ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

1st Appeal No.S-62 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE

For orders on CMA No.1934/2026.
For orders on CMA No.2289/2025.
For hearing of main case.

24-09-2026

Mr. Anjum Ahmed Siddiqui, advocate for the appellant.

JAWAD AKBAR SARWANA, J:- Appellant/defendant, Muhammad Danish Qureshi, is aggrieved by the ex-parte judgment dated 01.08.2025 passed by 5th Additional District Judge, Hyderabad ("the trial Court") in Summary Suit No.08 of 2025 filed by the respondent/plaintiff Muhammad Danish Sharif.

Counsel contends that he was denied the right to file a leave to defend application after service was held good on 22.02.2025. He argued that, at that point, the District Court was completely shut down and the doors of the Court were locked, with no access for advocates to reach the Court. In the circumstances, no filing of any application of any kind was possible, including a leave to defend application. He contended that the Court had noted in its Order dated 06.03.2025, that the appellant/defendat had been affected service on 16.01.2025 and that such service had been held good on 22.02.2025, and finally, as a result of non-filing of the leave to defend application, he was debarred from filing the Written Statement; and such orders, too, were contrary to law. He challenged the order dated 06.03.2025 debarring him by way of an application under Order IX Rule 7 CPC; however, this application, filed by the defendant on 19.04.2025, after hearing the parties, was dismissed on 22.07.2025. Counsel submits that the only opportunity to challenge the leave-granting order dated 22.07.2025 arose after the ex-parte judgment was passed on 01.08.2025. Hence this 1st appeal.

Counsel for the appellant/defendant has also filed a statement attaching certain certified copies of orders passed by the trial Court, which are taken on record subject to all just exceptions.

Heard counsel. It is apparent from the record that the appellant was served on 16.01.2025; however, no leave to defend application was filed. The Court still gave the appellant/defendant 10 days' time from 22.07.2025 to file a leave to defend application. Yet, nothing is on record to show any bona fide effort by the appellant/defendant to submit solvent surety in terms of the leave to defend.

Indeed, there was no challenge to the dismissal order of the application under Order 9 Rule 7 CPC, dated 22.07.2025, either. In the circumstances, much water has flown under the bridge to consider a challenge to these past proceedings, including the leave-to-defend order, which has not culminated in the impugned ex-parte judgment dated 01.08.2026 passed by the trial Court.

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-V, Hyderabad, passed the judgment and decree.

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 (grounds for challenge) may be available under Order 21 CPC.

For the foregoing, there being no material illegality or irregularity in the impugned judgment and decree dated 01.08.2025 passed by the learned Additional District Judge-V, Hyderabad, in Summary Suit No.08 of 2025, the 1st Appeal is misconceived and is accordingly dismissed along with the listed applications.

J U D G E

Irfan Ali