JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO. 150 OF 2025

MALIK ABDUL RASHEED

VS

JAFAR HUSSAIN BHATTI

Petitioner by : Mr. M. Amir Naeem Khan, Advocate.

Respondent by : Dr. Ishfaq Ahmad, Advocate.

Date of Hearing : 02.07.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Civil Revision Petition filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 **("CPC")**, Petitioner has assailed the Order dated 11.04.2025 ["**Impugned Order**"] passed by the learned Additional District & Sessions Judge, West-Islamabad ["**Trial Court**"] whereby the right of the Petitioner/Defendant to defend himself has been struck off and the leave earlier granted to him has been recalled due to non-submission of surety bond.

2. The brief facts of the case as per the contents of the instant Revision Petition are that the Respondent/Plaintiff instituted a Suit for Recovery of Rs. 5,000,000/- under Order XXXVII, CPC, on the basis of Cheque No. 21023636 dated 05.04.2022, drawn for an amount of Rs. 50,00,000/-, against the Petitioner/Defendant**.** The said suit was initially decreed ex-parte vide Judgment and Decree dated 11.01.2023. Subsequently, on 04.05.2024, the Petitioner/Defendant filed an Application for setting aside the aforementioned ex-parte Judgment and Decree. The said Application was contested by the Respondent/Plaintiff through a written reply. Upon hearing both parties, the learned Trial Court, vide Order dated 24.09.2024, allowed the Application subject to payment of costs amounting to Rs. 10,000/-. Following the setting aside of the ex-parte Judgment and Decree, the Petitioner/Defendant filed an Application seeking leave to appear and defend the suit, which was also opposed by the Respondent/Plaintiff through a written reply. After hearing the arguments of the parties, the learned Trial Court, vide Order dated 23.01.2025, conditionally allowed the said application, directing the Petitioner/Defendant to furnish

security/surety/bank guarantee or net cash equivalent to the value of the cheque(s)/suit amount. However, on 11.04.2025 vide Impugned Order, the learned Trial Court struck off his right to appear and defend the suit due to the his failure to comply with the aforesaid condition and simultaneously recalled the earlier order granting leave to defend. Aggrieved by the Impugned Order, the Petitioner/Defendant has preferred the present Revision Petition.

3. The learned counsel for the Petitioner/Defendant submits that the Impugned Order passed by the learned Trial Court is contrary to law and the facts on record, and is the outcome of misreading and non-reading of the material available on the record; that the learned Trial Court has erroneously stretched the facts to justify the recall of the earlier order granting leave to defend, which is not contemplated within the scheme of Order XXXVII, CPC; that the Petitioner/Defendant has a *prima facie* arguable case on merits for which he was granted leave to appear in the suit, therefore, recalling the leave granting order is extremely harsh and uncalled for; that it is a settled principle of law that matters should be decided on merits rather than on technicalities; that the Petitioner/Defendant has been unduly penalized without due appreciation of the genuine factual controversy involved in the matter and without proper consideration of the material available on record; that the Petitioner/Defendant had a right to defend himself before a Court of law and not to be prejudiced on account of technicalities; that it is also a settled principle of law that no one should be condemned unheard. Lastly, the learned counsel for the Petitioner/Defendant prayed that the instant Civil Revision may kindly be accepted, the Impugned Order may be set aside and the Petitioner/Defendant may be awarded an opportunity to submit solvent surety to the satisfaction of the learned Trial Court.

4. Conversely, the learned counsel for the Respondent/Plaintiff, in support of the Impugned Order, contends that the Petitioner/Defendant was afforded ample opportunities to comply with the order dated 23.01.2025, but failed to do so. Consequently, the learned Trial Court's order striking off the Petitioner's/Defendant's right to defend the suit is lawful and justified. It is further submitted that no illegality or irregularity has been committed by the learned Trial Court, and, therefore, the instant petition may kindly be dismissed.

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

6. The key issue before this Court is whether the learned Trial Court acted illegally, irregularly, or in excess of or in failure of jurisdiction in recalling the earlier order granting conditional leave to defend and striking off the Petitioner's/Defendant's right to appear and contest the suit for non-compliance with the condition imposed.

7. It is not in dispute that the suit was filed under Order XXXVII, CPC, a special procedural regime designed to ensure the expeditious disposal of claims arising from negotiable instruments and written contracts. While this summary procedure curtails the Defendant's right to defend unless leave is granted, it is balanced by judicial discretion to allow such leave, conditionally or unconditionally, where a plausible or bona fide defense is demonstrated.

8. In the present case, the learned Trial Court, vide Order dated 23.01.2025, exercised its discretion in favor of the Petitioner/Defendant by granting conditional leave to defend, specifically requiring the Petitioner/Defendant to furnish a solvent surety/bank guarantee or deposit cash equivalent to the suit amount of Rs. 5,000,000/-. On 24.02.2025 and then on 24.03.2025, the Petitioner/Defendant failed to submit the surety amount. On 24.03.2025, on the request of the Petitioner's/Defendant**'s** counsel, the case was adjourned for 11.04.2025 with a cost of Rs. 5,000/-, for submission of surety amount. On 11.04.2025, the Petitioner/Defendant again failed to furnish surety bond and the learned Trial Court struck off the right of the Petitioner/Defendant to defend himself and recalled the leave earlier granted to him. The Petitioner/Defendant failed to fulfill the condition of Order dated 23.01.2025. Importantly, there is nothing on the record to suggest that the Petitioner/Defendant ever filed any application for modification of surety amount, or demonstrated inability to comply with the said order during the time granted. The default was complete and unexplained. The failure to comply with a conditional leave order under Order XXXVII, CPC is not a mere procedural lapse, it amounts to a forfeiture of the right to defend. The learned Trial Court, therefore, acted squarely within the four corners of its jurisdiction when it passed the Impugned Order striking off the defense and recalling the conditional leave earlier granted.

9. The Petitioner's/Defendant**'s** plea that the Impugned Order is harsh or excessive is without merit. The law provides sufficient clarity that non-compliance with a conditional order carries consequences, and litigants who benefit from judicial

indulgence must honor the conditions imposed. No material was presented before either the learned Trial Court or this Court to show that the Petitioner/Defendant was prevented from compliance due to circumstances beyond his control, nor was there any move to rectify the non-compliance before the Impugned Order was passed.

10. The revisional jurisdiction of this Court under Section 115, CPC is limited and cannot be invoked to re-appreciate evidence or substitute the revisional Court's discretion for that of the subordinate Court unless it is shown that the subordinate Court has:-

(i) exercised jurisdiction not vested in it by law;

(ii) failed to exercise jurisdiction so vested; or

(iii) acted in the exercise of jurisdiction illegally or with material irregularity.

In the present case, the Impugned Order discloses no jurisdictional error, nor does it suffer from any material illegality or irregularity.

11. The Constitutional guarantee of a fair trial is undoubtedly a cornerstone of justice, but it is equally true that such fairness must extend to both parties. The Plaintiff, too, is entitled to a timely resolution of the suit, especially in a summary proceeding where delay is adverse to the very purpose of the procedural framework. Where a Defendant fails to comply with Court directions without justification, he cannot invoke equity to avoid consequences that naturally flow from his own default. Thus, in the totality of the circumstances, no ground has been made out for interference by this Court in its revisional jurisdiction.

12. In view of the above, the instant Civil Revision Petition, being devoid of any merit, is hereby **dismissed**. Reliance is placed on *Murtaza Haseeb Textile Mills v. Sitara Chemical Industries* **(2004 SCMR 882)** and *Abdullah versus Shaukat,* **(2001 SCMR 60)**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____day of July 2025.

JUDGE

/Sajid/