

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.203 of 2024

Present

Mr. Justice Muhammad Jaffer Raza

Muhammad Owais Khan Applicant

Versus

Zain Moinuddin Respondent

Mr. Mohamed Vawda, Advocate for the Applicant.

Date of Hearing: 16.05.2025

Date of Order: 16.05.2025

ORDER

Instant Civil Revision Application has been filed by the Applicant impugning the order dated 10.12.2024. The Impugned Order whilst granting the leave to defend of the Applicant in Summary Suit No.99/2023 imposed a condition for furnishing solvent surety to the tune of 6.5 million rupees, for such grant. Learned counsel for the Applicant has stated that he had made out a case in which the onus was shifted to the Respondent and no condition whatsoever ought to have been imposed by the learned trial Court for grant of such leave. He has further invited my attention to the judgment in a criminal case pertaining to the same cheques. The said judgment, according to learned counsel, casts serious doubt regarding the authenticity of the cheques and the agreement in question. In this regard, he has stated that the onus shifted entirely on to the Respondent. He has contended, that it is a settled principle of law that when the onus is shifted the leave application in a summary suit ought to be granted unconditionally. Lastly, the learned counsel in this regard has relied upon the judgment in cases of **Muhammad Ali Nawaz and 3 others vs. Sh. Muhammad Aslam**¹ and

¹ PLD 2010 Lahore 219

Pakistan Water and Power Development Authority (WAPDA) vs. Messrs Sea Gold Traders through Partners and 2 others² and argued that exceptional circumstances are present for grant of unconditional leave.

2. Instant Civil Revision Application was filed on 28.12.2024, whereas, notices were issued to the Respondent. Thereafter, on 03.02.2025 the Impugned order was suspended and notices were repeated to the Respondent. It is evident that the Respondents in the instant Revision Application have failed to affect appearance. Therefore, the instant matter is being adjudicated with the able assistance of the learned counsel for the Applicant.

3. The principles regarding grant of leave were expounded in the case of **Pakistan Water and Power Development Authority (WAPDA)** (supra). The principles relevant to the case at hand are reproduced below: -

“Where there arose triable issues for adjudication, leave normally is granted unconditionally and where defence is patently dishonest or unreasonable, when it could not reasonably be expected to succeed, the leave can be granted conditionally. The issue for grant or not to grant leave, and whether to grant or not to grant conditional leave can be summarized in the light of decisions of various Courts right from Fine Textile Mills case reported in PLD 1969 SC 163 as under:

(i) Leave to defend in a suit instituted under Order XXXVII, Civil Procedure Code shall be granted by Court where the facts disclosed by the defendant on affidavit make out a case of shifting of onus on plaintiff.

(ii) Leave may also be granted on any other ground or facts which the Court considers sufficient to support the application for grant of leave.

(iii) Refusal to grant leave is a rare phenomena confined to cases where no defence at all is disclosed by the defendant.

(iv) No hard and fast rule can be laid down for grant of conditional or unconditional leave.

(v) Where facts disclosed in affidavit are such that it becomes necessary for the plaintiff to prove consideration of the instrument leave to defend may be granted unconditionally.

(vi) Leave can be granted unconditionally where execution of the negotiable instrument is denied and from material on record it is not possible for Court to record a positive finding at the stage of consideration of application.

(viii) There can be other circumstances in which unconditional leave can be granted.

(ix) Where defence disclosed found by the Court illusory or lacking bona fides. Leave can be granted conditionally.”

² 2003 CLD 392

4. I have perused the impugned order and the leave to defend application submitted by the Applicant. I have also examined the judgment of the criminal Court in FIR No.71 of 2022, (however, the same may not have any bearing on the summary suit at hand, as the standard of proof required in criminal case is beyond reasonable doubt). It is held that the Applicant in the instant case has made out the case for shifting of the onus entirely upon the Plaintiff (Respondent) in the summary suit. The defence taken by the Applicant is neither vague nor illusory. In this regard the learned trial Court has erred in imposing the condition of deposit of Rs.6.5 million for grant of such leave. I have purposely restrained myself from making any observation regarding the specific grounds taken by the Applicant in the application for leave to defend as the same may impact the final judgment to be passed by the learned trial court.

5. In light of what has been held above the Impugned order is set-aside. Leave to defend application filed by the Applicant is granted unconditionally. The learned trial court shall proceed with the matter expeditiously, preferably within 60 days from today, without being influenced by any finding in the instant order.

6. Instant Civil Revision Application is allowed in the above terms along with listed application.

J U D G E