

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Muhammad Shafi Siddiqui &
Sana Akram Minhas JJ

First Appeal No.7 of 2022

(Muhammad Noman v. Muhammad Arif)

Appellant: Muhammad Noman
Through, Mr. Ali Gohar Masroof, Advocate

Respondent: Muhammad Arif
Through, Ms. Shahnaz A. Razzaq, Advocate

Date of Hearing: 30-4-2024

Date of Decision: 30-4-2024

ORDER

1. **Sana Akram Minhas, J:** The instant First Appeal arises from Summary Suit No.72/2019 (“**Suit 72**”) and impugns judgment dated 20.11.2021 (“**Impugned Judgment**”) and decree dated 26.11.2021 passed by the learned Trial Court in favour of the Respondent (Plaintiff in Suit 72) and against the Appellant (Defendant in Suit 72).The said Suit 72 was instituted on 17.9.2019 under the provisions of Order 37 CPC by the Respondent against the Appellant in the Trial Court for recovery of a sum of Rs.1,407,144/- (being the balance amount payable by the Appellant to the Respondent for purchase of yarn).
2. On 25.1.2020, the Appellant filed a Leave to Defend application seeking an unconditional leave. The Trial Court, however, by order dated 6.11.2020 granted the Appellant conditional leave to defend, subject to furnishing “*solvent surety*” for an amount of Rs.1,070,000/- within 15 days (which surety amount equalled the aggregate value of the three disputed cheques issued by the Appellant). The Appellant’s attempt to submit surety was not accepted by the Trial Court, which insisted that he deposit cash. The Appellant, in January 2021, challenged this by instituting Civil Revision No.10/2021 in the High Court of Sindh at Karachi, which was granted vide order dated 2.2.2021, allowing the Appellant to provide solvent surety and the Trial Court directed to accept it. When the

Appellant submitted surety in the shape of PR Bond of equivalent amount, the Trial Court (on the Respondent's written objection) declined to accept it vide order dated 16.9.2021, citing that it contradicted the spirit of the High Court's order of 2.2.2021. Instead, the Trial Court now directed the Appellant to provide surety amounting to Rs.1,070,000/- equivalent to the value of the three disputed cheques within 15 days in order for it to contest the Suit 72, as the Appellant's written statement dated 9.2.2021 was already on record.

3. The Appellant also contested this order before the High Court of Sindh through another Civil Revision No.153/2021. Meanwhile, while this Civil Revision was pending, the Trial Court continued to provide the Appellant with multiple opportunities to submit the surety. However, due to the Appellant's non-compliance with the order dated 16.9.2021, the Trial Court eventually struck off the Appellant's defence on 18.10.2021 and posted the matter for evidence.
4. The Appellant failed to cross-examine the Respondent in Suit 72 despite being granted several adjournments for this purpose, leading to the closure of the Appellant's side by the Trial Court, which then listed the matter for final arguments. On that day, no one appeared for the Appellant. Ultimately, the Trial Court, through the Impugned Judgment, decreed the Respondent's Suit 72 in his favour (which led the Appellant on 17.12.2021 to withdraw his aforesaid Civil Revision Application No.153/2021 from the High Court).
5. After the Respondent initiated Execution proceedings, the Appellant expressed readiness in the instant First Appeal before this Court to secure the disputed decretal amount. Subsequently, this Court, in an order dated 30.3.2022, directed that, subject to the Appellant securing the disputed decretal amount within 7 days, the Execution proceedings may not be finalized. In compliance, the Appellant deposited title documents of an immovable property (viz. a unit in a building).
6. At the very start, the learned Counsel for the Appellant requests that since the disputed decretal amount has been secured by the Appellant, the matter may be remanded back to the Trial Court with the consent of the parties and the Appellant be afforded an opportunity to present evidence and cross-examine the Respondent. The learned Counsel for the Respondent has firmly declined this request.
7. The Appellant's Counsel then transitioned to his next and sole argument, asserting that in the Leave to Defend application, the Appellant had

sought an unconditional leave to defend. Hence, the Trial Court's decision to grant conditional leave was erroneous.

8. We have considered arguments of the learned Counsel for the parties and have gone through the record of the case.
9. A perusal of the provisions of Order 37 rule 3(2) CPC¹ shows that the statute vests the Court with reasonable discretion to grant leave conditionally or unconditionally² on terms deemed suitable in the circumstances of each case so long as such a discretion is exercised reasonably without being illegal, arbitrary, capricious or fanciful.³
10. The grant of conditional or unconditional leave is linked to the plausibility of the defence.⁴ The ultimate success or failure in the suit is not the consideration for the refusal or grant of leave. Instead, the focus is on whether the grounds stated in the application for permission to defend the suit are plausible, and if the defendant has an arguable case. But there is no rule that if the defence is credible, the defendant must be granted unconditional leave.⁵ Put simply, while the credibility of the defence is sufficient grounds for granting leave to defend the suit, it does not guarantee or entitle a defendant to unconditional leave.
11. The Supreme Court⁶ has additionally determined that where the statute itself confers upon the Court unrestricted discretionary powers, it would be inappropriate to establish or specify a general or standard guideline (i.e. to lay down a rule of thumb) for the exercise of such powers. It is established that appellate courts generally refrain from interfering with the exercise of discretion by the trial court (or will not substitute their own discretion for that of the trial court) unless it is shown to have been based

¹ **Order 37 rule 3(2) CPC:** Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

² 2011 SCMR 659 (*Muhammad Ramzan v. Ghulam Qadir*); PLD 1996 SC 749 (*Rafique Saigol v. Bank of Credit & Commerce*); PLD 1991 SC 976 (*Ark Industrial Management Ltd v. Habib Bank Limited*); 1991 SCMR 75 (*Niaz Ahmad v. Habib Bank Ltd*)

³ 1999 SCMR 2832 (*Ashfaq Ahmed v. Muhammad Wasim*); 1991 SCMR 75 (*Niaz Ahmad v. Habib Bank Ltd*)

⁴ 2004 SCMR 1747 (*Zubair Ahmad v. Shahid Mirza*)

⁵ Ibid

⁶ PLD 1996 SC 749 (*Rafique Saigol v. Bank of Credit & Commerce*); PLD 1991 SC 976 (*Ark Industrial Management Ltd v. Habib Bank Limited*); 1984 SCMR 568 (*Abdul Karim Jaffarani v. United Bank Ltd*)

on irrelevant or extraneous considerations, or exercised arbitrarily, whimsically or perversely.⁷

12. Reverting to the facts of the instant Appeal, the contents of the Appellant's Leave to Defend application displays that the Appellant, without disputing the execution of cheques issued to the Respondent, had averred that these were submitted as security and were not intended for encashment. Upon appraising all aspects related to the claim in Suit 72, we find that the exercise of discretion by the Trial Court in passing the initial order conditionally granting leave to defend was free from any material defect.
13. Upon revisiting the particulars of the present case, we have thoroughly examined the contents of the Leave to Defend application. After careful consideration, we find that the defence presented therein do not warrant intervention by this Court or compel us to overturn the Trial Court's decision.
14. Since apart from the solitary objection mentioned in paragraph 7 above, the Counsel for the Appellant has not alleged any irregularity or deficiency in the Impugned Judgment, we hold that it is not open to exception and hereby maintain it. Consequently, the instant First Appeal and pending applications are **dismissed**. Each party shall bear their own costs.

JUDGE

JUDGE

Karachi
Dated: 30th April, 2024

⁷ PLD 1970 SC 139 (*Muhammad Umar Beg v. Sultan Mahmood Khan*); 1986 CLC 2547 (*Batulbai v. Yousuf Shuja*)