IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Ist Appeal No.05 of 2026

Appellant	:	Dhanesh Puri son of Kanwal Puri, Through Mr. Mian Taj Muhammad Keerio, Advocate
Respondent	:	Mushtaque Ahmed son of Ahmed Baloch, Through Mr. Abdul Rashid Mughal, Advocate
Date of hearing	:	07.10.2026.
Date of order	:	07.10.2026.

O R D E R

Jawad Akbar Sarwana, J. Dhanesh Puri, son of Kanwal Puri, by caste Puri, appellant/defendant, has preferred this first appeal against the judgment and decree dated 23.12.2025 passed by the IXth Additional District Judge, Hyderabad, in Summary Suit No.114 of 2025 filed by Mushtaque Ahmed Rind, son of Ahmed Baloch, respondent/plaintiff.

2. Counsel for the appellant/defendant contends that he filed the leave to defend on 16.08.2025 and on 10.10.2025 the trial Court granted conditional leave subject to the deposit of solvent surety in the sum of Rs.21,50,000/- within a period of ten days. Counsel candidly concedes that, due to financial difficulties, the solvent surety could not be arranged, and when the court passed an order dated 15.12.2025, the same was challenged by the appellant/defendant in Civil Revision Application No.148 of 2025 filed before this (High) Court, which revision was dismissed on 10.12.2025. Counsel contends that thereafter, without giving an opportunity of hearing, the trial court

passed an ex parte judgment and decree dated 23.12.2025. The appellant/defendant has challenged this impugned judgment and decree in the first appeal instituted in this court on 27.01.2026.

3. The record of this first appeal indicates that the matter did not proceed as expected, and on 04.03.2026 the first appeal was dismissed for non-prosecution. Thereafter, the appellant/defendant filed an application for restoration of the first appeal, which was allowed subject to the conditions articulated in the order dated 18.08.2026, which is reproduced as hereunder:-

> *"This appeal was dismissed for non-prosecution on 04.03.2026. Learned counsel for the respondent has "No Objection to the restoration of the first appeal" subject to the appellant furnishing a solvent surety in the sum of Rs.21,50,000/- (Rupees Twenty One Lac Fifty Thousand) on or before 12.09.2026, to the satisfaction of the executing court. Upon submission of the said solvent surety, the 1st appeal shall stand restored, and the operation of the execution proceedings shall remain suspended. In case no solvent surety is submitted by the appellant on or before 12.09.2026, this Order shall stand automatically recalled and the execution court shall be at liberty to proceed against the appellant in accordance with law."*

4. Following the aforesaid order, I heard this matter on 14.09.2026, 28.09.2026 and once again today.

5. As per the report submitted by the IXth Additional District Judge, Hyderabad, it appears that the appellant/defendant has furnished a solvent surety as described in the report dated 03.10.2026 reproduced herein below:-

> *"In Compliance of your honour's kind office letter referred above, I have the honour to submit report in respect of compliance/surety proceeding of summary execution noted above that the Defendant/JD/Applicant namely, Danish Puri S/O Kanwal Puri has furnished solvent surety on 10.09.2026, in shape of 01.SUZUKI CULTUS, Registration No. BFH-442, Model 2016, Chassis No. SF410PK527773, Engine No. PKF620870, Color Graphite Gray, 02 MOTORCYCLES CG-125 REGSITRATION NO. HEC-4605, MODEL 2022 CHASSIS NO.EC160350, ENGINE NO.T478212, COLOR BLACK AND NO.03. CD-70 REGSITRATION*

NO. HCJ-2047, MODEL 2019 CHASSIS NO.CP027279, ENGINE NO.C042169, COLOR BLACK, before this court, for which letter of valuation and verification of documents with direction to keep mortgage entry in respect of surety vehicle/bikes was issued on same date, but said reports yet to be received by this court, on which this court has issued show cause notice to In-Charge Excise, Taxation & Narcotics Officer, Motor Registration Authority GOR, Colony, Hyderabad. Copy of Show Cause Notice (attached herewith).

The above report is respectfully submitted to your honours, as desired."

6. Counsel for the appellant/defendant has contended that, as per the order dated 18.08.2026, he has furnished the surety before the executing court. He contends that this surety is in the sum of Rs.21,50,000/-, which is also the decretal amount. Therefore, he contends that the judgment and decree should be set aside and the matter should be remanded to the trial court for hearing of the leave to defend application, as the condition of the leave to defend has been satisfied viz., the deposit of security and that he is entitled to the right of hearing and to defend the summary suit on merits. Counsel for the respondent/plaintiff vehemently opposes the appellant/defendant's contentions. Counsel argues that at this late stage, when the judgment and decree have been passed, no grounds have been made out to set aside the said ex-parte judgment and decree. He contends that the surety shall remain in place before the Executing Court, as the property has yet to be seen by the court and/or the respondent/plaintiff, and the matter is also pending valuation. He argues that the value of the three movable assets (a car and two motorbikes) may be significantly less than the surety to be submitted to the Executing Court in the sum of Rs.21,50,000/- pursuant to the Order passed by the (High) Court.

7. Heard Counsel and perused the documents.

8. It is an admitted position that when the conditional leave to defend was granted on 10.10.2025, the appellant/defendant did not fulfill the conditions of such leave granting order. 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 Court has directed the defendant to file the written statement, 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.

9. In the case in hand, the appellant/defendant could not fulfil the conditions of the leave to defend granting order, and therefore the right of hearing in terms of Order XXXVII Rule 3 of CPC stood shut with only limited opportunity available under Order XXXVII Rule 4 of CPC as discussed herein below. As per the impugned judgment and decree of the trial Court, no documentary evidence was/is available to rebut the claim put up by the respondent/plaintiff, and the summary suit based on the dishonoured cheques supported by the bank memo went unrebutted.

10. Given the principles laid down in the above-mentioned case law and as referred above, the appellant/defendant, aggrieved by an ex-parte judgment and decree passed by the trial court in summary proceedings, has limited grounds. When leave to defend is not allowed and/or the conditions for leave to defend are not fulfilled, as in the case in hand, the summary suit proceeds ex parte against the

appellant/defendant. In such cases, the appellant / defendant's remedy in summary proceedings is limited to *inter alia* Order XXXVII Rule 4 of CPC which states that **after decree has been passed**, as in the instant lis, the court (to be read as the executing court) may under special circumstances, set aside the decree and if necessary or set aside execution and may give leave to defend to appear to the summons and to defend the suit, if a suit is reasonable to such court to do so and on such terms as the court deems fit. Alternatively, an opportunity of challenge (grounds for challenge to the decree) continues to remain available simultaneously to the judgment debtor under Order XXI of CPC. Counsel for the appellant/defendant has submitted that, as it has now furnished the surety in the trial court, the grounds of Order XXXVII Rule 4 of CPC have been made out. He contended that once the surety is in place, the matter is in terms of Order XXXVII Rule 4 of CPC; the decree and/or execution may be stayed or set aside. On perusal of the order dated 28.09.2026, it is apparent that the same was passed for the purpose of restoration of the first appeal, subject to the deposit of solvent surety in the sum of Rs.21,50,000/- to the satisfaction of the executing court. No doubt, the quantum of the surety was the same as that ordered in the conditional leave-granting order; however, the purpose of depositing such surety was not to set aside the leave to defend proceedings and/or the judgment and decree. The purpose of the said exercise as set out in the order dated 28.09.2026 reproduced hereinabove was to enable the hearing of this first appeal on merits. In view of the order dated 28.09.2026, I have extended the opportunity of hearing the 1st Appeal on merits to the appellant/defendant. Thus, having availed the condition of hearing, it is expected that the security submitted by the appellant/defendant will also come through, and the valuation of the

movable assets will meet the condition for hearing today on merits of the 1st Appeal.

11. In view of the above discussion, no case is made for setting aside the impugned judgment and decree passed by the trial court in the above-mentioned summary suit. There is neither any illegality or irregularity in the same. The appellant/defendant lost his right of defence when he did not fulfil the conditions of the leave-to-defend order and will now have to face the consequences.

12. As mentioned above, I have heard counsel on the merits of the impugned judgment and decree in this first appeal. Accordingly, the security submitted to the Executing Court, in terms of the Order of the High Court, is to be adjusted against the decretal amount. Given that the appellant/defendant has furnished security in the sum of Rs.21,50,000/- which is under process of scrutiny by the Executing Court, which is yet to assess the value of the security submitted (a car and two motorbikes), as and when the said exercise shall stand completed, the funds generated shall be adjusted against the decretal amount. For the avoidance of doubt, it is clarified that the Executing Court shall be at liberty to proceed further in the matter as deemed fit, including passing any orders in relation to the security and/or its realisations, strictly within the contours of its powers and the provisions of Order XXXVII of the CPC.

13. Consequently, this first appeal is **dismissed** along with all pending applications, if any, with no order as to costs in the above terms.

JUDGE

Shahid