HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

1st Appeal No.S-47 of 2026

[Shaikh Muhammad Amir vs. Mst. Maham Iftikhar]

Appellant : Shaikh Muhammad Amir
By Mr. Muhammad Noman Jaffer advocate

Respondent : Mst. Maham Iftikhar
None present

Date of hearing: 02.10.2026

Date of decision: 02.10.2026

O R D E R

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JAWAD AKBAR SARWANA J:- Shaikh Muhammad Amir S/o Shaikh Fazal Muhammad – appellant/defendant is aggrieved by the ex-parte judgment dated 22.05.2026 passed by the VI[th] Additional District Judge/MCAC-II, Hyderabad ("the trial Court") in Summary Suit No. 162 of 2025 filed by the respondent/plaintiff - Mst. Maham Iftikhar D/o Iftikhar Ali.

2. At the outset, the Counsel contends that the decretal amount in relation to the six (6) cheques, each of Rs.2 lacs, in the sum of Rs. Twelve Lacs (Rs.12,00,000/-) only was erroneous for the reason that three out of six cheques mentioned in paragraph No.4 of the impugned judgment were presented to the Bank and were dishonoured on 03.09.2025, whereas the Summary Suit was instituted on 16.08.2025. He further contends that after the leave to defend was allowed to the appellant/defendant on 20.04.2026,[1] on 11.05.2026, the appellant/defendant filed an application to enlarge time to furnish security or surety, which the Court allowed on the same date, extending the time till 18.05.2026.[2] Yet, on 22.05.2026, when the appellant/defendant, by way of affidavit for furnishing security,[3] offered to submit to the trial Court, for its consideration, TDRs equivalent to the amount of the solvent surety, in terms of the conditional leave to defend order dated 20.04.2026, the trial Court disregarded and entirely ignored the submission of such security (TDRs), and on 22.05.2026 proceeded to pass ex-parte judgment and decree against the appellant/defendant without affording an opportunity of hearing. Therefore, Counsel contends that the impugned judgment and decree is liable to be set aside and the appellant/defendant may be allowed to lead evidence after submission of the TDRs.

3. Notice of 1st appeal was issued to Mst. Maham Iftikhar vide order dated 07.08.2026 and thereafter once again on 27.08.2026. Notices were also ordered to be

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[1] Copy available on pages 145-149 of the first appeal
[2] Copy available on pages 157-159 of the first appeal
[3] Copy available on pages 161-163 of the first appeal

served through the trial Court/Additional Sessions Judge-IV, Hyderabad, in Summary Suit No. 162 of 2025 (now execution proceedings). However, as no one attended, the Court re-issued notice by publication on the respondent/plaintiff. Today, Counsel filed a statement attaching a copy of the Daily Kawish newspaper dated 30.09.2026, concerning notice of this lis to the respondent/plaintiff. However, the respondent/plaintiff, once again, remains absent. Neither Mst. Maham nor any representative on her behalf has entered appearance. The Court cannot wait endlessly for the respondent/plaintiff. Accordingly, this 1st appeal is decided with the assistance of Counsel and the available record.

5. Heard counsel and perused the record.

6. On **16.08.2025** the respondent/plaintiff instituted the aforesaid Summary Suit in the sum of Rs.22,00,000 based on 12 cheques.[4] Each cheque was dated differently and was presented for collection at different banks on different dates. The following table sets out the position of the twelve cheques based on the plaint filed in the summary suit, the impugned judgment, and the statement dated 02.10.2025 submitted by the appellant/defendant Counsel today, which was/is taken on record, subject to all just exceptions. It is clarified that the table below summarises the dispute between the parties for the purpose of deciding this first appeal concerning Summary Suit 162/2025.

Table "A"

Sr. No.	**Bank Alfalah Cheque Nos.**	**Date of cheque**	**Status/Date of Presentation**	**Place of Presentation of the cheques** **(Each cheque Rs.200,000/-)**
i.	59057701	20.01.2025	Not presented	-
ii.	59057702	20.02.2025	Not presented	-
iii.	59057703	20.03.2025	**26.03.2025**	Meezan Bank, Bilawal Chowk Br. Karachi
iv.	59057704	20.04.2025	**23.05.2025**	Meezan Bank, Kh-e-Tanzeem Br. Karachi
v.	59057705	20.05.2025	**23.05.2025**	Meezan Bank, Kh-e-Tanzeem Br Karachi
vi.	*59057706*	*20.06.2025*	*03.09.2025*	*Meezan Bank, Auto Bahn Road Br Hyderabad*

[4] Paragraphs 3, 6 and 9 and prayer clause (a) of summary suit no.162/2025.

			(After the institution of the Summary Suit on 16.08.2025)	
vii.	*59057707*	*20.07.2025*	*03.09.2025* *(After the institution of the Summary Suit on 16.08.2025)*	*Meezan Bank, Auto Bahn Road Br Hyderabad*
viii.	*59057708*	*20.08.2025*	*03.09.2025* *(After the institution of the Summary Suit on 16.08.2025)*	*Meezan Bank, Auto Bahn Road Br Hyderabad*
ix	59057709	20.09.2025	Not presented	-
x.	59057710	20.10.2025	Not presented	-
xi.	59057711	20.11.2025	Not presented	-
xii	59057712	20.12.2025	Not presented	-

Six (6) cheques Not Presented to the bank prior to institution of the summary suit

7. As is evident from the aforesaid Table "A", the respondent/plaintiff filed the summary suit on **16.08.2025** in respect of 12 cheques drawn on Bank Alfalah. The trial Court discarded six out of 12 cheques in Table "A" at serial nos. (i), (ii) and (ix) to (xii) for the reasons that the cheques were not presented to the bank. The trial Court correctly observed that when the summary suit was instituted on 16.08.2025, no cause of action had accrued to file such a summary suit for these six (6) cheques when these six (6) cheques had not been presented to the bank for collection (paragraph 5 of the impugned ex-parte judgment dated 22.05.2026). There is no room for any cavil regarding the trial Court's conclusion. If the cheques were not presented to the bank when the summary suit was instituted, no cause can be sustained against such cheques in a summary suit filed under Order 37 CPC. Accordingly, I concur with the trial Court's observation.

Two (2) categories of bounced/dishonored cheques

8. For the remaining six (6) cheques out of the twelve listed in Table "A" from sr. nos. (iii) to (viii), the trial Court bundled/aggregated all the said six (6) cheques together in one/single category, finding them as "dishonored/bounced cheques" and decreed the respondent/plaintiff's summary suit in the sum of Rupees Twelve Lacs

only (Rs.12,00,000/-) plus interest/markup. However, on closer scrutiny the six (6) cheques in Table "A" from sr. nos. (iii) to (viii) fall into two distinct and separate categories. The First Category of cheques consists of three cheques in Table "A" at sr. nos. (iii), (iv) and (v) which bounced on 23.05.2025; whereas the Second Category consists of the remaining three cheques at sr. nos. (vi), (vii) and (viii) of Table "A", which bounced/were dishonoured on 03.09.2025 after the institution of the summary suit.

1st Category: Cheques bounced/dishonored PRIOR to the institution of summary suit

9. As per Order 37 CPC, a cause of action for filing a summary suit arises in favour of the plaintiff/recipient of a cheque against the defendant/issuer when the said cheque bounces and/or is dishonoured. Thereafter, the plaintiff/recipient accrues a cause of action to institute a summary suit against the issuer/defendant to recover the amount of the said bounced/dishonoured cheque under Order 37 CPC. The trial Court rightly found the three cheques in Table "A" at sr. nos. (iii) chq. # 59057703, (iv) chq. # 59057704, and (v) chq. # 59057705 bounced. To that end, the respondent/plaintiff, in the facts and circumstances of the case, was/is rightly entitled to recover the total amount of the aforesaid three (3) cheques in terms of the decree. Accordingly, I also concur with the trial Court's observation concerning these three bounced cheques falling under the above-described First Category of bounced cheques. Yet, the same cannot be said for the Second Category of cheques in Table "A" from sr. nos. (vi) to (viii).

2nd Category: Cheques bounced/dishonored AFTER the institution of summary suit

10. The three cheques in Table "A" at sr. nos. (vi) chq. # 59057706, (vii) chq. # 59057707, and (viii) chq. # 59057708 were presented for collection to the concerned Bank on 03.09.2025**,** i.e. after the date of institution of the summary suit on 16.08.2025. As discussed earlier, a cause of action to recover the amount in a bounced cheque in summary proceedings accrues after the cheque bounces and its payment was due on the date of institution of the summary suit. The cause must already be triggered on the date of institution of the summary suit, viz. the cheque had already been presented, and it had already bounced when the summary suit was filed. Subsequently bounced cheques between contesting parties, which bounce after the summary suit is filed, cannot be claimed in the ongoing summary suit as and when they are presented and bounce/dishonour during the pendency of summary proceedings, even if such cheques were claimed in the summary suit. Merely mentioning cheques in the summary suit cannot save the summary suit in respect of the claim for cheques unless and until the ingredients of summary suit have been triggered within the contours of Order 37 CPC. Any other interpretation will lead to absurdities.

11. Given the above, the three cheques in Table "A" at sr. nos. (vi) chq. # 59057706, (vii) chq. # 59057707 and (viii) chq. # 59057708 were not recoverable in the Summary Suit because they had not been presented for collection to the bank and had not bounced at the time of institution of the summary suit. The summary suit could not be sustained for recovery of the aforesaid three cheques described as being in the Second Category. No cause of action accrued concerning the Second Category cheques, which, at the time of institution, had not been presented, and were presented only after the institution of the summary suit, and also bounced. Therefore, the impugned ex-parte judgment and decree passed by the trial Court cannot be maintained to the extent of the three cheques in Table "A" at sr. nos. (vi) chq. # 59057706, (vii) chq. # 59057707, and (viii) chq. # 59057708.

Delay in furnishing security

12. The appellant/defendant Counsel has also argued that although he failed to deposit the surety within time, the appellant/defendant proposed to furnish the security in the form of TDRs; however, the trial Court declined to accept the TDRs and, instead, decreed the suit. Hence, the ex parte judgment and decree is liable to be set aside. Counsel's submissions have two aspects. The First is the consequence of the delay in furnishing security by the appellant/defendant, and the Second is the TDRs as security.

13. The trial Court, on 20.04.2026, allowed the appellant/defendant conditional leave subject to furnishing security equal to the subject amount of Rs.22,00,000 within three (3) weeks. Yet, almost four (4) weeks later, the appellant/defendant had still not complied with the conditions set out in the leave-to-defend granting order. On 11.05.2026, the appellant/defendant filed an application to convert the security condition into a surety for Rs. 22,00,000. Further, on the same date, the appellant/defendant also filed another application for enlargement of time to furnish security, which the trial Court allowed, extending the time to furnish security to the appellant/defendant till 18.05.2026. But again, no security was furnished, and on 22.05.2026, the appellant/defendant swore an affidavit stating that he was furnishing security of Rs.22,00,000 through TDRs dated 21.05.2026 issued by Allied Bank Limited, drawn on the account titled "Merab Builders" (TDA 00069116).[5] But the trial Court did not accept the TDRs and, on 22.05.2026, passed an ex parte judgment for Rs. 12,00,000/- with 10% per annum interest from the due date of the cheques.

14. The appellant/defendant did not comply with the condition of the leave-granting order, viz. furnishing security of Rs.22,00,000 within three weeks from

[5] Available on pages 161-167 of the first appeal

20.04.2026. Further, the three (3)- week period expired on or about 11.05.2026, but the appellant/defendant had not furnished the security as required under the leave-granting order. The trial Court, at the appellant/defendant's request, also extended time till 18.05.2026. Yet, even on 18.05.2026, the appellant/defendant showed no positive momentum to furnish security, and the case was adjourned to 22.05.2026. Yet, on 22.05.2026, the appellant/defendant again failed to comply with the previous order. Instead, the appellant/defendant submitted security in the form of TDRs and pleaded with the trial Court to accept it, which the Court declined. The appellant/defendant's conduct does not inspire confidence and shows a clear, consistent pattern of delay, which, given that the trial Court is/was conducting summary proceedings, cannot be condoned.

TDR as security

14. I now turn to the appellant/defendant's eleventh-hour (in an already extended period of time) attempt to furnish security by way of TDRs as security in the summary suit. A TDR is a "Term Deposit Receipt". It is an official document or certificate issued by a bank or financial institution when you place a lump-sum amount into a fixed or term deposit account for a set period. Banks issue these receipts to individuals, firms, or institutions as formal legal proof of the deposit. In the present case, the TDR submitted to the trial Court by the appellant/defendant was issued by Allied Bank Limited in the name of the account "MERAB BUILDERS". The appellant/defendant's affidavit attaching the said TDR did not disclose who is/was "MERAB BUILDERS", or why "MERAB BUILDERS" was submitting a security. If the TDR was meant for the Court, the TDR itself suggested nothing to the effect that it was meant as security in the summary suit. No supporting document was available to suggest that either "Allied Bank Limited" and/or "MERAB BUILDERS" had consented to/or given their "No Objection" to, or confirmed the lien to, the trial Court in terms of furnishing security in the summary suit. In other words, the affidavit in support of the TDR, with the appellant/plaintiff dragging his feet, such TDR, given the questions surrounding the security being offered, and all the facts and circumstances of the case discussed hereinabove, did not inspire confidence and, in the context of things, appeared to be an attempt to yet again gain time and delay the summary proceedings from proceeding to the next stage, i.e. trial. Thus, the trial Court's decision to decline the security offered by the appellant through TDR is neither illegal nor irregular, nor does it call for interference or scrutiny.

15. 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 directs the defendant to file the written statement, no further rights are created in favour of the defendant if the defendant fails to comply with the conditions of the leave-granting order.

16. 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, raise challenge to the decree as may be available under Order 21 CPC.

17. In view of the above, the impugned ex-parte judgment and decree are modified and the respondent/plaintiff's summary suit is decreed to the extent of the three bounced cheques in Table "A" at serial nos. (iii) chq.#59057703 dated 20.03.2025, (iv) chq. #59057704 dated 20.04.2025, and (v) chq.#59057705 dated 20.05.2025, in the sum of Rupees Six Lacs Only (Rs.6,00,000/-) (total) with a 10% increase from the due date of the three cheques, with no order as to costs.

18. The 1st appeal stands allowed in the above terms.

JUDGE
16.10.2026

Sajjad Ali Jessar