

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

First Civil Appeal No. S-42 of 2025

Appellant : Zafar Ahmed s/o Abdul Hakeem, Shaikh
Through Mr. Muhammad Uzair Shaikh, Advocate

Respondent No.02 : Mansoor Ashraf s/o Muhammad Zakir Shaikh
(In person)

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First Civil Appeal No. S-43 of 2025

Appellant : Mst. Fareed Zafar w/o Zafar Ahmed, Shaikh
Through Attorney Tufail s/o Zaffar Ahmed, Shaikh
Represent by Mr. Sheeraz Fazal, Advocate

Respondent No.03 : Mansoor Ashraf s/o Muhammad Zakir Shaikh
(In person)

Date of hearing : 18.12.2025

Date of Order : 15.01.2026

JUDGMENT

KHALID HUSSAIN SHAHANI, J. — This common judgment, will dispose of First Civil Appeal No. S-42 of 2025 and First Civil Appeal No. S-43 of 2025, as both of them arise out of the same Judgment and Decree dated 28.08.2025, passed by the learned District Judge, Sukkur, in Summary Suit No. 272 of 2022.

By the impugned judgment, the learned trial Court struck off the defence of appellant Zafar Ahmed on account of alleged non-compliance with an order requiring deposit of security, proceeded ex parte against appellant Mst. Fareeda Zafar, and ultimately decreed the suit for a sum of Rs.1,45,00,000/- (Rupees One Crore Forty Five Lac) jointly and severally against both appellants.

2. The material facts necessary for the determination of these appeals are that respondent No.1, Mansoor Ashraf, instituted a summary suit under Order XXXVII of the Civil Procedure Code, 1908, initially before the learned District Judge, Sukkur. The suit was subsequently transferred to the Court of the learned Additional District Judge-II, Sukkur and thereafter to the Court of the learned 3rd Additional District Judge, Sukkur. The suit was founded upon negotiable instruments, wherein it was alleged that appellant Zafar Ahmed had issued cheques aggregating to Rs.1,45,00,000/- in favor of the plaintiff,

purportedly pursuant to an out-of-court settlement arising out of a dispute relating to immovable property bearing C.S No.C-640/3, Sukkur. The record further reveals that on 03.06.2023, the learned trial Court granted unconditional leave to defend to appellant Zafar Ahmed. Pursuant thereto, the appellant filed his written statement, and issues were framed. Consequently, the suit progressed beyond the initial summary stage and entered the phase of adjudication upon disputed questions of fact. Aggrieved by the order granting unconditional leave, respondent No.1 assailed the same before this Court through Civil Revision No.188 of 2023, which was allowed vide order dated 10.03.2025, whereby the earlier order was modified and the leave to defend was made conditional upon deposit of the entire suit amount of Rs.1,45,00,000/- within a period of twenty days.

3. The case of appellant Zafar Ahmed is that after the passing of the order dated 10.03.2025, his counsel was engaged before another Bench and was thus unable to assist the Court in apprising it of the procedural posture of the suit, particularly the fact that the written statement had already been filed and issues had been framed. Thereafter, the appellant filed a statement before the trial Court expressing his intention to file documents and sought time in that regard. The appellant also approached the Honorable Supreme Court of Pakistan by filing CPLA No.643-K of 2025, challenging the revisional order dated 10.03.2025. During the pendency of the proceedings before the Apex Court, the appellant filed an application under Section 148 CPC before the trial Court, seeking extension of time and appropriate adjustment of compliance for furnishing security or deposit. In the meantime, respondent No.1 filed a transfer application alleging bias against the then presiding officer, and subsequently, on 30.04.2025, filed an application seeking decree of the suit on the ground of non-compliance with the conditional order. Ultimately, upon transfer of the matter, the learned District Judge, Sukkur, passed the impugned judgment on 28.08.2025, decreeing the suit without adjudicating the pending application

under Section 148 CPC and without awaiting the outcome of the proceedings pending before the Honorable Supreme Court.

4. Learned counsel for appellant Zafar Ahmed, appearing in First Appeal No. S-42 of 2025, assailed the impugned judgment on the ground that the defence was struck off on a purely technical premise, resulting in denial of the appellant's substantive right to a fair hearing. It was contended that once unconditional leave to defend had been granted, the written statement filed, and issues framed, the suit had effectively transitioned from a summary proceeding into the realm of ordinary civil adjudication, thereby requiring determination on merits rather than mechanical disposal. Learned counsel further submitted that the revisional order dated 10.03.2025 was obtained without bringing to the notice of this Court the material fact that the trial had already progressed to the stage of framing of issues, and that the imposition of a condition requiring cash deposit of the entire suit amount was unduly harsh and disproportionate. Learned counsel argued that an appeal is a continuation of the proceedings and empowers the appellate Court to correct procedural and substantive irregularities. He relied upon the case of *Abdul Rauf Ghauri v. Kishwar Sultana* (1995 SCMR 925) and *Javed Parekh v. Muhammad Safdar Malik* (2014 SCMR 1830) to contend that where a defendant is willing to furnish solvent security, insistence upon cash deposit is neither mandatory nor just. It was emphasized that the trial Court failed to exercise the discretion vested in it under Section 148 CPC, despite a pending application seeking extension or adjustment of compliance. Learned counsel also argued that the impugned judgment violates Order XX Rule 5 CPC, which obligates the Court to record findings on each framed issue, particularly where the suit had proceeded beyond the summary threshold, as held in the case of *Syed Zawar Hussain v. Syed Riazul Abbas Sherazi* (2015 MLD 890). Reference was also made to the pendency of connected civil and criminal proceedings to demonstrate that the alleged liability was seriously disputed. The appellant, it was reiterated, is ready and

willing to furnish unencumbered immovable property as solvent security to establish his bona fides.

5. In First Appeal No.S-43 of 2025, learned counsel for appellant Mst. Fareeda Zafar adopted the submissions relating to procedural illegality but raised a distinct and fundamental legal objection. He contended that the appellant is neither the drawer nor a signatory of the cheques forming the basis of the suit, and that under Section 29-A of the Negotiable Instruments Act, 1881, liability on a negotiable instrument is confined strictly to persons who have signed it. It was argued that the summary suit, being instrument-centric, was not maintainable against a non-signatory, and that proceeding ex-parte against her to pass a joint and several decree amounted to a patent error of law and jurisdiction.

6. Conversely, learned counsel for respondent No.1 supported the impugned judgment and submitted that the revisional order dated 10.03.2025 was explicit in requiring deposit of the entire suit amount as a pre-condition for defence, and that failure to comply therewith disentitled the appellants from contesting the suit. He argued that the trial Court was legally justified in striking off the defence and proceeding to decree the suit upon non-compliance. Learned counsel further contended that the civil proceedings relating to specific performance, as well as the revision arising therefrom, had already been dismissed, and that the pendency of proceedings before the Honorable Supreme Court did not operate as an automatic stay in the absence of any restraining order. It was maintained that the cheques were issued against an existing liability and that the appellants had resorted to dilatory tactics through repeated applications to frustrate the plaintiff's lawful claim.

7. I have heard the learned counsel for the appellants, respondent in person at considerable length and have carefully perused the pleadings, the impugned judgment and decree, the interlocutory orders passed during the proceedings, and the case-law cited at the bar. I have also examined the manner

in which the learned trial Court exercised its jurisdiction while passing the impugned decree and the legal consequences flowing therefrom.

8. The principal controversy arising in First Appeal No.S-42 of 2025 relates to the striking off of the defence of appellant Zafar Ahmed on account of non-compliance with the condition requiring deposit of Rs.1,45,00,000/- as security. It is not in dispute that prior to the revisional intervention, the appellant had been granted unconditional leave to defend, had filed his written statement, and that issues were framed. The suit had thus progressed beyond the initial summary threshold and had entered the domain of adjudication upon disputed questions of fact. Although this Court, in Civil Revision No.188 of 2023, validly modified the earlier order by imposing a condition of security, the consequences of such modification were required to be examined and enforced by the trial Court with due regard to judicial discretion, proportionality, and the altered procedural posture of the suit. The conditional leave did not, by itself, obliterate the pleadings already exchanged nor annul the issues framed; rather, it superimposed a requirement of security to safeguard the plaintiff's claim pending adjudication.

9. The record further reveals that the appellant did not remain supine after the revisional order. He approached the Honorable Supreme Court by filing a petition for leave to appeal; he filed an application before the trial Court under Section 148 CPC, seeking extension and adjustment of compliance; and he consistently expressed willingness to furnish solvent security in the form of immovable property in substitution of cash deposit. While it is correct that pendency of proceedings before the Supreme Court does not operate as an automatic stay, the existence of a pending application seeking accommodation in compliance imposed a corresponding obligation upon the trial Court to apply its judicial mind and decide the same by a reasoned order before resorting to the severest procedural consequence. The discretion vested in Courts under Section 148 CPC to extend time for procedural compliance has been consistently

recognized by the superior Courts. Although such provision does not authorize a subordinate Court to rewrite a superior Court's order, it embodies the broader principle that procedural directions are meant to advance justice and not to stifle it. The trial Court, therefore, erred in treating non-deposit of cash as an automatic trigger for striking off the defence and decreeing the suit, without examining whether the object of the condition, namely, securing the plaintiff's claim, could be achieved through a less destructive but equally efficacious alternative.

10. Equally significant is the question of proportionality. The condition imposed required deposit of the entire suit amount in cash, a substantial sum by any standard. The Honorable Supreme Court has repeatedly held, including in the cases of *Abdul Rauf Ghauri v. Kishwar Sultana* (1995 SCMR 925) and *Javed Parekh v. Muhammad Safdar Malik* (2014 SCMR 1830), that conditions attached to leave to defend must not be so onerous as to amount to denial of the right of defence, and that where a defendant is able and willing to furnish solvent security, the Courts may accept such security to balance competing equities. In the present case, the defence raised by the appellant, relating to the nature of the alleged settlement, the underlying property dispute, and the circumstances in which the cheques were issued, cannot, at this stage, be characterized as sham or moonshine. These are matters requiring evidence as to date, time, place, consideration, and intention, which cannot be conclusively determined without trial. To non-suit the appellant solely on account of inability to deposit cash, despite readiness to secure the claim through immovable property, would offend the principles of fairness, proportionality, and substantive justice, particularly when the plaintiff's monetary interest can be fully protected through adequate security.

11. A further and independent infirmity in the impugned judgment lies in its non-compliance with the mandatory requirements of Order XX CPC. The impugned judgment does not frame points for determination, does not adjudicate the issues already settled, and does not record findings supported by

reasons. Instead, it proceeds to decree the suit as a punitive consequence of non-deposit, without examination of the defence on merits. Where a suit has progressed beyond the summary threshold and involves disputed factual questions, a decree passed merely as a procedural penalty, without issue-wise consideration, does not satisfy the mandate of Order XX Rules 4 and 5. The impugned judgment thus suffers from material irregularity in the exercise of jurisdiction.

12. The impugned judgment further discloses a misdirection in appreciation of evidence. The learned trial Court treated the filing of an affidavit in ex parte proof and the production of dishonored cheques as conclusive proof of liability, without examining the foundational facts of the alleged settlement, consideration, or enforceability. Mere production of cheques and dishonor memos establishes dishonor, but does not, by itself, dispense with proof of the underlying liability, particularly where the cheques are stated to have been issued in the backdrop of a disputed property transaction. Such an approach reflects non-application of judicial mind and misunderstanding of the scope of summary jurisdiction.

13. The position in First Appeal No.S-43 of 2025, filed by appellant Mst. Fareeda Zafar, is legally distinct and admits of no ambiguity. The suit under Order XXXVII CPC is founded exclusively upon negotiable instruments admittedly issued by appellant Zafar Ahmed. It is not disputed that appellant Mst. Fareeda Zafar is neither a drawer nor a signatory to the cheques in question. Section 29-A of the Negotiable Instruments Act, 1881 creates a clear statutory bar against fastening liability upon a person who has not signed the instrument. A summary suit is a special and restrictive remedy, strictly confined to liability arising from the instrument itself. Even in ex-parte proceedings, the Court remains duty-bound to examine whether the plaint discloses a legally maintainable cause of action. The decree passed jointly and severally against a non-signatory spouse is, therefore, without jurisdiction and unsustainable in law.

14. In view of the foregoing discussion, and keeping in mind that an appeal is a continuation of the proceedings, this Court is fully competent, while exercising appellate jurisdiction, to correct procedural and legal infirmities that have culminated in an unjust decree. While the revisional order dated 10.03.2025 is respected in its substance and purpose, the mode of its implementation is amenable to appellate adjustment so as to prevent denial of justice. Modification of the mode of security, while maintaining its quantum, does not undermine the authority of the earlier order; rather, it operationalizes its spirit in a manner consistent with fairness, enforceability, and the constitutional guarantee of fair trial under Article 10-A of the Constitution. Justice, therefore, demands that the real controversy between the parties be resolved on merits, while adequately safeguarding the plaintiff's financial interest.

15. Resultantly, for the reasons recorded hereinabove, both appeals are allowed. The Judgment and Decree dated 28.08.2025, passed by the learned District Judge, Sukkur, in Summary Suit No.272 of 2022, are hereby set aside. The matter is remanded to the learned trial Court, subject to the following directions and conditions, which shall be strictly complied with:

- i) The suit, insofar as it is founded upon negotiable instruments under Order XXXVII CPC, is dismissed against appellant Mst. Fareeda Zafar (Defendant No.2), admittedly being neither a drawer nor a signatory of the cheques in question, and hence not liable under Section 29-A of the Negotiable Instruments Act, 1881. This dismissal shall not prejudice any independent remedy available to the plaintiff, if so advised, in accordance with law.
- ii) The defence of appellant Zafar Ahmed (Defendant No.1) is restored, subject to compliance with the condition of furnishing adequate and enforceable solvent security, as stipulated below, in substitution of the cash deposit earlier directed.
- iii) In order to give meaningful effect to the earlier revisional order of this Court dated 10.03.2025, while safeguarding the plaintiff's interest, the following conditions are imposed: (a) The appellant Zafar Ahmed shall, within fifteen (15) days from receipt of this judgment, furnish unencumbered immovable property security equivalent to Rs.1,45,00,000/-, to the satisfaction of the learned trial Court. (b) Such security shall be furnished by: depositing certified title documents, filing an affidavit of ownership and non-encumbrance, and creating a legally enforceable charge or

mortgage, including mortgage by deposit of title deeds, in accordance with law. (c) The valuation of the property shall be determined on the basis of: the official valuation table (DC rate), or a court-approved valuation report, whichever is higher. (d) The plaintiff shall be at liberty to raise objections regarding title, valuation, or encumbrance, which the trial Court shall decide by a speaking order prior to acceptance of the security.

- iv) In the event of failure by the appellant Zafar Ahmed to furnish valid and enforceable security within the stipulated time, or if the security is found to be defective, illusory, or insufficient, the learned trial Court shall be at liberty to pass appropriate orders in accordance with law, including revival of consequences flowing from non-compliance with the conditional leave to defend.
- v) Upon furnishing and acceptance of the security, the learned trial Court shall: proceed with the suit from the stage of evidence, afford both parties full opportunity to lead evidence, and decide the suit issue-wise on merits in accordance with Order XX Rule 5 CPC.
- vi) The learned trial Court shall endeavor to conclude the proceedings expeditiously, preferably within a period of three (03) months, subject to cooperation of the parties and exigencies of justice. It is clarified that all observations made herein are tentative, confined to appellate adjudication, and shall not prejudice the merits of the case before the trial Court. The appeals are disposed of in the above terms.

J U D G E