

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

R.A. No.372 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA 3574/2023
2. For orders on office objections 7 to 9
3. For orders on CMA 3575/2023
4. For orders on CMA 3576/2023
5. For hearing of main case

21.12.2023

Mr. Faisal Ali Raza Bhatti advocate for applicant.

Briefly stated, Summary Suit 40 of 2020 was filed before the court of Additional District Judge-II Hyderabad. The applicant sought leave to defend the suit; the application was allowed and leave, subject to deposit of surety¹, was granted thereto vide order dated 16.12.2022. This date has been intimated by the applicant's counsel since the relevant order has not been deigned to be attached with this revision.

Admittedly, the surety was never deposited, however, on 29.11.2023 the applicant preferred an application for grant of further time. This application, filed almost one year later, was dismissed by the court on 07.12.2023 and it is only this order that is under challenge before this Court.

Per learned counsel, the applicant belongs to Punjab and therefore could not arrange the surety. It is further added that surety could not be submitted in time or at any time thereafter due to events not in the control of the applicant. The entire case of the applicant is that leave to defend ought to have been granted unconditionally, hence, this revision.

Heard and perused. It was never the applicant's case that leave could not be granted conditionally or that the court did not have the jurisdiction to refuse further time. The grounds pleaded for default did not meet the approval of the trial court and no infirmity in such regard could be demonstrated before this court.

It is settled law that the trial court is competent to grant leave to defend, conditional or otherwise at its discretion. The trial court appears to have exercised its jurisdiction and no infirmity in such regard is manifest. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum.

¹ Being the exact verbiage employed in the application placed on record and available at page 89.

² Per *Faqir Muhammad Khokhar J. in Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity.

In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine* along with listed application/s.

Judge

Ali Haider