IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A No.120 of 2026

Applicant	:	Muhammad Sharif son of Muhammad Ghani Through Mr. Rashid Wassan, Advocate
Respondent	:	Muhammad Javed Waseem son of Wali Muhammad (Nemo).
Date(s) of hearing	:	01.10.2026 and 05.10.2026
Date of order	:	05.10.2026.

ORDER

Jawad Akbar Sarwana, J.:- Muhammad Sharif (applicant/plaintiff), has filed this revision application against the leave-to-defend granting order dated 11.05.2026 passed by the VIIIth Additional District Judge, Hyderabad ("trial Court") in Summary Suit No.73 of 2026 filed against Muhammad Javed Waseem (respondent/defendant).

2. Notices were issued to the respondent/defendant from time to time vide orders dated 13.08.2026, 11.09.2026 and thereafter once again on 25.09.2026 through all modes of service, including publication. On 01.10.2026, Counsel submitted a statement attaching a copy of the newspaper, namely "Kawish", dated 01.10.2026, evidencing that the notices were duly published. As the notice of these proceedings stood effected on the respondent/defendant, the matter was adjourned to 05.10.2026 to provide one final opportunity to the respondent/defendant to enter appearance and assist the bench. Today, no one is present on behalf of the respondent/defendant, and no intimation has been received.

3. The Counsel for the applicant/plaintiff contends that the bounced cheque was issued in relation to a commercial agreement dated 03.01.2024 as set out in the plaint. He contends that the said cheque was subsequently dishonoured and that the memo of dishonour was available before the trial Court, as it is in the revision. Counsel contended that the impugned order dated 11.05.2026 was passed by trial Court in summary proceedings granting leave to defend

to the respondent/defendant subject to furnishing a solvent surety in the sum of Rs.100,000/- whereas the dishonoured cheque was in the sum of Rs.50,00,000/-. He contends that the leave-to-defend-granting Order is arbitrary and discretionary, has no basis, as copies of the bounced cheque, the bank's memo of dishonour and the commercial agreement between the parties were available with the trial Court. In the circumstances, he argued that no case was made out for furnishing a surety in the reduced sum of Rs.100,000/-.

4. Heard Counsel and perused the documents available on record.

5. By now it is well established that in summary proceedings, the trial Court has the discretion to grant leave to defend conditionally or unconditionally depending upon the facts and circumstances of each case, and 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.

6. The applicant/plaintiff contended in his pleadings that the underlying basis of the bounced cheque was a commercial agreement for the sale of property. He also filed documentary evidence in support of his claim in his plaint. By contrast, the respondent/defendant's defence was diametrically opposed to the claim set up by the applicant/plaintiff. In his leave to defend application, the respondent/defendant denied the commercial sale agreement and pleaded that he had obtained finance/loan from the applicant/plaintiff and that the applicant/plaintiff was in custody of his banking documents, which included, inter alia, the cheque book, consisting of the bounced cheque, the leaves of which cheque book had been allegedly misused by the applicant/defendant. The leave to defend application was not supported by any documentary evidence. The respondent/defendant also referred to other legal proceedings which he had initiated and which had been decided. It is pertinent to mention that in paragraphs 9 and 10 of the leave to defend

application, the respondent/defendant conceded that he had not obtained any favorable relief in these proceedings. As mentioned above, the burden was on the respondent/defendant to make out a case for grant of leave to defend in terms of Section 37(3) CPC. To this extent, the respondent/defendantt is/was required to provide and to disclose such facts to the trial Court as would make it incumbent on the holder (applicant/plaintiff) to prove consideration or such other facts as the court may deem sufficient to support the application. As per case law, this aspect may also be balanced with other considerations, including, inter alia, the right of hearing, etc. Ultimately, the burden was entirely on the respondent/defendant to prove his defence. In the circumstances, the impugned leave-to-defend order states that leave to defend was granted based on the "pleas raised in the application for obtaining leave to defend the suit…[requiring] evidence," without identifying those pleas. The trial Court's impugned Order is entirely silent concerning what pleas of the respondent/defendant it had in mind when granting conditional leave to defend. Thus, instead of deciding the leave to defend on the principles set out in Order 37 Rule 3 CPC and legal principles discussed herein above, the trial Court anchored its justification for granting conditional leave to defend on the erroneous ground in summary proceedings that "no one could be non-suited and it is right of contesting party to have a chance to him/her of fair contest." The defendant's financial position/soundness and right to hearing cannot be the core ground for deciding a leave-to-defend application. As discussed above, this cannot be the criterion for considering a leave-to-defend application under summary proceedings.

7. Without prejudice to the above, I now turn to the reduction of the surety amount in the conditional leave to defend granting order. The purpose of filing a summary suit is to provide an expeditious remedy to the applicant/plaintiff and to secure the financial obligation arising out of a negotiable instrument, such that not only the trial proceedings are fast-tracked but also, when the suit is decreed, the time spent in execution is curtailed. Determining the quantum of the solvent surety in a summary suit is not on par with a session court deciding the quantum of bail. Summary proceedings are civil in nature, conducted under special procedure, and as already discussed above, the defendant does not have any "right" to being granted leave

to defend. It appears that the reasons underlined above also led the trial Court to reduce the surety amount. Indeed, there was only one (1) bounced cheque, yet the impugned order states in the opening line of paragraph 3 that the amount of Rs.50,00,000/- was based on five cheques; however, no such averment is mentioned in the plaint, and no articulation appears in the leave to defend application and/or the affidavit in support thereof concerning the five (5) cheques. It appears that the trial Court fixed the surety, allegedly splitting the liability across five (5) cheques and somehow arrived at the figure of Rs.100,000; whereas the plaint mentions only one (1) bounced cheque no.15390818 dated 20.02.2026 in the sum of Rs.50,00,000/-. This was an arbitrary determination/reduction of surety by the trial Court in its conditional leave-to-defend order.

8. Given the above, no case is/was made out to grant leave to defend to the respondent/defendant based on the reduced amount of solvent surety in the sum of Rs.100,000/-, which is consistent with neither the scheme of Order XXXVII of CPC, nor the record, nor the facts and circumstances discussed hereinabove. Therefore, while the order to grant conditional leave to defend is sustained, the surety to be submitted by the respondent/defendant is enhanced to the sum of Rs.50,00,000/- (Fifty Lacs), which is to be deposited with the trial Court within a period of 15 (fifteen) days from the date of passing of this Order, failing which, the trial Court is at liberty to take further action, including, but not limited to initiating ex-parte proceedings against the respondent/defendant, and/or pass any other orders deemed fit and/or necessary within the contours of Order 37 CPC.

9. The Office is directed to forward a copy of the Order, including all relevant material, to the concerned trial Court without delay.

9. This revision application is **allowed** in the above terms.

JUDGE

Shahid