

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

M.A. No.S-01 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on office objections.
For hearing of CMA No.203/2026
For hearing of main case.

14-05-2026

Mr. Muhammad Arshad S. Pathan, advocate for the appellants.
Mr. Zubair Ahmed Khuhawar, advocate for the respondent.

JAWAD AKBAR SARWANA, J:- Appellants/co-plaintiffs contend that the VIth Additional District Judge, Hyderabad, in Summary Suit No.161 of 2025 vide order dated 22.12.2025, has granted unconditional leave to defend, which is contrary to law. He submits that the leave to defend application filed by the defendant/respondent was barred by limitation. Additionally, he contends that some payments made by the respondent/defendant, as alleged, were accepted by the Court as per the observation articulated in the impugned order, whereas such material was irrelevant for deciding the leave to defend application, nor did it raise any triable issues. Hence, Counsel for the applicants/co-plaintiffs argued that the VIth Additional District Judge, Hyderabad, ought to have dismissed the leave to defend application, and even if a case was made out, then leave to defend to the respondent/defendant was to be allowed conditionally, upon submission of a solvent surety. Finally, he contends that the summary suit is still not proceeding after the passing of the impugned order, as the defendant/respondent is still incarcerated, which has caused and is causing delay - all to the detriment of the applicants/co-plaintiffs, who remain unsecured because of an unconditional leave to defend order impugned in this misc. application. Counsel argued that no case for unconditional leave to defend was made out, and the impugned leave granting order was liable to be set aside.

2. The counsel for the respondent/defendant has entered an appearance and contends that there is/was no delay on his part in filing the leave to defend application, as the same was filed within the statutory period of ten days, which he calculates from 26.09.2025 and expiring on 04.10.2025. He argues that, as the leave to defend application was filed prior to 04.10.2025, it was within time. Finally, he submits that the respondent/defendant positively made out a case for unconditional leave to defend.

3. Heard counsel and perused the record. As per the cover letter, available on page 247 in the summary suit, issued by the Senior Superintendent/Officer

Incharge, Central Prison & Correctional Facility Hyderabad (hereinafter referred to as “the Jail Superintendent”), Counsel for the applicants/co-plaintiffs, contends that the summons available on page 249 attached to the cover note show that the same was attached to the cover letter of the Jail Superintendent addressed to the VIth Additional District Judge. He has argued that the summons was issued in the summary suit through the Jail Superintendent on 16.09.2025, and service was effected on the defendant/respondent, who signed for it without mentioning the date of receipt. I have scrutinized the summons on page 249, and, as already noted, it does not indicate the date of the respondent/defendant's receipt. Thus, Counsel for applicants/co-plaintiffs’ contention implying that summons was received on 16.09.2025, and the leave to defend application, was to be filed within 10 days from the said date, and was not filed within this time frame, appears to merit consideration. Yet there is another aspect to the matter, which presents a different picture.

4. There appears to be some disconnect between the date of the covering letter dated 16.09.2025 issued by the Jail Superintendent, and the orders passed by the VIth Addl. District Court. At first glance, upon reading the two documents together, i.e. the cover letter of the Jail Superintendent and the Summons, it would appear that the date of the cover letter dated 16.09.2025 attaching a summons directing the respondent/defendant to appear on the next hearing date on 18.09.2025, could be reconciled assuming that the notice of the summons was effected on the defendant/respondent on 16.09.2025, concerning a hearing, following up, two days later, i.e. on 18.09.2025. Thus, presumably, when the Jail Superintendent issued a cover letter dated 16.09.2025 to the VIth Additional District Court, it was in connection with the hearing date of 18.09.2025. However, the matter is not so simple. A perusal of the Court diary maintained by the VIth Additional District Judge, Hyderabad, as appearing on page 245, indicates that the order to issue notice/summons to the Senior Superintendent Central Prison, Hyderabad, was not made by the Court until the order dated 18.09.2025. It was by this order dated 18.09.2025 that the court summons/notice was to be served through the Senior Superintendent of Central Prison, Hyderabad. No earlier order prior to 18.09.2025 directing that the summons be served on the defendant through the Jail Superintendent is available on record. Counsel for the applicants/co-plaintiffs has also relied on this summons attached to the Jail Superintendent’s cover note dated 16.09.2025, which does not cross-reference any other order for its issuance, i.e. to actually order notice to the Jail Superintendent. Thus, in the circumstances, I am unable to reconcile the dates and timelines and determine a firm date for the commencement of the 10-day period within which the respondent/defendant must file the leave to defend application.

5. Additionally, an examination of the court diary of the VIth Additional District Judge in the summary suit dated 04.10.2025 identifies another anomaly. The records state that the advocate for the applicants/co-plaintiffs provided the respondent/defendant with a copy of the plaint on 04.10.2025. This suggests that the plaint, at least as per the record, was not formally available until 08.10.2025, but the leave to defend application was surprisingly filed on 04.10.2025. This does not reconcile with the observations in the learned VIth Additional District Judge's order dated 04.10.2025, which records, on the one hand, that a copy of the plaint was supplied on 04.10.2025, and, on the other hand, notes that the leave to defend application was filed on the same date and the matter adjourned to 18.10.2025 giving time to the respondent/defendant to collect copy of plaint from the office. Further, the summons itself (attached to the Jail Superintendent's cover note, as relied upon by the applicant/co-plaintiffs) neither mentions that the plaint had accompanied the summons, nor does it state that the respondent/defendant acknowledged in writing on the summons that he had received a copy of the plaint. Therefore, given the circumstances described herein, the leave to defend application cannot be conclusively said to have been filed beyond the period of 10 days and/or found to be barred by time.

6. Be that as it may, I now turn to yet another important issue while deciding this misc. application, i.e. the text of the summons (as available on page 251) in issue in this summary suit, are not the same as the proforma of form No.4 in appendix "B" of the CPC, which is the prescribed proforma of summons under Order 37 Rule 2 CPC. The key text missing from this version of the summons, when compared to the text of form No.4, is the reference to the copy of the plaint which is to be annexed to such summons. This reference to the plaint is missing from the summons involved in this summary suit. It is because of the language of the pro forma of form No. 4 that Courts assume that once summons are issued, the 10-day period also begins ticking. Accordingly, for the fast-track proceedings to kick in and trigger the 10-day period to file the leave to defend application, the procedural requirements must be strictly followed. In the case at hand, the summons neither mentioned that the plaint was attached to the same nor did it contain any endorsement in manuscript suggesting that the plaint had been received by the respondent/defendant. This aspect needs to be considered, too. Therefore, the applicants/co-plaintiffs' claim that the leave to defend was barred by time does not carry weight, nor does it find any favor on this account, too.

7. The Summary Court has the license to condone 'late' filing of leave to defend application, subject to demonstrating 'sufficient cause'. In the circumstances, a case for sufficient cause appears to have been made out in favor of the respondent/defendant. Indeed, at the end of the day, given the background of the matter and the facts and circumstances of the case, I am not convinced that

the leave-to-defend application filed by the respondent/defendant was barred by time and thus liable to be dismissed on this score.

8. With regard to the contention of counsel for the applicants/co-plaintiffs that the leave to defend application was erroneously granted unconditionally, this was a matter within the discretion of the learned VIth Additional District Court. On perusal of the reasons recorded in the impugned order, I do not find any arbitrariness warranting interference in the exercise of the Court's discretion to call for setting aside of the unconditional leave to defend granting order impugned in this misc. application. Indeed, there is sufficient reason articulated therein to support the rationale of the impugned order and the conclusion reached by him at this interim stage of the summary trial. Again, I have no reason to interfere with the conclusion arrived at by the VIth Additional District Judge, especially at this interlocutory stage of the summary proceedings; the impugned order is merely a tentative assessment. The claim raised by the applicant/co-plaintiffs and the defence taken by the respondent/defendant must now be proved by evidence.

9. Before parting with this lis, Courts conducting and handling summary proceedings are reminded to scrutinise/supervise summons being issued in summary proceedings and to ensure that the summons are in line with the statutory format of summons prescribed in summary suits in form No.4 in Appendix "B" of the CPC. It is well recognised that, in summary proceedings, valuable rights of the parties are at stake. In the instant case, the summons was issued without considering the nature of the suit, which is summary, whereas the summons issued was on the ordinary proforma of summons in civil suits (rather than within the contours of the provisions of Order 37 CPC). This procedural oversight ultimately rendered the service of summons ineffective against the respondent/defendant.

10. The upshot of the above discussion is that this Miscellaneous Appeal stands dismissed in the above terms.

J U D G E