

**2013 CLD 25**

**Lahore**

**Before Shigaat Ali Khan, J**

**MUHAMMAD ADNAN (MUHAMMAD IRFAN)- Petitioner**

**versus**

**ADDITIONAL DISTRICT JUDGE HAFIZABAD and another ---- Respondents**

**Civil Revision No, 2275 of 2012, decided on 20th July, 2012.**

[Civil Procedure Code (V of 1908)]----O. XXXVII, R. 3---Suit for recovery--Direction to the defendant to deposit disputed amount in court---Scope--“ Application for leave to defend by the defendant was allowed with the direction to the defendant to deposit the recovery amount in the court--- Defendant contended that condition on the defendant for depositing the said amount with the court was arbitrary and therefore, the order of the Trial Court should be set aside to such extent--- Validity---Court under O. XXXVII, Rule 3, C.P.C. had the discretion to grant leave to defend conditionally or unconditionally and could, amongst other things, direct payment of the amount in dispute to be deposited with the court--- No illegality in the impugned order having been found, \_revision was dismissed. Ip. 271A.

**Bashumal v. Dr. Zahoor Ahmad Sheikh 2008 SCMR.**

**39; Abdul Karim Mengal v. Sultan Badshah 2010 YLR 2596 and Muhammad Azad v. Malik Zahoor 2008 CLD I 128 rel.**

**(b) Negotiable Instruments Act (XXVI of 1881 )--- 118~--Execution of cheque, prima facie, carried the presumption that the same was issued against some consideration. Ip. 281B Muhammad Azhar Sulehria for Petitioner. CLD**

**26 CORPORATE LAW DECISIONS [Vol. XII ORDER SHUJAAT ALI KHAN, J.--- By means of this revision petition the petitioner has called in question the vires of order dated 5-7-2012 whereby the learned Additional District Judge, Hafizabad while accepting the application of the petitioner for leave to appear and defend the suit filed by respondent No.2 for recovery of Rs.21,00,000 on the basis of cheque issued by the petitioner. directed the petitioner to deposit the amount in question in the Court. 2. Briefly put, the respondent No.2 filed a suit under Order XXXVII, C.P.C. for recovery of Rs.`21.00,000 against the petitioner. The petitioner filed an application for grant of leave 'to appear and defend the suit which came up for final hearing on 5-7-2012 when the same was allowed and the petitioner was directed to deposit Rs.21,00,000 in the Court. Aggrieved by the said order the petitioner has filed the instant petition for setting aside thereof. Being confronted with the query that if the prayer made in this revision petition is granted, the order regarding grant of leave to appear and defend the suit would be no more in the field and the application filed by the petitioner would stand disrriised, learned counsel for the petitioner while conceding his mistake request that the prayer. in this petition be confined to the extent of deposit of Rs.21,00,000. 3. Learned counsel for the petitioner contends that while passing the impugned order the learned Additional District Judge had, in a sense, decreed the suit of the petitioner; that the direction of the learned trial Court regarding deposit of amount 'in dispute is too harsh and arbitrary; that while directing the petitioner to deposit in question in the Court the learned trial Court` failed to consider that there was nothing on the record to show that the said amount ever paid to the petitioner; that the learned Additional District Judge has illegally exercised his discretion vested in him under Order XXXVII, rule 3, C.P.C. and that in case the impugned order to**

the extent of deposit of amount in dispute is not sei aside, the petitioner is bound to suffer irreparably.

4. After hearing the learned- counsel for the petitioner and going through the documents appended with this petition. During the said ezgercise I have noted that while accepting the application filed by the petitioner for grant of leave to appear and defend the suit the learned trial Court directed the petitioner to deposit the amount in dispute in 2013] Muhammad Adnan v. Additional District Judge 27 (Shigaat Ali Khan, J) the Court. The procedure regarding leave to appear and defend has been postulated under rule 3 of Order XXXVII, C.P.C. The said rule, for convenience of reference, is being reproduced hereinbelow:-~

"Defendant showing defence on merits to have leave to aggear.--»(1) 'T he 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 sutyect 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)." As per sub rule (2) (supra), it is the discretion of the Court to grant leave conditionally or unconditionally. Amongst other conditions the Court can direct for payment in the Court. Thus, While passing the impugned order the learned Additional District Judge has committed no illegality. The power of the Court regarding grant of leave to appear and defend the suit has elaborately been dealt with in the cases reported as Bashumal v. Dr. Zahoor Ahmad Sheikh (2008 SCMR 39), Abdul Karim Mengal v. Sultan Badshah (2010 Y'LR 2596), Muhammad Azad v. Malik Zahoor (2008 CLD 1128) and Muhammad NaZir v. Qadeer Babar. In the case of Abdul Karim Mengal (supra) it 'has inter alia been held that:»» "Thus as per Sub-rule (2) of the Rule discretion is given to the trial Court either to grant leave to defend unconditionally or sulyect to some terms. Giving security is one of the same. As such to this extent the trial Court has the power to call for deposit of security ~ in thematter, there is no ill/egality to this extent in the impugned order, The only thing which is required to be seen that whether this discretion has been exercised judiciously or not by the concerned court. As per petitioner/ defendant theme is no justy°ication under the law for imposing of the condition, further the court has A.

28 CORPORATE LAW DECISIONS [Vol. XII mis~exercised f its authority by granting leave conditionally., The petitioner/defendant is not specific in his contentions; he failed to point out any illegality or irregularity in the exercise of discretion by the trial Court. Rather the petitioner/ plaintiff stressed more on merits of the case, whereon no findings can be given at this stage. He further failed to point out any illegality in order made on 8-5-2007. The trial Court has exercised its discretion properly. It is apparent from documents placed on record that a dispute exists between the parties, while they are pursuing against each other on civil as well as on criminal side. In the circumstances the learned trial Court has made an appropriate order, which will not only safeguard the rights of the parties, but also works as blockage in multiplicity of litigation." 5. insofar as the contention of the petitioner that there is no proof of the transaction between the petitioner and respondent No.2 is concerned, I am of the View that according to section 118 of the Negotiable Instruments Act. 1881 prima facie execution of a cheque carries the presumption that the same was issued against some consideration. Thus, the arguments of the learned counsel for the petitioner on this score are hereby spurned. 6. For what has been discussed above, I am of the View that while passing the irnpugned order the learned Additional District Judge has committed no illegality justifying interference by this Court in exercise of revisional jurisdiction.

Consequently, I see no force in this petition which is accordingly hereby dismissed. KMZ/M»274/L  
V Petition dismissed.