JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO. 416 OF 2024

ABDUL REHMAN KAHOUT

VS

SAJID MAHMOOD CHISHTI

Petitioner by : Mr. Adil Aziz Qazi, Advocate.

Respondent by : Raja Rizwan Abbasi, Advocate.

Date of hearing : 04.03.2025

MUHAMMAD AZAM KHAN, J.

1. The Petitioner/Defendant has filed the instant Revision Petition under Section 115 of the Code of Civil Procedure, 1908 **("CPC")** against the Order dated 15.11.2024 **("Impugned Order")** passed by the learned Additional District Judge-IV (East), Islamabad **("Trial Court")** whereby the Application for Leave to Appear and Defend the Suit filed by the Petitioner/Defendant was allowed conditionally subject to submission of surety equivalent to the amount of cheque i.e. Rs. 513,200,000/-in the shape of Bank Guarantee to be furnished before the said Court by the Petitioner/Defendant.

2. The brief facts giving rise to the instant Revision Petition are that the Respondent filed a Suit for Recovery of Rs. 513,200,000/- under Order XXXVII, Rules 1 & 2, CPC on the basis of Cheque bearing No. CA0000000188 dated 27.09.2023 against the Petitioner/Defendant. The Petitioner/Defendant appeared before the learned Trial Court and filed an Application for Leave to Appear and Defend the Suit, which was contested by the Respondent by filing his written reply. The learned Trial Court after hearing the arguments of both the parties, conditionally allowed the above said Application vide the Impugned Order subject to submission of surety equivalent to the amount of cheque i.e. Rs.513,200,000/-in the shape of Bank Guarantee to be furnished before the said Court by the Petitioner/Defendant. Being aggrieved of the Impugned Order, the Petitioner/Defendant has filed the instant Revision Petition.

3. The learned counsel for the Petitioner/Defendant submits that the record was not at all taken into consideration by the learned Trial Court which reflects

the misreading and non-reading of the record, therefore, the Impugned Order is liable to be set-aside; that the learned Trial Court has not considered the fact that the Respondent has not mentioned the details of transferred land even he has not mentioned about the pendency of earlier cases; that the Respondent has not bothered to file replication but the learned Trial Court has passed defective order, which has no legal value in the eyes of law; that the findings of the learned Trial Court are not comprehensive and in accordance with law which itself makes the Impugned Order nullity in the eyes of law; that the learned Trial Court has failed to exercise the jurisdiction vested in it under the law and has exercised the same, while committing illegality and material irregularity and against the true spirit of law, therefore, the Impugned Order is liable to be set-aside on this score alone; and that the Impugned Order is based upon conjectures and surmises. Lastly, the learned counsel prayed that the instant Revision Petition may kindly be accepted, and the Impugned Order may kindly be set-aside and unconditional leave may be granted to the Petitioner/Defendant.

4. On the other hand, the learned counsel for the Respondent submitted that the Impugned Order has been passed after considering the facts and the record of the case; that the learned Trial Court issued a well-reasoned order; and that there is no illegality or irregularity in the Impugned Order. The learned counsel, therefore, prayed for the dismissal of instant Civil Revision Petition.

5. I have heard the learned counsel for the parties and have also perused the relevant record with their able assistance.

6. The case of the Petitioner/Defendant is that the order of imposing surety equivalent to the amount of cheque i.e. Rs.513,200,000/- in the shape of bank guarantee is not in accordance with law and the learned Trial Court while passing such direction to the Petitioner/Defendant has committed illegality and material irregularity.

7. It is to mention here that it is the discretion of the Court to impose the condition, but in the matter of *Abdul Rauf Ghauri…vs…Mrs. Kishwar Sultana and 4 others* reported as 1995 SCMR 925, the august Supreme Court laid down the principle that there should not be a harsh condition and order to the extent of imposing the condition of bank guarantee was modified. By imposing such harsh condition will amount to obstructing the Petitioner/Defendant from contesting his case if he has plausible defence in his favour. The learned Trial Court under

Order XXXVII, Rule 3, CPC grants leave to appear to the defendant, the said provision of law is reproduced as under: -

> *"**3. Defendant showing defence on merits to have leave to appear.---(1)** The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.*
>
> ***(2)** Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.*
>
> ***(3)** The provisions of Section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to applications under sub-rule (1)."*

Under the said provision of law, the District Judge has the discretion either to allow the leave to defend conditionally or unconditionally. The superior Courts have held that the discretion must be exercised judiciously keeping in view the circumstances of each case. In the instant case, the learned Trial Court allowed the Petitioner/Defendant's Application for leave to defend based on some findings/grounds but has put a harsh condition of submitting Bank Guarantee to the tune of Rs.513,200,000/- which is at higher side. Thus, in the circumstances, the Petitioner/Defendant is directed to submit surety bond of a person who is local and man of means and having immovable property equal to the amount of cheque i.e. Rs.513,200,000/- to be furnished to the satisfaction of the learned Trial Court. The condition imposed by the learned Trial Court is amended in the above-mentioned terms and the Petitioner/Defendant is directed to submit the said surety bond within fifteen days from the passing of this order.

8. The petition is ***partially allowed*** in the above terms.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open Court on _____.

JUDGE

//Mehboob//