

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.232 of 2009

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DATE

ORDER WITH SIGNATURE OF JUDGE

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**Plaintiff:** Shell Pakistan Limited through Mr. Rajendar Kumar, Advocate for Plaintiff.

**Defendant:** Nemo.

**For hearing of Leave to Defend CMA No.5908/09 (U/O 37 Rule 3 CPC)**

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**16.04.2018**

This is a Summary Suit under Order XXXVII C.P.C for recovery of an amount of Rs.31,000,002/- with 14% markup. Pursuant to issuance of summons, the Defendant filed leave to defend application; but thereafter none affected appearance to pursue such leave to defend application. On various dates i.e. 26.02.2018 and 19.03.2018 none affected appearance, whereas, a direct notice was also sent to the Defendant through courier and despite service no one turned up. On 19.03.2018, the following order was passed:-

“None present for the Defendant nor any intimation received. Pursuant to earlier orders, the Counsel for the Plaintiff has sent notices to the Defendant as well as his Counsel through TCS and tracking report has been placed on record, which reflects that notice stands served upon the Counsel, whereas, it could not be served upon the Defendant as he has been shifted from the given address. This leave to defend application is pending since 2009 and no serious effort has been made on behalf of the Defendant to contest this Suit. As an indulgence adjourned to 16.04.2018 with a note of caution that, if no one turns up to proceed with this leave to defend application on the next date, appropriate orders would be passed.”

Today, again no one is in attendance. In the circumstances, leave to defend application is dismissed for non-prosecution.

Learned Counsel for the Plaintiff submits that Defendant used to be a Petroleum dealer of the Plaintiff and time and again various supplies were made to him for which he issued postdated cheques, which were dishonoured and thereafter he entered into a settlement agreement and executed a Promissory Note for payment of the said amount but again he defaulted and never made the payment. Learned Counsel submits that even in the leave to defend application the Defendant has not categorically denied the execution of the Promissory Note, but has stated that it was not executed in conscious manner.

Heard learned Counsel and perused the record. This is a Summary Suit under Order 37 and Rule 2 provides that the defendant cannot appear or defend the Suit unless he obtains leave from the Court to appear and defend and in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree. Admittedly the defendant has failed to seek leave to defend. In this matter the plaintiff's case is based on a promissory note executed by the defendant after dishonoring of cheques.

In the circumstances, since the defendant has failed to seek leave of the Court to defend and/or appear in this matter, this Court is left with no option but to decree the Suit of the plaintiff for an amount of Rs.31,000,002/- alongwith interest at the rate of 6% per annum from the date of institution of this Suit i.e. 12.02.2009 till realization, as provided under Section 79 and 80 of the Negotiable Instrument Act, 1881.

Suit decreed as above. Office to prepare decree accordingly.

J U D G E

Ayaz P.S.