

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

R.A.No.S— 295 of 2023

| DATE | ORDER WITH SIGNATURE OF JUDGE |
|------|----------------------------------|
| 1. | for order on CMA 3571/2023 (U/A) |
| 2. | for order on office objection |
| 3. | for order on CMA 2952/2023 (S/A) |
| 4. | for hearing of main case. |

21.12.2023.

Mr. Zainul Abidin Sahito, Advocate for applicant

1. Granted.

2,3&4: Briefly stated; Summary Suit No.154/2022 was filed before the VIII Additional District Judge Hyderabad. The applicant sought leave to defend the Suit and the said application was allowed vide order dated 12.09.2023, however, it was conditional subject to surety.

Admittedly, surety was never deposited and on 07.10.2023, the applicant made an application for adjournment. The said application was dismissed vide order dated 07.10.2023, annotated on the application itself, and consequently the applicant was debarred and the suit was directed to proceed exparte.

It is admitted fact that the order dated 12.09.2023, whereby conditional leave to defend was granted, was never been assailed before any forum. The only challenge before this Court is the dismissal of application for adjournment.

Per learned counsel, adjournment ought to have been granted and time ought to have been extended to enable the application to proceed with its defendant on merit. The entire case of the applicant is that leave to defend ought to have been granted unconditionally, hence, this revision.

Heard and perused. It is admitted that the order by which leave was granted was never assailed by the applicant. 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 law¹ 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 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

A.Rasheed/stenographer