

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, AT KARACHI

**First Appeal No.94 of 2023**

( *Syed Muhammad Kashif Zaidi v. Syed Munawar Abbas Zaidi* )

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Date

Order with Signature(s) of Judge(s)  
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1. For Hearing of Main Case
2. For Hearing of CMA No.4919/2023

**8-12-2025**

Mr. Muhammad Rafi, Advocate for Appellant  
Mr. Muhammad Rashid, Advocate for Respondent  
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1. The Appellant has challenged the Judgment and Decree passed in Summary Suit primarily on the ground that the mandatory summons as required under Order 37 Rule 2 CPC (First Schedule, Appendix-B, Form No.4) along with copy of Plaint were not served upon the Appellant, enabling him to file Leave to Defend application within the stipulated time of ten (10) days. He has drawn attention to paragraph No.3 of the impugned Judgment, which reads as under:

*“3. Summons were issued against the defendants through ordinary modes and subsequently substitute mode of service was adopted and summons was published in daily “Ummat” Karachi on 06/05/2023. On 15/05/2023, Mr. Asad Ali Bugti Advocate filed Vakalatnama on behalf of the Defendant and the matter was fixed for filling leave to defend application. On 25/05/2023, learned counsel for the defendant filed adjournment application, which was dismissed by the Court and the Defendant side was debarred from filling leave to defend in the instant summary suit vide order dated 25/05/2023 and the matter was ordered to be proceed exparte against the defendant.”*

2. He has placed on record copy of first summon issued on 28.04.2023 and 05.05.2023 in support of his submissions and states that proper opportunity was not given to the Appellant to defend the case.

3. The above contention is opposed by the learned Counsel for the Respondent who states that once the knowledge was acquired by the Appellant, he should have filed the Leave to Defend application. He further averred that Appellant is a habitual defaulter, whose earlier cheques were also dishonoured and who is facing criminal prosecution.

4. Arguments have been considered. The fact remains, which is also confirmed from the undisputed official record, that summons were not issued or served in terms

of Order 37 Rule 2 CPC (i.e., First Schedule, Appendix-B, Form No.4), which is reproduced as under:

“No.4, SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT  
(0.37.r.2)

(Title)

[Name, description and place of residence)

WHEREAS.....has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs....., balance of principal and interest due to him as the ..... of a .....of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs..... and the sum of Rs..... for costs <sup>11</sup>[together with such interest, if any, from the date of the institution of the suit as the Court may order].

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this ..... day of .....  
19 .....

Judge”

5. Improper service results in non-filing of a Leave to Defend application, which is then followed by passing of Judgment and Decree effectively debaring the affectee from a right of audience and hearing. If the consequences are strict and mandatory, that too against the Defendants, then the steps preceding such consequences have to be strictly complied with. In this case, the summons admittedly were not issued in the above due manner as stipulated in CPC. As this inherent defect cannot be cured in this Appeal, an opportunity has to be extended to the Appellant to defend the Summary Suit.

6. Consequently, we set aside the impugned Judgment and Decree, and remand the matter back to the learned Trial Court. Leave to Defend Application will be filed by the Appellant **not later than ten (10) days from today**, which will be considered on its own merits by the learned Trial Court. In case of Appellant's failure to do so, consequences as provided in the law viz. passing of Judgment and Decree, will follow. Learned Counsel for the Appellant states that Appellant is currently behind bars. We direct the Jail Superintendent to facilitate the Appellant and/or the Appellant's Counsel in filing Leave to Defend application.

7. In case, the Appellant has been arrested in execution of the impugned Judgment and Decree (although no record of the same is available), since the same has been set aside by us, the Appellant should be immediately released, if not

required in some other case. The remaining formality be immediately completed by the Trial/Executing Court, by, *inter alia*, issuing the Release Writ.

8. Accordingly, the Appeal stands disposed of in above terms along with pending application.

**JUDGE**

FAIZAN\*

**JUDGE**