

Form No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Civil Revision No.406 of 2019

Wasif Ghafoor.

Vs

Fouzia Jabeen Sheikh.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**24.10.2019. Mr. Muhammad Abbas, Advocate for the
petitioner.**

This petition is directed against order dated 18.09.2019, whereby the learned Trial Court recalled the order granting leave to defend.

2. The facts, in brief, are that respondents filed a suit against the petitioner for recovery on the basis of negotiable instrument namely the cheque. The petitioner filed application for leave to defend on 30.07.2019. Leave to defend was granted subject to furnishing surety bonds equivalent to Rs.1,00,00,000/-. Since the petitioner did not fulfill the condition, the leave granting order was recalled.

3. Learned counsel for the petitioner, *inter-alia*, contended that the surety could not be furnished due to unavoidable circumstances. In this behalf, it was contended that since the petitioner's mother

was indisposed, the order could not be complied. It was submitted that this Court has inherent power to enlarge the time. Reliance was placed on Section 148 of Code of Civil Procedure as well as case reported as "*Pakistan Water and Power Development Authority (WAPDA) Vs. Messrs SEA Gold Traders through Partners and 2 others*" **(2003 CLD 392)**.

4. Arguments advanced by learned counsel for the petitioner have been heard and the documents placed on record examined with his able assistance.

5. The learned Trial Court granted conditional leave to defend to the petitioner; the condition was that surety bond in the sum of Rs. 1,00,00,000/- shall be filed and the case was fixed for 18.09.2019 for the needful. On the said date, no one entered appearance on behalf of the petitioner and the same is borne out from the impugned order. The learned Trial Court has specifically stated that the case was taken up a number of times, however, no one entered appearance on behalf of the defendant/petitioner. In such view of the matter, the learned Trial Court was left with no option but to pass the impugned order. Even though, since the condition provided in order dated 30.07.2019

was not fulfilled and as a result thereof there was no leave granting order but still the Court recalled its order. The contention that time can be enlarged under Section 148 of the Code of Civil Procedure is misconceived inasmuch as the bare reading of the referred provision shows that time can only be enlarged by the Court where doing of any act is prescribed or allowed by the Code. Moreover, the discretion is vested with the learned Trial Court to do the needful. Petitioner left the learned Trial Court with no option but to pass the impugned order as he chose not to appear on the date in question. The judgment relied upon by learned counsel for the petitioner reported as **"2003 CLD 392"** is not relevant inasmuch as the order impugned before this Court is one of 18.09.2019 and not 30.07.2019.

6. For the above reasons, the instant petition is without merit and is accordingly ***dismissed in limine.***

**(AAMER FAROOQ)
JUDGE**

M. Zaheer Janjua