

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 188 of 2023

(Mansoor Ashraf Shaikh v. Zafar Ahmed Shaikh & others)

Date of hearing : 10.03.2025

Date of decision : 10.03.2025

Applicant, Mansoor Ashraf, present in person.
Respondent No.1, Zafar Ahmed, present in person.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – This Civil Revision is filed by the applicant (plaintiff) against the order dated 03.06.2023, passed by learned Additional District Judge-III, Sukkur in Summary Suit No.272 of 2022, whereby an application for leave to defend filed by respondent (defendant) No.1 under Order XXXVII Rule 3, CPC, was allowed unconditionally with no order as to costs.

2. The background leading to this litigation is that the applicant filed Summary Suit No.272 of 2022 on 26.10.2022 before learned District Judge Sukkur (later transferred to learned Additional District Judge-III Sukkur) under Order XXXVII Rule 2, CPC, seeking recovery of an amount of Rs.1,45,00,000/- (Rupees One Crore and Forty-Five Lacs), on the basis of four dishonored cheques issued by respondent No.1, which according to the applicant, were given in discharge of a lawful liability arising out of a settlement and compromise between the parties.

3. The applicant has assailed the impugned order primarily on the grounds that the respondent has not come to the Court with clean hands; that his defense is illusory, self-contradictory and devoid of any substance; that the trial Court has failed to consider the material contradictions in the pleadings and documents of the respondent; and that subsequent events, including adverse findings in connected proceedings, clearly demonstrate that the defenses raised were not only untenable but fabricated to frustrate the applicant's genuine claim.

4. The record shows that respondent No.1 moved an application for leave to defend, in which it was contended that the cheques in question were not issued towards any existing liability but were handed over merely as security to witness, namely Jameel Ahmed, in connection with a purported agreement to sell dated 19.03.2022, and that the said cheques were later misplaced by the said witness. Per respondent No.1, the said cheques were stolen by the applicant. It was further alleged that the applicant had manipulated and forged earlier documents to launch a false claim.

5. However, what is remarkable from the record is that respondent No.1, in his NC lodged with Police Station “C” Section, Sukkur, reported that his 06 blank cheques had been misplaced at an unknown place, without attributing any direct allegation of theft or misuse at that time. This contradiction between his NC report and the version taken in his leave application casts serious doubt on the bona fides of the defense and goes to the root of the credibility of the respondent’s case.

6. Moreover, the applicant also lodged FIR No.05/2023 under Sections 489-F, PPC, relating to the dishonoring of the subject cheques, which was initially disposed of under “C” Class by the learned Magistrate concerned vide order dated 18.02.2023. However, said order was subsequently challenged by the applicant by filing Criminal Miscellaneous Application No.123/2023 before this Court, and upon hearing, this Court ordered reinvestigation, which was conducted first by DSP Abdul Qudoos Kalwar and later by DSP Abdul Qadir Chachar of District Ghotki. The reinvestigation resulted in a Final Challan recommending that the case be tried against respondent Zafar Ahmed. Said final report has been submitted, and the criminal case is currently pending before the competent Court for trial.

7. The respondent also sought to rely upon F.C. Suit No.37/2023, filed by him before learned Ist Senior Civil Judge, Sukkur for Specific Performance of Contract and Cancellation of Cheques, claiming that he had entered into a lawful sale transaction and that the cheques were issued as security for the balance consideration. However, subsequent developments in that suit reveal a pattern of non-compliance, delay and

evasion on the part of the respondent. The concerned Court passed an order dated 16.11.2023, directing the respondent to deposit the balance sale consideration, failing which the suit would be dismissed for non-compliance / default.

8. The respondent challenged that order through Civil Revision Application No.74/2023 before learned Additional District Judge-III, Sukkur, which was dismissed vide order dated 31.01.2024, and the directive to deposit the balance amount was maintained. Thereafter, the respondent invoked the constitutional jurisdiction of this Court by filing Constitutional Petition No. D-203/2024, which was also dismissed on 24.04.2024, and both lower Courts' orders were upheld.

9. Despite being granted multiple opportunities by different fora, the respondent failed to deposit the amount as directed, which led to dismissal of F.C. Suit No.37/2023 on 11.05.2024 for non-compliance. The said order has attained finality, as no application for restoration, revision or appeal has been filed by the respondent within the stipulated period. Further, even a Review Application filed by the respondent under Section 114, CPC, was dismissed by the concerned Court on 18.09.2024, and again, the order has not been challenged, which confirms that the grounds originally raised in the leave to defend application no longer survive.

10. In view of the above, it is evident that both foundational defenses pleaded by the respondent in support of his application for unconditional leave, (i) pendency of civil litigation relating to the alleged agreement and cheques, and (ii) disposal of the FIR under "C" Class, have lost their legal efficacy. The suit for specific performance has already been dismissed, and the FIR is now under active trial proceedings, supported by an investigative finding of guilt.

11. The jurisprudence laid down by the Hon'ble Supreme Court in a number of cases emphasizes that unconditional leave to defend under Order XXXVII Rule 3, CPC, is not to be granted merely upon the making of a denial, but only when a plausible and legally sustainable defense is raised. Mere existence of triable issues is not sufficient when the defense

appears to be illusory or self-contradictory, or when the conduct of the defendant is manifestly dishonest.

12. This Court is of the considered opinion that in view of the glaring contradictions in the respondent's own documents, the clear findings emerging from reinvestigation, the dismissal of his suit for specific performance, and his repeated failure to comply with Courts' directions, the defense raised is not bona fide, and the grant of unconditional leave was unwarranted.

13. However, in the interest of affording one last opportunity and to avoid any possible miscarriage of justice, this Court, vide its short order dated 10.03.2025, was inclined to modify the impugned order to the extent that leave to defend is granted to the respondent subject to the condition of depositing the entire suit amount of Rs.1,45,00,000/- (Rupees One Crore Forty-Five Lacs) before the trial Court within a period of twenty (20) days from the date of that order.

14. This Civil Revision is **allowed** in the above terms. Let a copy of this order be transmitted to the learned trial Court for compliance and further proceedings in accordance with law.

Above are the reasons of my short order dated 10.03.2025.

J U D G E

Abdul Basit