

Form No.HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

D. No. 151940 of 2025

Waqar Ahmad
vs.
ADJ, District Sheikhupura & another

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
	18.11.2025	Rana Nadeem Ahmad, Advocate for petitioner.

Objection Case

The petitioner has filed instant constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 by calling in question order dated 06.11.2025 passed by Additional District Judge, Sheikhupura, whereby right of the petitioner to cross examine witnesses of respondent No.2 has been closed for his failure to comply with the condition mentioned in the leave granting order.

2. The office has raised the objection at Serial No.45 of the objection sheet to avail proper remedy i.e. Civil Revision.

3. Learned counsel for the petitioner has contested the said objection by referring to judgment reported as **Habib Bank Limited, Karachi vs. Zaki Muhammad Siddiquie and 2 others** (PLD 1979 Karachi 129), wherein against a leave granting order, civil revision was held to be not maintainable and further relies upon the judgment reported as **Hafiz Muhammad Owais vs. Addl: District Judge, etc** (2024 CLC 577) to contend that against similar order, the petitioner in an earlier round of

litigation was allowed to file a constitutional petition by over-ruling the office objection.

4. Perusal of Section 115 CPC shows that remedy of civil revision is available against any order, appeal where-against is not available under the law. Section 115(1) CPC is reproduced below for ready reference:

“115. Revision.—(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that, where a person makes an application under this subsection, he shall, in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.

Provided further that the subordinate court shall provide copies of the documents to a person within three days of the decision, and the High Court shall dispose of such application within six months.

.....”

5. In the present case, respondent No.2 had filed a suit under Order XXXVII CPC for recovery of Rs.1,20,00,000/- against the petitioner which was contested by him and vide order dated 01.02.2025, learned Additional District Judge, Sheikhupura was pleased to grant leave to defend to the petitioner subject to furnishing of the surety bonds equivalent to the amount claimed in the suit i.e. Rs.1,20,00,000/-, however, as said condition was not complied with by the

petitioner, despite availing various opportunities, hence the said order was recalled on 16.04.2025, where-after the petitioner on 12.07.2025 submitted an application before the trial court seeking permission to cross examine witnesses of respondent No.2. The said application has been dismissed through the impugned order dated 06.11.2025, the operative part of which is reproduced below:

"Perusal of record reveals that respondent/plaintiff filed suit u/o XXXVII of CPC against the applicant/defendant who put his appearance before the court and submitted application for leave to defend before learned predecessor of this court on 18.01.2025 which was allowed after hearing both the parties vide order dated 01.02.2025 but defendant remain failed to submit surety bond as per direction of learned predecessor of this court due to which order dated 01.02.2025 was recalled and application for leave to defend was dismissed vide order dated 16.04.2025. In the instant case the leave granting order dated 01.02.2025 was conditional in nature and due to failure of the applicant/defendant to fulfill the condition of submission of surety bond the same has already been recalled by learned predecessor of this court vide order dated 16.04.2025. Although learned counsel for the applicant/defendant has pointed out that such order has been assailed before the Hon'ble Lahore High Court, Lahore through writ petition No.24536/2025 titled "Waqar Ahmad Vs. learned Additional District Judge, Sheikhupura etc" but no injunctive order has been produced before this court. Subsequently, plaintiff's evidence was completed and learned counsel for the plaintiff has already closed the oral as well as documentary evidence and case was fixed for final arguments. At this belated stage instant application u/s 151 of CPC has been filed by the applicant/defendant for permission to cross examine the plaintiff's witnesses. Since leave to defend refusal order dated 16.04.2025 is still in field and no injunctive order has been produced by the applicant/defendant before the court, hence leave to defend refusal order is being still in field,

therefore, applicant/defendant is debarred from joining further proceedings in the suit. Hence, this application is not maintainable in the present scenario.”

6. No appeal is maintainable against said order, therefore, in terms of Section 115(1) CPC ordinarily a revision petition is to be filed against such an order. However, petitioner contends that no revision is available on the basis of two judgments referred above, hence, the said objection of the petitioner against maintainability of revision petition is being addressed.

7. In **PLD 1979 Karachi 129** (Supra) unconditional leave to defend the suit under Order XXXVII Rule 1 CPC was granted to the respondent-defendant which was challenged by petitioner-plaintiff-bank before the revisional court through civil revision and the court while addressing the question had reached the conclusion that civil revision could only be exercised on the basis of three grounds and none of the same was available in the said case to entertain the same and said court never concluded that civil revision was not maintainable at all and that constitutional petition should have been filed. The operative part of the said judgment reproduced before:

“4. Jurisdiction under section 115 of the Code of Civil Procedure is of a limited nature and can be invoked only when it is shown that the subordinate Court has-

- (i) exercised jurisdiction not vested in it by law, or*
- (ii) failed to exercise a jurisdiction so vested, or*
- (iii) acted in the exercise of its jurisdiction illegally or with material irregularity.*

There can be no two opinions that the District Judge had the jurisdiction to grant leave, conditionally or otherwise. The

exercise of such power, even if erroneous would not attract the provisions of section 115 of the Code of Civil Procedure as far as the first clause of the said section is concerned. Normally absence of jurisdiction connotes an absence of power to deal with a particular case or exercise of powers in excess of powers conferred by law. Since Court has the power to grant leave or to refuse leave it cannot be said that the order is one without jurisdiction. The next question is whether the jurisdiction has been exercised illegally or with material irregularity. Whether an order of a Court proceeds on illegality or with material irregularity, the question would always depend upon the provisions of law that have been disregarded. Often times the adoption of a precisely prohibited course is construed as an illegality. Obviously this is not so in the instant case. It then remains to be seen whether the District Judge acted with material irregularity. The words "material irregularity" have come up for consideration by the superior Courts of this country and a fair summary of the decisions would indicate that a Court would be said to have acted with material irregularity when it commits an error of procedure which may affect the ultimate decision in the case. The illegality must be in the manner of arriving at a decision as distinct from arriving at a conclusion. If a Court has jurisdiction, its conclusion whether on a matter of law or fact, cannot be questioned in revision, unless such conclusions affect the decision of a case. The mere adoption of an irregular mode would not attract section 115, C. P. C. If authorities are wanted for the proposition reference may be made to the cases reported in PLD 1964 SC 97, PLD 1969 Lah. 951 and PLD 1963 Kar. 551."

8. Consequently, reliance upon the said judgment is of no avail to the petitioner. As regards the judgment reported as **2024 CLC 577**(Supra), the matter in issue in the said case was

an interlocutory application for grant of interim relief during the pendency of application for setting-aside ex-parte decree, which was still pending, the court has required the petitioner therein to deposit the bank guarantee and surety bond for ad-interim suspension of the impugned ex-parte decree which was held to be not a final challengeable order or a case decided in terms of Section 115 CPC for the revision petition against the same to be maintainable and it was held that question relating to maintainability of writ petition in the alternate would be decided on the judicial side, hence, said judgment is also distinguished on the basis of facts and not applicable to the case of the petitioner.

9. In the present case, right of the petitioner to cross examine the PWs of respondent No.2 has been declined by dismissing his application. This is a final order as regards the decision of said application and case decided in terms of Section 115 CPC, therefore, could be called in question through revision petition and while hearing the said revision on merits, the question whether the matter falls within the three grounds provided for exercise of civil revision or not would be decided on its own merits in accordance with law.

10. For what has been discussed above, the office objection is accordingly *sustained*.

(MUZAMIL AKHTAR SHABIR)
JUDGE

*Naveed **

APPROVED FOR REPORTING: