

Form No: HCJD/C-121.

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

C.R. No. 86 of 2019

Khizar Hayat

**Vs**

Brig. (Retd.) Muhammad Naeem Akbar Qazi

<b>S. No. of order/ proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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- 02)    29-04-2019.    Mr Muhammad Abbas Advocate, for the petitioner.  
Mr Mustafa Tanvir Sufwat Advocate, for the respondent.  
Mr Rabi bin Tariq, State Counsel.  
M/s M. Anwar (ASI) and M. Fayaz (ASI) with record.

Through this petition, the petitioner has assailed order, dated 25-02-2019, passed by the learned Addl. District Judge (West), Islamabad.

2.            The facts, in brief, are that the respondent filed a suit under Order XXXVII of the Code of Civil Procedure, 1908 (hereinafter referred to as the "**CPC**") for recovery of Rs.2,000,000/- (rupees two million). The petitioner filed an application for leave to appear and defend. The application was allowed subject to furnishing surety bond amounting to Rs.1,000,000/- (rupees one million).

3. The learned Counsel for the petitioner has argued that the latter despite making efforts could not arrange a local surety. The learned Counsel has stated that in the facts and circumstances of the case, granting conditional leave to appear and defend was not in consonance with law. He has, therefore, made a request that the impugned order may be modified and the condition of furnishing surety may be ~~waved~~<sup>waived</sup>.

4. The learned Counsel for the respondents, on the other hand, has argued that no legal infirmity has been pointed out in order to interfere with the impugned order. However, taking a fair stance he has stated that the petitioner may approach the learned trial Court with the request to allow furnishing of surety other than a local surety.

5. The learned Counsels have been heard and the record perused with their able assistance.

6. This Court is satisfied that the impugned order does not suffer from any legal infirmity nor the discretion exercised by the learned trial Court has been found to be arbitrary or fanciful. However, the learned trial Court

would be at liberty to afford an opportunity of hearing to the learned Counsels for the parties and accept such surety as it may deem appropriate in the circumstances.

7. The instant petition stands **disposed of** in the above terms.

*CHIEF JUSTICE*

Tanveer Ahmed.