

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A No.16 of 2026

[Rameez Ahmed Khan vs. Waqar Ahmed Khatri]

Applicant by : Mr. Muzamil Khan Bughio advocate
Respondent by : Mr. Jeewat Ram advocate
Date of Hearing : **30.03.2026**
Date of Decision : **02.04.2026**

ORDER

SYED FIAZ-UL-HASAN SHAH, J:- This revision application has been directed against the Order dated 07.01.2026 passed by learned Additional District Judge-VI Hyderabad in Summary Suit No.81 of 2025 [*Re: Waqar Ahmed Khatri vs. Rameez Ahmed Khan*], whereby the applicant herein was allowed to defend the summary suit, however, upon furnishing surety in the sum of Rs.30,00,000/-.

2. Brief facts of the matter are that the respondent herein instituted a summary suit, referred to above, against present applicant for recovery of certain amount alongwith interest and compensation. Upon notice the present applicant being defendant filed an application under Order XXXVII Rule 3 CPC for leave to defend, which was conditionally allowed to defend the suit, hence he has challenged the said order through present revision application with the prayer that he may be allowed to defend the suit unconditionally.

3. Learned counsel for the applicant contends that although the relief has been granted through the impugned order but strict condition has been put upon the applicant i.e furnishing a surety for an amount of Rs.30,00,000/-. He further contends that as per agreement dated 24.12.2024 subject cheques were issued on account of sale purchase of iron goods, however, by a subsequent agreement dated 08.01.2025 this condition was modified

and the respondent/plaintiff was liable to pay an amount of Rs.1,38,00,000/- to applicant and also to return the subject cheques. He states that suit for specific performance of contract and cancellation of cheques is pending adjudication before XIIth Civil Judge Hyderabad.

4. On the other hand learned counsel for the respondent/plaintiff opposed the instant revision application and contends that the applicant/defendant intentionally committed the act of dishonour and has failed to pay the amount mentioned in subject cheques, therefore the impugned order is proper and does not warrant any interference.

5. Arguments heard and record perused.

6. It appears that initially parties were entered into agreement, available at page-43 of the Court's file, for sale purchase of iron goods and thereafter terms and conditions of said agreement were modified through a subsequent agreement dated 08.01.2025, wherein it has been categorically provided that the disputed cheques were issued for security. Although the learned counsel for the respondent/plaintiff has disputed the signature on the subsequent agreement, however, same cannot be adjudicated without recording evidence so also without adjudging the veracity of signatures of marginal witnesses. The applicant/defendant has already instituted the suit for cancellation of said instrument and that too cannot be adjudicated without recording of evidence. In order to avoid conflict of findings in both proceedings, the trial Court rightly allowed the leave to defend application, however, the condition for deposit of surety of Rs.30,00,000/-, i.e equivalent to half of the disputed amount, is harsh condition when the applicant/defendant has already suffered on account of registration of FIR and incarceration in respect of the subject cheques.

7. Rule 3 of Order XXXVII of CPC states: -

“3. Defendant showing defence on merits to have leave to appear: -

(1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

[(3) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to applications under sub-rule (1).]

8. Sub-Rule 2 of Rule 3 of the Order *ibid* provides that leave to defend may be granted either unconditionally or subject to terms such as payment into Court, furnishing security, framing and recording issues, or otherwise as the Court deems fit. The principles governing the grant or refusal of leave to defend were laid down by the Hon'ble Supreme Court in ***Fine Textile Mills Ltd. Karachi v. Haji Umar (PLD 1963 SC 163)***. The Court observed:

*“In a suit of this nature, where the defendant discloses upon his affidavits facts which may constitute a plausible defense or even show that there is some substantial question of fact or law which needs to be tried or investigated into, then he is entitled to leave to defend. What is more is that even if the defense set up be vague or unsatisfactory or there be a doubt as to its genuineness, leave should not be refused altogether but the defendant should be put on terms either to furnish security, or to deposit the amount claimed in Court. The principles upon which the provisions of Order XXXVII of the Code of Civil Procedure should be applied are not dissimilar to the principles which govern the exercise of the summary power of giving liberty to sign final judgment in a suit filed by a specially endorsed writ of summons under Order XIV of the Rules of the Supreme Court in England. One of such principles laid down by the Court of Appeal in *Kodak v. Alpha Film Corporation (1930 2 KB 340)* was that at the stage when leave to defend is sought ‘the Judge is not to try the action; he is to see that there is a bona fide allegation of a triable issue, which is not illusory; he need not be satisfied that the defense will succeed; it is enough that such a plausible defense is verified by affidavit.’”*

9. It is admitted that the applicant issued cheques to the respondent which were dishonoured. Under the Negotiable Instruments Act, 1881 such instruments carry a presumption of consideration, and the burden lies upon the drawer to rebut this presumption with cogent material. The applicant has not denied his signatures on the cheques. His sole plea is that the cheques were obtained and were intended only as security under a duly executed agreement between the parties. If true, this is a serious allegation. The applicant asserts that the cheques were conditional and not meant to be encashed at the respondent's unbridled discretion, but only upon the occurrence of specific events stipulated in the agreement and both parties are bound by such agreement/contract.

10. It is trite law that under Order XXXVII CPC, the Court must assess the quality of the defence. Where the defence raises substantial and real triable issues, unconditional leave may be granted. Where the defence is frivolous or illusory, leave may be refused or granted only on conditions. In the present case, the applicant's plea of conditional issuance of cheques raises questions of fact that cannot be resolved without recording evidence. The presumption under the Negotiable Instruments Act, though strong, is rebuttable, and the applicant has successfully raised grounds requiring adjudication. Additionally, the applicant is also facing criminal trial for the same disputed cheques, therefore, the placement of condition of surety equivalent to the half of the disputed amount is harsh condition when the Applicant has also filed suit for cancellation of disputed cheques and the parties would have to lead evidence in that case too.

11. Accordingly, the impugned order is well reasoned, grant of leave to defend merits consideration, as the defence discloses triable issues which must be investigated through proper evidence and the condition of surety amount of Rs.30,00,000/- is reduced to Rs.5,00,000/-, which is to be deposited by the applicant/defendant within 15 days from the date of this

order either in shape of cash or by way of tangible security of equal value to the satisfaction of the trial Court. With these modifications, the instant revision application stands disposed of.

JUDGE

Sajjad Ali Jessar