

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

R.A.No. 73 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For orders on office objections.
- 2. For orders on CMA 1064/2026.
- 3. For hearing of main case.

21.05.2026.

Mr. Rasool Bux Lara, Advocate for applicant.
Mr. Imam Ali Chang, Advocate for respondent.
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Applicant, Shahid Hussain, the defendant, is aggrieved by the order dated 24.03.2026 passed by the 1st Additional District Judge, Shaheed Benazirabad, in Summary Suit No.27/2025. He contends that the leave to defend application was filed within time, yet it has not been considered.

Counsel for the respondent-plaintiff contends that the leave to defend application is hopelessly time-barred as per the evidence available in the R&Ps. The plaint filed in Summary Suit No.27/2025 was received by the counsel for the defendant on 28.11.2025, whereas the application for leave to defend was filed on 20.12.2025. Therefore, this revision is liable to be dismissed.

The perusal of the record indicates that on 08.11.2025, the Court issued a summons in the said Summary Suit and adjourned the hearing to 28.11.2025. The record also indicates that subsequently, a letter was issued by the Court to the Jail Superintendent dated 13.11.2025 for the production of the accused applicant/defendant. It appears that on the day of 28.11.2025, the defendant appeared before the learned Additional District Judge. Thereafter, the matter was adjourned to 17.12.2025, and once again on 17.12.2025 to 20.12.2025. On all the aforesaid dates of hearing, except on 20.12.2025, the matter was adjourned with an observation that the suit was put off to the next hearing for leave to defend. On the second last date of hearing, 17.12.2025, the applicant/defendant had also filed an application for the grant of time and the concerned Addl. District Judge also passed orders on the same.

In the circumstances, it is assumed that although the statutory time may have expired, however, when the plaintiff/respondent neither came forward nor took any action to oppose the extension of time being extended to the applicant/defendant by the Court, his (the respondent/plaintiff) silence amounted to consent, as on each date the Court had indicated to the parties that the next hearing date was given for filing a leave to defend application. The time stood extended with each such passing order. When the leave to defend application was finally filed on 20.12.2025, it was once again adjourned to 24.12.2025, this time to enable the respondent/plaintiff to file objections to the application for leave to defend. It was at this stage that the plaintiff first raised the objection that the leave-to-defend application was filed beyond the 10-day period. Such a challenge ought to have been raised in the first instance. When the Court extended time for filing leave to defend to the applicant/defendant, the respondent/plaintiff ought not to have remained silent. His silence amounted to consent, and the objection as to time was no longer available as a ground of attack to the leave to defend application.

In light of the provisions of Order 37 CPC, the concerned Court conducting summary proceedings could allow the party extension of time to file a leave to defend application based on sufficient cause, and equally to close the door on the defendant by dismissing the application for extension of time or by simply commencing ex-parte proceedings when no leave to defend application was placed on record within the time limit of 10 days or passing any other order recording therein that the time to file leave to defend application had already expired. In the circumstances, a perusal of the record reveals that no such prohibitory orders were passed by the concerned Addl. District Judge hearing the summary proceedings. Instead, the Court, on its own motion, had been granting the defendant, from time to time, an extension of time to file the leave to defend application. Therefore, in the leave to defend order, it could not subsequently be found that the applicant/defendant's leave to defend application was time-barred, when the Court itself was responsible, as per the orders available on record, for extending the time limit to the applicant/defendant to file the leave to defend application sans sufficient cause and/or even articulating any reason(s) for such extension of time in these interim orders passed by the concerned Addl. District Court. In the circumstances, when the Court itself extended time, the non-filing of the application for condonation of time under the Limitation Act, 1908, was not a valid ground to reject the leave to defend application as

being barred by time. The issue of limitation arising from the orders passed by the Court itself was to be addressed by the Court itself, based on the orders passed in the summary proceedings. In the peculiar background of the case, as an exception, an application for condonation of delay was not necessary. The extension of time was recorded in the orders of the Court, and the applicant/defendant could not be penalized for the conduct of the Court.

In view of the above, the impugned order dated 24.03.2026 is set aside, and the revision application is allowed. During the course of the arguments, counsel for the applicant submitted that he had already filed a leave to defend application. In the circumstances, the concerned Additional District Judge is directed to rehear the leave to defend application and pass a speaking order on the merits of the defence raised by the applicant/defendant.

The revision stands allowed in the above terms.

JUDGE

Tufail