

IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

First Appeal No.S-05 of 2025

Appellant: Jhaman Das son of Sawai Mal,
Through Mr. Om Parkash H. Karmani, Advocate.

Respondent: Leela Ram son of Hemoon,
Through Mr. Jaidev S. Sharma, Advocate.

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Civil Misc. Appeal No.S-04 of 2025

Appellant: Jhaman Das son of Sawai Mal,
Through Mr. Om Parkash H. Karmani, Advocate.

Respondent: Leela Ram son of Hemoon,
Through Mr. Jaidev S. Sharma, Advocate.

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Date of hearing: 15.01.2026

Date of Judgment: 15.01.2026

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J U D G M E N T

Muhammad Hasan (Akber), J-: The appellant, through First Appeal No.S-05 of 2025, has impugned the judgment dated 30.05.2025, passed by the learned Additional District Judge-II, Umerkot, through which the Summary Suit No.06/2025 filed by the respondent Leela Ram was decreed. And through Civil Misc. Appeal No.S-04 of 2025, the appellant has impugned the Order dated 08.09.2025 passed by the learned Additional District Judge-II, Umerkot, through which the Execution Application No.02/2025 was allowed.

2. Brief facts giving rise for filing instant First Appeal and Misc. Civil Appeal are that the respondent/ plaintiff filed Summary suit against the appellant/ defendant stating therein that he runs a confectionery shop in Shahi Bazaar, Umerkot and supplied goods on credit sourced from Karachi and Hyderabad. The appellant/ defendant operate a garments shop in Samand Market, sought financial assistance to start a new business. On 15.05.2022, the respondent/ plaintiff advanced a loan of Rs.1,33,00,000/- in presence of witnesses, against which the appellant /defendant issued three

cheques of Meezan Bank, Umerkot Branch. Subsequently, on 01.07.2022, the appellant /defendant requested for an additional loan of Rs.1,10,00,000/- which the respondent/ plaintiff arranged from other businessmen. The appellant/ defendant issued another cheque dated 13.07.2022, which was deposited at MCB Umerkot Branch but was dishonoured. Upon the appellant/defendant's refusal to repay, the respondent/ plaintiff lodged FIR No.141/2022 under section 489-F P.P.C at P.S Umerkot. After trial, the appellant /defendant was convicted and sentenced to suffer three years' simple imprisonment with a fine of Rs.30,000/- on 27.03.2024. The appellant/defendant's Criminal Appeal was dismissed on 16.10.2024; then the respondent/ plaintiff filed Summary suit against the appellant/ defendant for recovery of Rs.2,43,00,000/=. After service of notice, the appellant/defendant appeared before the learned trial Court without engaging counsel and failed to file application for grant of leave to defend within the prescribed time, resulting in dismissal of his request and striking off of his defence. The case was, thereafter, fixed for further proceedings on 19.05.2025. On that date, learned counsel for the appellant/ defendant appeared and filed an application seeking restoration of the defence and permission to file leave to defend application; however, the application was not supported by any affidavit explaining the delay, nor did it challenge the earlier order striking off the defence. Consequently, the application was dismissed in *limine*. After hearing learned counsel for the respondent/plaintiff, the learned trial Court decreed the suit. Thereafter, the respondent/ plaintiff filed Execution Application No.02/2025 which was allowed vide order dated 08.09.2025.

3. It is contended on behalf of the appellant that the impugned judgment/Order is contrary to law and facts, as the trial Court failed to properly apply the procedural safeguards under Order XXXVII C.P.C. It is argued that the defence was struck off without granting a reasonable opportunity to explain the delay in filing leave to defend application, thereby violating principles of natural justice. It is further submitted that the application seeking restoration of defence was dismissed without examining the merits or considering whether substantial questions of fact and law warranted conditional leave. He further submits that though First Appeal against the impugned Ex-

parte judgment was pending before this Court, but learned trial/Executing Court allowed the Execution Application in hasty manner. Lastly he prayed for setting aside the impugned judgment and Order and remand of the case to the learned trial Court for decision on merit.

4. It is contended on behalf of the respondent that the impugned judgment is lawful and in strict conformity with Order XXXVII C.P.C. The appellant was duly served but failed to file leave to defend application within the prescribed time and showed no sufficient cause. Mere appearance without counsel did not extend the statutory period and the defence was rightly struck off. He further submits that there was no stay order in the First Appeal filed by the appellant before this Court, hence there was no bar upon the learned trial/Executing Court on passing order in the Execution application. Lastly, he prayed that instant appeals be dismissed.

5. Heard and perused.

6. Admittedly, the appellant/defendant was duly served in the summary suit and was fully aware of the proceedings; however, he failed to file an application for leave to defend within the statutory period prescribed under Order XXXVII C.P.C. On 17.05.2025, he appeared before the learned trial Court without engaging counsel and did not file the requisite application, resulting in the lawful striking off of his defence. The subsequent application filed on 19.05.2025 seeking restoration of defence and permission to file leave to defend application was neither supported by an affidavit explaining the delay nor did it challenge the earlier order whereby the defence had already been struck off, and was, therefore, rightly dismissed in limine. The respondent/ plaintiff produced original cheques and supporting documents which remained unrebutted and the conviction of the appellant under section 489-F P.P.C, having attained finality, further corroborates the respondent's claim. Admittedly, there is no stay order in First Appeal No.S-05 of 2025, pending before this Court, therefore, passing of impugned Order by the learned trial/Executing Court in the Execution application is not against the law. No illegality or material irregularity has been committed by the learned trial Court while passing the impugned judgment and Order.

7. Learned counsel for the appellant has failed to point out any illegality or irregularity in the impugned judgment and Order, which have been passed in accordance with law. No case for interference is made out; therefore, the instant First Appeal and Civil Misc. Appeal stand **dismissed** alongwith pending applications. These are the reasons of short order dated 15-01-2026.

JUDGE