

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT  
HYDERABAD**

1st Appeal No. 11 of 2025

Civil Transfer Application No.07 of 2025

Appellant : Abdul Khaliq Baladi son of Allah Jurio  
Through Mr. Mushtaque Ali Tagar,  
Advocate.

Respondent : Shahid Hussain S/o Tharo Khan Shawal  
Through Mr. Faisal Mughal.

Date of hearing : 17.09.2025

Date of Judgment : 03.12.2025

**J U D G M E N T**

**TASNEEM SULTANA J:** Through this first appeal the appellant has assailed judgment and decree dated 09.01.2025 passed by the learned IInd Additional District Judge, Tando Allahyar in Summary Suit No.16 of 2024, whereby the suit was decreed on the ground that the appellant has failed to comply the order dated 20.11.2024 whereby his application under Order XXXVII Rule 3 CPC was granted conditionally requiring him to furnish surety in the sum of Rs.22,00,000/-. The appellant has also impugned the legality of the said conditional order passed on his application under order XXXVII Rule 3 C.P.C. The appellant also filed Civil Transfer Application during execution proceedings is to be decided through this judgment.

2. The brief facts of the case are that the respondent filed Summary Suit No.16 of 2024 for recovery of Rs.4,500,000/- based on cheque No.00000001, allegedly issued by the appellant. The respondent's case was that he had sold Plot No.163, admeasuring 1800 sq. ft., situated at Al -Rauf Housing Scheme Tando Allahyar, for a consideration of Rs.4,260,000/-. He had further sold two motorcycles to the appellant, and towards discharge of this liability the appellant issued the said cheque, which on presentation was dishonored for insufficient funds.

3. The appellant entered appearance within the statutory period and applied for leave to defend. He asserted that the underlying sale agreement was not executed with him but with his real brother Abdul Rauf, that he was merely a marginal witness, and that he never



assumed any contractual liability. The appellant further pleaded that the cheque originally pertained to a motorcycle transaction of Rs.45,000/- and had been subsequently altered to reflect Rs.4,500,000/-. In support of this stance, he relied upon admissions in contemporaneous criminal proceedings wherein the bank manager acknowledged overwriting and use of different inks on the cheque, and the Investigating Officer conceded absence of proof linking the appellant to the alleged plot consideration.

4. The learned trial Court, after hearing both sides, passed the order dated 20.11.2024 granting leave conditionally, directing the appellant to furnish surety of Rs.22,00,000/- within fifteen days. Thereafter, the appellant produced a solvency certificate which the trial Court rejected on the technical grounds that the Solvency Certificate had expired and was issued in another district. The appellant requested time to furnish substituted surety, but the trial Court declined, treated the non-compliance as deliberate, struck off the defence and decreed the suit on 09.01.2025. Following the decree, the respondent-initiated execution proceedings. The appellant, now judgment-debtor, filed written objections contending that the decree was obtained without lawful adjudication and that the dispute involved pertains to several triable issues.

5. These objections remained pending when the appellant moved a Civil transfer application (C.T.A) before this Court alleging bias, undue haste, refusal of surety without justification, and hostile conduct of the presiding officer. A detailed report was called from the learned trial Court. Though the presiding officer denied the allegations, she expressly stated that due to the nature of allegations she was placed in an awkward position to proceed with the matter, and that she had no objection if the execution was transferred to another Court.

6. Learned counsel for the appellant contended that the learned trial Court failed to apply the settled principles of Order XXXVII C.P.C.; that the appellant had entered appearance within time and raised several substantial triable issues regarding the underlying dealings, the alleged liability and the quantum claimed; that such issues could not be determined summarily and his application under Order XXXVII CPC for leave to defend was not examined on its merits; that the



conditional leave order dated 20.11.2024 was passed mechanically and without assigning reasons; that the condition of furnishing surety of Rs.22,00,000/- was disproportionate and in substance amounted to refusal of leave; that rejection of the surety on a curable technical objection and refusal to grant reasonable time for substituted surety deprived the appellant of fair opportunity; that striking off the defence on the basis of such a defective order and decreeing the suit without evidence was contrary to law; and that both impugned orders therefore warrant interference and remand for fresh adjudication before another competent Court. He has relied upon the case of unreported judgment dated 19.02.2024 passed in Ist Civil Appeal No.S-04 of 2023 [**Arsalan Habib Buriro V. Rustam Ali Tunio**].

7. Learned counsel for the respondent supported the impugned judgment and contended that the cheque bore the appellant's admitted signature; that its dishonour constituted sufficient basis for the decree; and that non-compliance with the conditional order justified striking off the defence.

8. I have heard learned counsel for the parties and examined the record.

9. The primary question for determination is whether the conditional leave order dated 20.11.2024, and the decree dated 09.01.2025 passed solely on its non-compliance, satisfy the requirements of Order XXXVII C.P.C.

10. A perusal of the record, it becomes necessary to consider both the factual controversies raised by the appellant as well as the legal framework governing summary suits under Order XXXVII CPC. The object of the summary procedure is undoubtedly to prevent dilatory tactics in clear cases, yet it is equally well-settled that this extraordinary jurisdiction cannot be exercised in a manner that deprives a defendant of fair opportunity in matters involving substantial dispute. Reliance is placed in the case of *Pakistan Water and Power Development Authority (WAPDA) V. Messer Sea Gold Traders and two others (2003 CLD 392)* wherein it was held as under:

***"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 phenomenon 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. 1PLD 2010 Lahore 219 22003 CLD 392*
- (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.*
- (vii) *Where claim in suit on its face appears to be prima facie time barred, unconditional leave can be granted,*
- (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."*

11. The foremost factual aspect is that the entire foundation of the respondent's claim rests upon a purported sale agreement of Plot No.163 admeasuring 1800 square feet situated at Al -Rauf Housing Scheme, Tando Allahyar. However, the agreement available on record unequivocally shows that the contracting party on the buyer's side is Abdul Rauf, the real brother of the appellant. The appellant's name appears merely as a marginal witness. No document has been produced showing that the appellant undertook any liability arising from that agreement, nor has the respondent produced any novation, assignment, acknowledgment, or assumption of liability. The question whether the appellant ever became contractually bound is, therefore, a substantial and disputed factual issue which could not be resolved by resort to summary jurisdiction. This central factual controversy has not been addressed at all while imposing conditional leave. Equally significant is the appellant's defence that the cheque in question though signed by him did not pertain to the alleged plot transaction but originated from a motorcycle dealing of Rs.45,000/-. He asserted that the cheque was subsequently altered to reflect Rs.4,500,000/-. This allegation is not speculative, in connected criminal proceedings,







31-Mar-26	Dismissed as not pressed
02-Apr-25	Disposed of
07-26	Dismissed as not pressed
	(sum Granted Surety sum of Rs. 100,000/- Disposed of)
	Disposed of
	sum as not pressed
	of
	Sum of Rs. 100,000/- Disposed
	sum of Rs. 200,000/-
	ed of
	Rs. 100,000/- Disposed

Court, the manner in which the proceedings were conducted, and the report submitted by the learned presiding officer herself, collectively give rise to a reasonable apprehension in the mind of the applicant that the matter may not proceed in an atmosphere free from perceived bias. While the presiding officer has denied the allegations, the learned Judge has also expressed that she is placed in an awkward position to continue with the execution. In such circumstances and keeping in view the settled principle that justice must not only be done but must also be seen to be done, the request for transfer merits acceptance.

18. The transfer application is accordingly allowed. Execution Application No.02 of 2025 along with Summary Suit No.16 of 2024 is withdrawn from the Court of the learned Jnd Additional District Judge, Tando Allahyar and shall be placed before the learned District & Sessions Judge, Tando Allahyar for assigning to any other Additional District Judge having jurisdiction. The application stands disposed of in these terms.

Sd/-MRS TASNEEM SULTANA  
JUDGE. 03. 12. 2025.

Announced by me on  
8. 12. 2025

Sd/-JAWAD AKBAR SARWANA  
JUDGE.

**CERTIFIED TO BE TRUE COPY**

(SHIYAM)  
Assistant Registrar  
High Court of Sindh,  
Circuit Court, Hyderabad.

