

Order Sheet  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD

1<sup>st</sup> Appeal No. 02 of 2016

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DATE	ORDER WITH SIGNATURE OF JUDGE
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25.04.2022

For orders on office objection  
For orders on MA 706/16  
For orders on MA 707/16  
For hearing of main case

M/s. Muhammad Sulleman Unar & Asad Ali Jatoi, Advocate for appellant.

Mr. Riazuddin Qureshi, Advocate for Respondent

I have heard the learned counsel(s) and perused the record.

Brief facts of the case are that a Summary Suit was filed by the respondent as Suit No. 50 of 2012 and perhaps at the initial stage ordinary notices and summons were issued instead of summons under special provisions of summary chapter. Be that as it may even on receipt of ordinary summons leave to defend application was filed which was decided on 15.2.2014 and a conditional leave was granted to the appellant to furnish surety to the extent of amount involved i.e. 1,81,030/- within seven days from the date of the order to contest. However it was not complied and an ex-party proceedings were initiated as an affidavit-in-evidence of plaintiff / respondent was filed. The respondent was then cross-examined on 13.10.2014; however, the court realized at that point of time that the summons were not issued under summary chapter and denovo suit proceedings, after issuing summons under summary chapter commenced. To this extent no counsel had objected. On receipt of summons under summary chapter the applicant again filed another leave application which application was then decided on 19.12.2015 by a detailed order. The trial court while proceeding with the summary suit held in the leave refusing order that there was no plausible defence which may lead to triable issue or enable the appellant to obtain leave either conditionally or unconditionally from the trial court.

The result of the order was that the leave application was declined and the suit was decreed with cost and 8% interest / markup from the date of filing of the suit till realization of the amount.

As against these proceedings, the appellant preferred instant appeal before this court by taking a defence that when ordinary summons were received, then the court should have proceeded with the suit in ordinary manner. That could have been a valid defence of the appellant provided they have taken it at the relevant time. On receipt of ordinary summons they preferred to file leave application instead of objecting the court that they would file written statement as they received ordinary summons. As a result of such action they lost their defence to consider it as ordinary suit. The initial leave application was conditionally granted which was not complied; however, during the cross-examination, as contended by both learned counsel the court felt that summons should have been issued under summary chapter and consequently on issuance of summons under summary chapter, fresh leave application was filed which was declined on the count that there was no plausible defence at all; hence this appeal. This act of appellant also rendered him disentitled to claim a defence of ordinary suit proceedings, though I did not approve the denovo proceedings as suit should have continued on the basis of ordinary notices / summons.

I have perused the first and second leave application and there are contradictory stands taken. The only undigestable defence taken by the appellant is that the cheque does not bear the signature of the appellant. I am also not satisfied with this defence on the count that they have to establish as to how the cheque came in possession of the respondent. Moreover the cheque was bounced as the amount of cheque exceeds the availability of fund in the account and not on fake signature. They have not been able to satisfy the trial court as well as this court that it was a stolen cheque, whereupon the signatures were forged. There is no evidence at all, in fact it is not even pleaded that any complaint was lodged with regard to the stolen cheque (if it was). It has been almost 12 years when the litigation under summary chapter commenced. The record also shows that an FIR was lodged as Crime No. 53 of 2012 under Section 489-F & 506 PPC wherein appellant was acquitted; however, it has no bearing as far as recovery proceedings are concerned.

In view of the above facts and circumstances, I am of the view that the appellant was given the opportunities to defend the suit twice; initially when

ordinary summons were issued and despite it he preferred a leave application as suit was filed under summary chapter. Then again on receipt of proper summons under summary chapter a leave application was filed which was declined and even on merits no satisfactory / plausible defence was raised at all. This being a situation the appeal is dismissed. The R&Ps be sent back to the trial court.

Since the appeal has already been dismissed and the remedy is exhausted; the principal amount as already been secured by the surety before the Additional Registrar, as Saving Certificate, is directed to encash it and the respondent shall be entitled to receive it on proper verification and identification along with interest. Since this is only a principal amount with limited period of interest / markup which has not been paid to its entirety, the respondent may continue to proceed with the execution application for the recovery of leftover markup amounts only.

Appeal stands dismissed.

JUDGE