

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
R.A. No. 175 of 2022

Dated: Order with signature of Judge(s)

- 1.For orders on office objections as at 'A'.
- 2.For hearing of CMA No.8295/2022.
- 3.For hearing of Main Case.

Date of hearing: 4 May 2023.

Applicants : Muhammad Faizan Samad through
Mr. Ghulam Asghar Pathan, Advocate.

Respondents No.1,3&4: Called absent.

Respondent No.2 : Ghazanfar Ali Fadool through Ms. Arjumand
Khan, Advocate.

ORDER

Mohammad Abdur Rahman, J. The Applicant has preferred an Application under Section 115 of the Code of Civil Procedure, 1908, asking this Court to revise the order dated 13 December 2022 passed by the XIth Additional District & Sessions Judge Karachi (South), in Summary Suit No.155 of 2022 (hereinafter referred to as the "Impugned Order") and by which order the Applicant had been declared ex-parte and barred from filing an application for leave to appear and defend a summary suit instituted under Order XXVII Rule 1 and 2 of the Code of Civil Procedure, 1908

2. The Respondent No.2 and the Respondent No. 3 (who were the Plaintiffs in Summary Suit No.155 of 2022) claim that the Applicant (who was the Defendant No.1 in Summary Suit No. 155 of 2022) was introduced to him by a common friend and showed an interest in investing and developing real estate in Bahria Town, Karachi. Such an interest culminated in the Applicant entering into an agreement with four persons namely, (1) Abdul Bari, (2) Muhammad Usman, (3) Asad Akber Behra and (4) Abdul Ahad (hereinafter referred to as the "Sellers") for the purchase of an immovable property bearing Plot No.B-56, Jinnah Commercial, Main

Jinnah Avenue, B-Side, Bahria Town, Karachi (Bearing Registration No.BTKC-JAC-0072) admeasuring 533 square yards. (hereinafter referred to as the "Said Property").

3. That the investment to be made by the Applicant in the purchase of the Said Property was a sum of Rs. 100,000,000 (Rupees One Hundred Million) which was to be paid by the Applicant to the owners of the Said Property and a further amount payable by the Applicant as commission to a commission agent. With regard to the agreement as between the Applicant and the Respondent No. 2 and the Respondent No. 3, it was purportedly agreed that as and when the initial sum of Rs. 100,000,000 (Rupees One Hundred Million) was paid by the Applicant to the Sellers, thereafter the obligations as between the Applicant and the Respondent No. 2 and the Respondent No. 3 to "Deal, Market & Sell" units in the construction that was proposed to be constructed on the Said Property would crystallize. The terms of such an agreement were recorded in a document entitled Marketing & Seller Agreement dated 31 March 2022.

4. That after some time it became apparent to the Respondent No. 2 and the Respondent No. 3 that, in fact, the Applicant did not have the requisite capital to fulfill his obligations as he was constantly leaning on the Respondent No. 2 and the Respondent No. 3 for an advance to allow him to fulfill his financial commitments to develop the Said Property and which according to the Respondent No. 2 and the Respondent No. 3 culminated in a sum of Rs. 20,062,000 (Rupees Twenty Million Sixty Two Thousand) being advanced by the Respondent No. 2 to the Applicant. Being concerned as towards the Applicants ability to repay the monies advanced by the Respondent No. 2, a demand was made by the Respondent No. 2 that the Applicant issue a cheque to the Respondent No.2 and the Respondent No.3 for a sum of Rs. 20,000,000 (Rupees Twenty Million) so

as to secure the advance made. This was, according to the Respondent No. 2 and the Respondent No.3 in their pleadings, reluctantly acceded to by the Applicant and who issued Cheque No. 21329426 dated 27 May 2022 issued on the account of the Applicant maintained with the Korangi Branch of Meezan Bank Limited (the "Said Cheque") to the Respondent No. 2 and the Respondent No. 3.

5. That after a period of about four months, the Respondent No.2 and the Respondent No. 3 came to know that the Applicant had on 10 September 2022 been arrested in Hyderabad on account of having issued cheques that had not been honoured and which compelled the Respondent No.2 to present the Said Cheque and which too was dishonored resulting in *inter alia* the institution of Summary Suit No. 155 of 2022.

6. Summary Suit No. 155 of 2022 was presented on 26 October 2022 and notices were issued to the Applicant and to the Respondent No. 4 (who at that time was arrayed as the Defendant No. 2) for 12 November 2022 to file their application under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908 for leave to appear and defend Summary Suit No. 155 of 2022. The Respondent No. 2 had filed a statement on 3 November 2022 confirming that he had issued the relevant notices, but the only document that is available on the record to identify whether notices were served or unserved according to that statement are courier delivery statements which show that the notices were not delivered. The relevant dates of the proceedings and the events that unfolded thereafter are as under:

- (i) On 12 November 2022, the counsel for the Applicant appeared and filed an undertaking to appear on behalf of the Applicant. The matter was adjourned to 22 November 2022,

- (ii) On 22 November 2022 the Advocate for the Applicant formally filed his Vakalatnama on behalf of the Applicant (along with a Power of Attorney issued by the Applicant in favour of his mother) and was provided with a copy of the plaint of Summary Suit No. 155 of 2022 and the matter was adjourned to 1 December 2022 to permit the Applicant to file his application under Order XXXVIII Rule 3 of the Code of Civil Procedure 1908 for leave to appear and defend Summary Suit No.155 of 2022,
- (ii) On 1 December 2022 as the Applicant was incarcerated in Hyderabad, it would seem that the Attorney of the Applicant i.e. his mother Mrs. Shahnaz Samad on 27 November 2022 purportedly had an accident which resulted in her damaging her lateral meniscus in her right knee and which left her immobile. The accident caused the Applicant on 1 December 2022 to file an application for enhancement of the time for filing the Application for Leave to Defend and on which application notice was issued to the Respondent No. 2 and the Respondent No. 3 for 12 December 2022,
- (iv) On 12 December 2022 a statement was filed by the Applicants submitting medical reports detailing the injuries suffered by the Attorney of the Applicant. The statement filed by the Applicant did not find favour with the XIth Additional District Judge Karachi (South) who while passing the Impugned Order on the Application observed:

“ 6. *In my humble opinion, it is rightly contended that the prescribed time for filing leave to defend is 10 days only and this time limit cannot be extended by the Court on the ground that the defendant in jail and his attorney is sick. Record further reflects that no any*

certificate from the Government Medical Officer is submitted by the learned counsel for defendant No.1 for showing that the attorney of defendant No.1 is strictly advised to bed rest and she is unable to move. Even otherwise learned counsel for defendant No.1 had an option to file the leave to defend along with her affidavit with the request to appoint commissioner for solemnizing the affidavit at the residence of the attorney of defendant No.1. But no any such action is taken by the defendant No.1, his attorney or his learned counsel within the prescribed time. In my humble opinion, after receiving the copy of plaint by the learned counsel for the defendant No.1 on 22.11.2022, the prescribed time for filing leave to defend has already expired and defendant No.1 has no any valid reason to grant of enlargement of prescribed time limit of 10 days.

7. *In view of the above discussion, defendant No.1 is hereby debarred from filing the leave to defend application, if any. Let the matter be proceeded against defendant No.1 ex parte.*

(Emphasis is added)

7. Mr. Ghulam Asghar Pathan on behalf of the Applicant has called on this court to revise the Impugned Order on the ground that there was sufficient information available with the XIth Additional District Judge Karachi (South) to enlarge the time and to permit the Applicant to file his application under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908 for leave to appear and defend Summary Suit No. 155 of 2022. The Counsel for the Applicant, in support of his contentions, relied on a decision reported as **Muhammad Nadeem Amin vs. Ch. Farast Ullah**¹ In this decision the Applicant was, quite like the Applicant in this Application, incarcerated and in his absence a decree was passed as against him under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908. The facts as narrated, clarify that a notice was served on the Applicant in jail and it was reported by the process server that the Applicant had refused to accept service of notice. There was a further report from the Superintendent District Jail Lahore, which had been ignored by the trial court at the time of declaring the Applicant as ex-parte, that the reason for refusal was that the Applicant wished to avail legal advice so as to appear in Court personally

¹ PLD 2006 Lahore 32

to comply with the judicial order. The Applicant was declared *ex parte* on 19 October 2004. Once the decree was passed, the Applicant who had by then admittedly been released from his incarceration on 9 October 2004 choose to file an application on 11 February 2005 under Order XXXVII Rule 4 of the Code of Civil Procedure, 1908 and the word of which section are for the sake of convenience restated hereinunder:

“ 4. *After decree 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.*”

(Emphasis is added)

The Trial Court having dismissed the application under Order XXXVII Rule 4 of the Code of Civil Procedure, 1908, a Civil Revision Application was preferred before the Lahore High Court, Lahore under Section 115 of the Code of Civil Procedure, 1908 on the grounds that the facts and circumstances amounted to “special circumstances” to “set side the decree and... give leave to the defendant to appear on the summons and defend the suit, if it seems reasonable to the court so to do on such terms as the Court thinks fit.” The application found favour with the Lahore High Court Lahore who while granting the Civil Revision Application stated that: ²

“ *No consideration was given to the meaning of the statutory criterion of “special circumstances in Order XXXVII Rule 4 C.P.C. for setting aside an ex parte decree. The physical confinement of the petitioner in jail is certainly not a case of willful abstention by the Petitioner no is it an occurrence of a routine nature. It is indeed a special circumstance that prevented the petitioner from attending the Court in answer to its summon and constituted a good ground to explain the petitioner’s non appearance. To promote the interest of justice, it was necessary for the petitioner in this case to have been granted a substantive opportunity to defend himself. The Impugned Order accordingly suffers from material irregularity in the appreciation and application of the relevant law. It is therefore set aside.*”

The Lahore High Court, Lahore was also mindful of Order V Rule 24 of the Code of Civil Procedure, 1908 which states that:

“ **24. Service on defendant in prison.-** *Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.*”

² *Ibid* at pg. 34

While interpreting this provision the learned Judge of the Lahore High Court Lahore followed a judgment of the Supreme Court of Pakistan reported as **Ghulam Rasool vs. Abdullah**³ wherein it was observed that:⁴

“ According to the Appellant his case was fixed for pronouncement of judgment on 22-3-1987. He had given oral instructions to a Petition writer for drafting his written statement which was prepared by him and was presented by his son on 24-3-1987. The Court in spite of the knowledge with regard to the detention of the appellant did not direct the Jail authorities to produce him in Court on 5-4-1987. It is an admitted feature of the case that appellant was convicted on a criminal charge and his absence was not willful. It was beyond his control. No process was issued to the appellant for 5-4-1987, as such ex parte proceedings could not be taken against him. The appearance of the minor son of the appellant was not appearance on behalf of the appellant. **He was not a constituted attorney of the appellant.** He had only informed above a fact when it came to the notice of the Court that the appellant had been detained on a criminal charge, it was obligatory on the Court to have issued a process to the appellant.”

8. It is to be mentioned that the Respondent No. 4, who is the wife of the Applicant, independently applied for and secured unconditional leave to defend and was subsequently struck off as a Defendant in Summary Suit No. 155 of 2022.

9. Ms. Arjumand Khan appearing for the Respondent No. 2 has supported the Impugned Order passed by the XIth Additional District & Sessions Judge Karachi (South) and held that the Applicant had been correctly declared ex-parte and that these proceedings were only instituted so as to delay the proceedings in Summary Suit No. 155 of 2022. She relied on no case law in support of her contentions.

10. I have heard the Counsel for the Applicant and the Respondent and have perused the record of this Application and also the record and proceedings of Summary Suit No. 155 of 2022.

11. The power to revise an order vests in a High Court under Section 115 of the Code of Civil Procedure, 1908 which clarifies:

³ 1991 SCMR 1964

⁴ Ibid at pg 35

- “ 1. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears
- (a) to have exercised a jurisdiction not vested in it by law, or
 - (b) to have failed to exercise a jurisdiction so vested, or
 - (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit...”

The scope of such power has been explained by the Supreme Court of Pakistan in **Mst. Banori vs. Jilani through Legal Heirs and others**⁵ wherein after quoting the section it was held that:⁶

- “ ... A perusal of the said provisions would reveal as under:
- (a) that the jurisdiction conferred by section 115, C.P.C. is essentially a supervisory jurisdiction of superintendence and control meant to ensure correction of illegalities and irregularities found in the decisions of the courts subordinate to the revisional court;
 - (b) that in the discharge of its said obligation, the revisional court had not been placed at the mercy of the parties to a lis or of some other person and was required to act even suo motu;
 - (c) that no law prescribed any limit of time for such a court within which such an error could be rectified;
 - (d) that there was, however, no bar on any person, laying, through an application any information before the revisional court about any such error, illegality or irregularity in any of the decisions of the subordinate courts and seeking correction thereof;
 - (e) that a person making such an application had, however, been bound to do so within ninety days of the decision sought to be revised;
 - (f) that the revisional court was expected not to call for the record of the subordinate court for the disposal of the matter except in exceptional cases for reasons to be recorded in
 - (g) that the subordinate court making the decision which is sought to be revised, was bound to supply a copy thereof within three days of the making of the same;
 - (h) that the revisional court was then required to dispose such an application within six months and that also, except in exceptional cases, without calling for the record.”

⁵ PLD 2010 SC 1196

⁶*ibid* at pg. 1965-1966

As such, the powers under Section 115 of the Code of Civil Procedure, 1908 as conferred on this Court are supervisory and can be exercised over a court subordinate to the High Court so as to examine any illegalities and irregularities that may come before it in respect of proceedings of those courts and to take remedial action to rectify such illegality or irregularity.

12. To examine as to whether any illegalities or irregularities have been committed by the XIth Additional District & Sessions Judge Karachi (South) in adjudicating Summary Suit No. 155 of 2022, I would refer to the provisions of Order XXVII Rule 2 of the Code of Civil Procedure, 1908 which states that:

“ ... 2.

(1) All suits upon bills of exchange hundies or promissory notes, may, in case the plaintiff desires to proceed hereunder be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No.4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms respectively the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so 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 -

(a) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section 79 or section 80 as the case may be of the Negotiable Instruments Act 1881 up to the date of the institution of the suit or for the sum mentioned in the summons whichever is less and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit; and

(b) for such subsequent interest if any as the Court may order under section 34 of this Code; and

(c) for such sum for costs as may be prescribed:

Provided that if the plaintiff claims more than such fixed sum for costs the costs shall be ascertained in the ordinary way.

13. As can be seen sub-rule 1 of Rule (2) of the Order XXXVII of the Code of Civil Procedure, 1908 requires a notice for summons to be issued

in “Form No.4 of Appendix B or in such other form as may be from time to time prescribed”. The form of the notice is reproduced as under:

“ ... NO. 4

SUMMON IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT

(Title)
To,
(Name, description and place of residence)

WHEREAS _____ has institute a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs. _____ balance of principal and interest due to him as the _____ of a _____ of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to, appear, and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. _____ and the sum of Rs. _____ for costs with such interest, if any, from the date of the institution of the suit as the Court may order].

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits; or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 20
Judge”

The issuance of a notice in the prescribed manner has been a matter of dispute before this Court in the Judgement reported as **Syed Azhar Hussain Raizvi vs. Irfan Umar**⁷ wherein it was held that:⁸

“ ... So far as the provisions of Article 159 of the Limitation Act Are concerned, no doubt it is provided in the said Article that the limitation for filing application for leave to appear and defend the suit begins when the summons are served; however apparently it is mandatory required that the summons must be served in a proper manner as prescribed under the law i.e. in accordance with Form 4 of Appendix B of Civil Procedure Code which clearly provides that a copy of plaint should be annexed with summons and if it not done, the service cannot be held good. In other words, if copy of plaint is not annexed with the summons, then service could only be held good as soon as copy of the plaint is supplied to the defendants which, in the instance case was supplied to the defendant on the next date i.e. 30th August, 2017 on which date the trial court fixed the case on 09.9. 2017 “for filing leave to defend” and the applicant/defendant complying with the direction of the trial court filed the application on the said date.”

⁷ 2020 CLC 1514

⁸ *ibid* at pg. 1523

14. The notice under Order XXXVIII Rule 2 of the Code of Civil Procedure 1908 being mandatory, I have personally examined the Record of Summary Suit No. 155 of 2022 and note that there is no copy that has been maintained by the XIth Additional District & Sessions Judge Karachi (South) as to the form of the notice that was issued by that Court to the Applicant, either in accordance with sub-rule 1 of Rule (2) of Order XXXVII of the Code of Civil Procedure, 1908 or, keeping in mind that the Applicant was incarcerated in prison in Hyderabad, as to whether a notice was issued in accordance with Order V Rule 24 of the Code of Civil Procedure, 1908. On an examination of the record the only evidence of any notice having been issued is in the nature of endorsement on the application in the following manner:

“
Order
 26-10-2022
Admitted and register this day, subject to
Legal objection if any,

Issue Summons to defendant through all
modes except publication on costs. Put off
to _____ for service

Sign of Judge
 Dated 26 -10-2022”

In addition, there is no evidence on the record to indicate as to when the summons on the Applicant was actually served so as to be able to compute the time from when the period available to the Applicant under Article 159 of the First Schedule of the Limitation Act, 1908 to file his Application for Leave to Appear and Defend Summary Suit No. 155 of 2022 under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908 would commence.

15. The Applicant apparently being in jail and no notice having been issued to him under Order V Rule 24 of the Code of Civil Procedure, 1908, had constructive notice of Summary Suit No. 155 of 2022 through his wife i.e. the Respondent No. 4 who had also been served. On 12 November 2022, the Advocate for the Respondent No. 2 and the Respondent No. 3 filed a document entitled “Application for Submission of Fresh Address of the Defendants No. 1 and 2 and wherein it was clarified to the XIth

Additional District & Sessions Judge Karachi (South) that the Applicant was incarcerated in Hyderabad Jail. To my mind, as soon as the XIth Additional District & Sessions Judge Karachi (South) had been informed that the Applicants had been incarcerated in jail, it should have compelled the court to comply with the provisions of Order V Rule 24 of the Code of Civil Procedure, 1908 and have notices issued the Applicant in accordance with that provision which was not done.

16. The reason for such a course of action being adopted by the XIth Additional District & Sessions Judge Karachi (South) was probably that the Applicant had in effect waived notice and was actively participating in the proceedings through his mother who was acting on his behalf in a capacity of a duly authorized attorney under a Power of Attorney dated 22 November 2022. The examination of the Power of Attorney dated 22 November 2022 however, raises even more concerns, it is printed on stamp paper dated 1 November 2022 purportedly issued by the Applicant in favour of his mother and states that it was executed by the Applicant on 22 November 2022 at Lahore. The Notary Public who has notarized the document is one Zafar Alam, Advocate who through the stamp affixed to the Power of Attorney professes to be a Notary Public in Karachi.

17. It is apparent that this document has not been properly examined by the XIth Additional District & Sessions Judge Karachi (South) when it was taken on the record of the court with the Vaklatnama filed by the Applicant. To my mind, the Power of Attorney may even raise doubts as to whether the Applicant was even incarcerated in Hyderabad Jail as the document states that it was being executed in Lahore and has in fact been attested in Karachi, while the Applicant was purportedly incarcerated in Hyderabad. It may be that the reference to Lahore, is a typographical error but the same should have been looked into by the Notary Public especially since he is in

Karachi to confirm as to the document that he is attesting. Needless to say, it was even more incumbent on the XIth Additional District & Sessions Judge Karachi (South) to have raised objections on this Power of Attorney dated 22 November 2022 when it was presented in Summary Suit No. 155 of 2022 and which has also not been done.

18. As per the decision of the Supreme Court of Pakistan in **Ghulam Rasool vs. Abdullah**⁹ before declaring the Petitioner ex-parte, as it was within the knowledge of the XIth Additional District & Sessions Judge Karachi (South) that the Petitioner was in prison, it was incumbent on the Court to have issued a notice to the Petitioner under Order V Rule 24 of the Code of Civil Procedure, 1908. However, it is also to be noted that in that Judgement it has been clarified that in the event that appearance was being entered through a **duly** constituted attorney, then compliance of Order V Rule 24 of the Code of Civil Procedure, 1908 could be construed as having been made. Assuming that the Power of Attorney has been validly filed, as claimed by the Applicant, this seems to be the case over here and the presence of the mother of the Applicant in her capacity as the attorney of the Applicant could lead me to conclude that in the circumstances compliance of Order V Rule 24 of the Code of Civil Procedure, 1908 did not need to be made once the Applicant had entered appearance through his mother.

19. Having held that service of the notice of Summary Suit No.155 of 2022 had in effect been waived by the Applicant and which would result in any irregularities that may have been committed by the XIth Additional District & Sessions Judge Karachi (South) in the issuance of notices under Order XXXVII Rule 2 or under Order V Rule 24 of the Code of Civil Procedure, 1908 as being inconsequential, it is now necessary to see

⁹ 1991 SCMR 1964

whether the XIth Additional District & Sessions Judge Karachi (South) had any discretion under the provisions of Order XXXVII Rule 3 of the Code of Civil Procedure, 1908 to enhance the time prescribed in Article 159 of the First Schedule read with Section 3 of the Limitation Act, 1908 and which reads as under:

Description of application	Period of limitation	Time from which period begins to run.
159.— For leave to appear and defend a suit under summary procedure referred to in section 128 (2)(f) or under Order XXXVII of the Code of Civil Procedure, 1908 (V of 1908)].	Ten days	When the summons is served

Under Article 159 of the First Schedule of the Limitation Act, 1908, a period of ten days has been given from the date when summons is served on a Defendant to file an application under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908 for leave to appear and defend a suit. From the diary sheet is noted that there is no evidence on the date when the summons issued by the Court were actually served. This is an irregularity that has been committed by the XIth Additional District & Sessions Judge Karachi (South) on whom it was incumbent to record as to the date when summons was served on the Applicant so as to assess as to from when the time indicated in Article 159 of the First Schedule of the Limitation Act, 1908 would commence. It is apparent that after noting that the Applicant had entered appearing on 12 November 2022 through a counsel who had submitted an undertaking to file a vakalatnama, the XIth Additional District & Sessions Judge Karachi (South) assumed that notices had been served on the Applicant and which conduct can only be described as being cursory. This very desultory conduct of the XIth Additional District & Sessions Judge Karachi (South) is further evidenced on 22 November 2022, when for the first time copies of the plaint of Summary Suit No. 155 of 2022 are handed over to the Applicant and time is given to the Applicant until 1 December

2022 to file an application under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908 for leave to appear and defend Summary Suit No. 155 of 2022. In the circumstances, in the absence of any proof of the summons having been served before that date, it can be considered that summons should be deemed to have been served on the Applicant on 22 November 2022 when a copy of the Plaint of Summary Suit No. 155 of 2022 was provided to him giving him 10 days from that date to file his Application for Leave to Appear and Defend Summary Suit No. 155 of 2022.

20. As is apparent on 1 December 2022, on account of the Applicants mother being incapacitated the Advocate for the Applicant made an application for an adjournment and sought additional time on behalf of the Applicant to file an Application for Leave to Appear and Defend Summary Suit No. 155 of 2022. After issuing notices on the application for adjournment to the Respondent No. 2 and 3, the XIth Additional District & Sessions Judge Karachi (South) correctly dismissed the Impugned Order, as the ten days period indicated in Article 159 of the First Schedule of the Limitation Act, 1908 having expired, the XIth Additional District & Sessions Judge Karachi (South) had no jurisdiction to enhance such time and was bound to declare the Applicant as ex-parte.

21. The Applicant has elected to file this Application under Section 115 of the Code of Civil Procedure, 1908 asking this court to revise the Impugned Order and pleads that the Impugned Order was passed illegally and has in this regard pressed into service the provisions of Order XXXVII Rule 4 of the Code of Civil Procedure, 1908. He contends that factual circumstances, disclosed constitute special circumstances to “set aside the decree”. The Applicants argument to this extent is misplaced. From the record it apparent that the proceedings in Summary Suit No.155 of 2022 before the XIth Additional District & Sessions Judge Karachi (South) were

suspended by this Court on 21 March 2023 and which order subsists to date. There being no decree that has as yet been passed in Summary Suit No.155 of 2022 by the XIth Additional District & Sessions Judge Karachi (South), the provision of Order XXXVII Rule 4 of the Code of Civil Procedure, 1908 cannot be pressed by the Applicant at this stage. Needless to say, the Applicant would be at liberty to maintain such an application in Summary Suit No.155 of 2022 by the XIth Additional District & Sessions Judge Karachi (South) on the grounds that he has raised in this Application once the decree is passed in Summary Suit No.155 of 2022 by the XIth Additional District & Sessions Judge Karachi (South), if he so desires.

22. While noting that there are some irregularities that have been committed by the XIth Additional District & Sessions Judge Karachi (South) in deciding Summary Suit No.155 of 2022, I do not think that they are of such a nature that have caused prejudice to the Applicant so as to consider them as “material irregularities” compelling me to revise the Impugned Order. The irregularities relating to the issuance of notice under Order XXXVII Rule 2 and Order V Rule 24 of the Code of Civil Procedure, 1908 to the Applicant were in effect waived by the Applicant himself appearing in Summary Suit No. 155 of 2022 before the XIth Additional District & Sessions Judge Karachi (South). The second irregularity in respect of the failure on the part of the XIth Additional District & Sessions Judge Karachi (South) to record as to when summons was served on the Applicant, thereby enhancing the time for the filing of the Application for Leave to Appear and Defend Summary Suit No. 155 of 2022 actually benefited the Applicant granting him additional time to file his Application for Leave to Appear and Defend under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908. The last irregularity on the part of the XIth Additional District & Sessions Judge Karachi (South) failing to notice the clear contradictions in the Power

of Attorney dated 22 November 2022 issued by the Applicant again benefited the Applicant. All in all, while the XIth Additional District & Sessions Judge Karachi (South) has clearly been errant in conducting Summary Suit No. 155 of 2022, it has decided the Impugned Order correctly and held that it did not have the jurisdiction to enhance the time prescribed in Article 159 of the First Schedule of the Limitation Act, 1908.

23. For the foregoing reasons and while noting that there are irregularities that have been committed by the XIth Additional District & Sessions Judge Karachi (South) in conducting Summary Suit No.155 of 2022, I do not consider such irregularities as material irregularities so as to compel me to revise the Impugned Order. In the circumstances, this Revision Application along with all applications are dismissed with no order as to costs and with the direction to the office to return the Record and Proceedings of Summary Suit No. 155 of 2022 to the Court of the XIth Additional District & Sessions Judge Karachi (South) forthwith.

JUDGE

Karachi;
Dated; 1 August, 2023