said cheque, yet the said issue, as well as the defence taken by the applicant/defendant no.2, in this revision, are all triable issues, and therefore the conditional leave-granting order subject to furnishing surety of Rs.60,00,000/-, which is half of the total claim of Rs.1,22,00,000/- within three weeks from the date of the said order by the applicant/defendant, is fair, reasonable, proper, in accordance with law, and liable to be sustained/upheld.

4. Heard Counsel for the parties, and perused the record.

5. The applicant/defendant no.2 has set out his defence to the summary suit in paragraph no.5 of the affidavit in support of the leave to defend the application (available on pages 33 to 39 of the revision). The extract of the said paragraph is reproduced as hereunder:

> *"5. That the para No.2 & 3 of suit is categorically, vehemently and specifically denied. It is further say that the defendant No-2 did not concern with plaintiff and plaintiff conceal the real facts of case is that ahmed housing scheme is under the umbrella of M/s Al-Hashir Associates which is the business firm of defendant No.1 and this firm is also registered in the same name and owner in FBR, and more ever the account in the bank is also in the title of Al-Hashir Associates. Hence the defendant No-2 does not did not concern with any business matter or deals of defendant No-1. . .It is more say that the defendant No-2 is just sign as witness on agreement dated 14.02.2022 as witness because defendant No-2 knowing to plaintiff and defendant No-1 as friendly/neighbors therefore request of plaintiff and defendant No-1 for sign as witness (plaintiff and defendant No-1 enter in agreement purchasing for plots some time after same agreement bearing No.2482 dated 14-02-2022 was cancelled and made new agreement bearing No.28-03-2022 where defendant No-2 not concern with new agreement (Marked & filed Photo copy of FBR registered Al-hashir Associate in the name of defendant No-1 as annexure-A)."*

6. Additionally, the trial Court, as per paragraph no.4 of the impugned leave-granting order dated 17.04.2026, recorded the respondent no.1/plaintiff's argument in the following terms:

> *"Learned Counsel for the plaintiff has argued that no doubt that cheque was issued by defendant No.1 but since property belongs to defendant No.2, therefore, equal liability lies upon both the defendants".*

7. Given the above, it is/was an admitted position that the bounced cheque was issued by Shakeel Ahmed, respondent no.2/defendant no.1, and not the applicant/defendant no.2. Respondent no.1/plaintiff had filed a summary suit under Order XXXVII CPC, and such summary suits concern recovery of claims arising out of negotiable instruments, which is distinguishable from an ordinary civil suit for recovery of money and other civil remedies. The summary suit is not an ordinary civil claim, and at no stage during proceedings under Order XXXVII CPC does it change its nature from summary to civil. A trial Court conducting summary proceedings cannot ignore this aspect. Indeed, the trial Court has the discretion to grant leave to defend conditionally or unconditionally depending upon the facts and circumstances of each case, and by now it is well established that grant of leave to defend is not a matter of course or of right; rather, the defendant must show/disclose a plausible defence that may give rise to a triable issue, and if he succeeds, it is well within the discretion of the trial Court to grant leave to defend either conditionally or unconditionally subject to such leave not being arbitrary and/or capricious; and, is cogent, fair, bona fide, reasonable; and, also disclosed in the affidavit in support of the leave to defend application.

8. In the present case, the leave to defend is supported by an affidavit that well disclosed a triable issue (see paragraph 5 reproduced above), and such stance is/was further re-affirmed by the admission made by the respondent no.1/plaintiff, viz. that the applicant/defendant no.2 did not issue the bounced cheque. Accordingly, the applicant/defendant no.2 defence in the leave to defend application and the hearing stood on the premise that there was no commercial relationship between him and the respondent no.1/plaintiff and not on the issue of the bounced cheque. In determining the factum of a plausible defence at the stage of granting leave to defend, when the burden was on the applicant/defendant no.2, the trial Court had to examine the issue of granting leave from the perspective of a summary suit and not a civil claim. In the case in hand, the trial Court accepted that the leave to defend was made out against the applicant/defendant no.2 and also recorded the arguments of the plaintiff's counsel in paragraph 7 of the impugned leave-granting Order, however, the trial Court did not take into consideration that in a summary suit the liability arises

out of the negotiable instrument alone and not the underlying commercial transaction.

9. The respondent no.1/plaintiff's claim under Order 37 can be agitated only for recovery of money arising out of the negotiable instrument, viz. the bounced cheque, and not for recovery of money arising out of breach of a commercial contract. Therefore, the alleged liability of the respondent no.2/defendant no.1, who issued the bounced cheque, in favour of the respondent no.1/plaintiff, which is the subject matter of the trial in the summary proceedings, could not be transposed onto the applicant/defendant no.2, who admittedly did not issue the bounced cheque. Yet the trial Court proceeded to grant such conditional leave, reducing the surety amount for the reason that "since the cheque was not issued by defendant no.2 however being beneficiary of business deal he is necessary party and by taking lenient view. . .leave to defend to the defendant [is allowed] subject to furnish[ing] surety of Rs.50,00,000/-, the half of total claim of Rs.12,200,000/-. . . ." As discussed above, this observation runs contrary to the scheme of the summary procedure under Order 37 CPC. The respondent no.1/plaintiff's averment that the applicant-defendant was allegedly a beneficiary having business dealings could not be made a ground for granting conditional leave to defend. The Court, while exercising its discretion at the leave-granting stage, in the facts and circumstances of the case, ought to have exercised its discretion in favour of granting unconditional leave to defend to the applicant/defendant no.2, for the reasons discussed hereinabove, notwithstanding that the said applicant/defendant may be a necessary party for the complete and proper adjudication of the summary suit, and even if some liability (other than one under the negotiable instrument) concurrently operates against the applicant/defendant no.2, the same may still be agitated before the proper forum subject to its legal consequences.

10. Given the above, the impugned leave-granting order dated 17.04.2026 is hereby set aside against the applicant/defendant no.2, and unconditional leave to defend is granted to the said applicant/defendant no.2.

11. This revision application stands allowed in the above terms.

JUDGE

Shahid