JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO. 129 OF 2025

ABDUL REHMAN KAHOUT

VS

SAJID MAHMOOD CHISHTI

Petitioner by : Mr. Adil Aziz Qazi, Advocate.

Respondent by : Raja Rizwan Abbasi, Advocate.

Date of Hearing : 28.04.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Civil Revision Petition, the Petitioner/Defendant has assailed the Order dated 10.04.2025 **("Impugned Order-I")** passed by the learned Additional District Judge, Islamabad-IV, Islamabad-East **,** whereby on the Application filed by the Petitioner/Defendant seeking permission to furnish a solvent personal surety bond the learned Additional and District Judge-IV, Islamabad-East **("Trial Court")** passed order for submission of surety as per the directions by this Court. The Petitioner/Defendant further assailed the separate Order of the same date, i.e., 10.04.2025 **("Impugned Order-II")**, passed by the learned Trial Court**,** whereby the learned Trial Court withdrew its earlier conditional Order dated 15.11.2024 and consequently dismissed the Application for Leave to Appear and Defend the Suit.

2. The brief facts of the case, as per the contents of the instant Revision Petition, are that the Respondent/Plaintiff filed a Suit for recovery of Rs. 513,200,000/- under Order XXXVII, Rules 1 and 2, CPC, on the basis of Cheque No. CA0000000188, dated 27.09.2023, against the Petitioner/Defendant. The Petitioner/Defendant contested the suit by filing an Application for Leave to Appear and Defend the Suit. In the said Application, the Petitioner/Defendant raised both legal and factual grounds justifying the grant of leave to defend. Vide order dated 15.11.2024, the learned Trial Court conditionally allowed the Application for Leave to Appeal and Defend filed by the Petitioner/Defendant, subject to submission of surety equivalent to the amount of the cheque i.e. Rs. 513,200,000/- in the shape of bank guarantee.

Feeling aggrieved by the said Order dated 15.11.2024, the Petitioner/Defendant filed Civil Revision No. 416/2024 before this Court, which was partially allowed vide order dated 24.03.2025, whereby the condition imposed by the learned trial Court was modified. Thereafter, the Petitioner/Defendant filed an Application before the learned trial Court on 09.04.2025, seeking permission to furnish a personal surety bond, however, the same was dismissed on the very next date, i.e., 10.04.2025. Furthermore, the learned trial court **also** passed a separate order of the same date whereby the right of the Petitioner/Defendant to defend the suit was closed, the conditional Order dated 15.11.2024 was withdrawn and consequently the Application for Leave to Appeal and Defend filed by the Petitioner/Defendant was dismissed. Feeling aggrieved by the Impugned Order-I and the Impugned Order-II, the Petitioner/Defendant has filed the instant Revision Petition.

3. The learned counsel for the Petitioner/Defendant contends that both impugned orders dated 10.04.2025 are contrary to law and facts, resulting from misreading or ignoring the record. The Trial Court failed to consider that the Petitioner/Defendant lacks sufficient resources to furnish a third-party surety bond and had rightfully sought permission to submit a solvent personal surety bond, a request aligned with legal principles and deserving of judicial discretion. Instead, the Court acted beyond its jurisdiction by rejecting the Application without adjudicating it first, thereby committing material irregularity and denying the Petitioner/Defendant a fair opportunity to defend. The dismissal of the Application for Leave to Appear and Defend the Suit, solely for non-submission of surety, despite the Petitioner/Defendant's compliance efforts, violates fundamental rights and principles of natural justice. The impugned orders effectively decreed the suit under Order XXXVII C.P.C. without addressing serious factual and legal controversies, including allegations of fraud and pending related litigation. The Trial Court's rigid and technical approach disregarded substantive rights and superior court precedents. Lastly, the learned counsel prayed that the instant Civil Revision Petition may very graciously be accepted/allowed and both the impugned orders dated 10.04.2025, passed by the learned Trial Court, may kindly be set aside by allowing the Petitioner/Defendant to submit his solvent personal surety bond before the learned Trial Court and grant the Petitioner/Defendant permission to contest the suit by accepting his Application for Leave to Appear and Defend the Suit, in the supreme interest of justice.

4. On the other hand, the learned counsel for the Respondent/Plaintiff resisted the arguments of the learned counsel for the Petitioner/Defendant and prayed for the petition's dismissal on the grounds that both the impugned orders are well-reasoned and do not suffer from any illegality or irregularity.

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

6. The Petitioner/Defendant and Respondent/Plaintiff entered into an agreement for sale of land at a rate of Rs. 1,700,000/- per kanal in Moza Humak**,** etc, Islamabad, for a total sale consideration of Rs. 843,200,000/-, out of which the Petitioner/Defendant paid Rs. 330,000,000/- to the Respondent/Plaintiff, while the remaining i.e. Rs. 513,200,000/- was to be paid till 26.09.2023. For this purpose, the Petitioner/Defendant handed over Cheque No. CA0000000188 dated 27.09.2023 amounting to Rs. 513,200,000/- of his bank account maintained in Faysal Bank Limited F-7 Branch, Islamabad, to the Respondent/Plaintiff. The Petitioner/Defendant failed to pay the remaining amount and requested to postpone the payment till 10.10.2023, but the Respondent/Plaintiff, after sending a Legal Notice on 29.09.2023, presented the cheque, which was dishonored due to insufficient funds on 11.10.2023.

7. The Respondent/Plaintiff then filed a suit under Order XXXVII, Rules 1 & 2, CPC on 18.10.2024 against the Petitioner/Defendant, and the learned Trial Court granted leave to defend subject to submission of surety equivalent to the amount of the Cheque i.e. Rs. 513,200,000/- in the shape of a bank guarantee. The Petitioner/Defendant challenged the said order of the learned Trial Court before this Court, which was modified vide Order dated 24.03.2025 and it was decided that "*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.51,32,00,000/- to be furnished to the satisfaction of the learned trial court within fifteen days"*.

8. The Petitioner/Defendant failed to submit the surety bond as ordered by this Court within the stipulated period and requested the Trial Court to accept a personal bond, which was rejected, and the learned Trial Court withdrew his earlier conditional Order dated 15.11.2024 and consequently dismissed the Application for

Leave to Appear and Defend the Suit vide Impugned Order dated 10.04.2025. The Petitioner/Defendant was given a fair chance to defend the suit by submitting surety bonds of a person having immovable property equal to the amount of the cheque in question, but he failed to do so. He failed to comply with the direction of this Court, which was issued vide Order dated 24.03.2025, thus, the Trial Court had no other option but to withdraw the leave to appear and defend the suit. Furthermore, the learned counsel for the Petitioner/Defendant has failed to point out any illegality or irregularity in the impugned orders.

9. With the above said observations, this Court is of the view that the instant civil Revision Petition has no merits which is accordingly **dismissed**. Reliance can usefully be placed on *Murtaza Habib Textile Mills versus Sitara Chemical Industries,* **2004 SCMR 882** and *Abdullah versus Shaukat,* **2001 SCMR 60**.

(MUHAMMAD AZAM KHAN)
JUDGE

/Sajid/