2026 IL App (1st) 250991-U

No. 1-25-0991

Order filed November 12, 2026

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JAISON JAYARAJ, Plaintiff-Appellee,

v.

VISHESH AKSHAT PATHAK, Defendant-Appellant.

Appeal from the Circuit Court of Cook County
No. 2024 M1 133758
The Honorable Martin Paul Moltz, Judge, Presiding

JUSTICE OCASIO delivered the judgment of the court.
Presiding Justice Lyle and Justice Mitchell concurred in the judgment.

ORDER

¶ 1 *Held*: The default judgment against defendant for want of an appearance was vacated because the record showed that defendant had both appeared personally at an earlier hearing and had entered a written appearance before the judgment was entered.

¶ 2 Defendant, Vishesh Akshat Pathak, appeals from a default judgment entered against him in a small-claims case. The plaintiff, Jaison Jayaraj, is Pathak's former roommate. In late 2024, Jayaraj sued Pathak over unpaid rent, seeking damages to compensate him for paying Pathak's share of the rent and miscellaneous harms associated with having to pay Pathak's share out of his own funds.

¶ 3 It appears from the record that the original summons was never served on Pathak. On February 11, 2025, Pathak was served with an alias summons that directed him to appear in court on March 26, but an "Initial Case Management Hearing" had already been set for February 18. Per the order memorializing that hearing, both parties were "[p]resent before the [c]ourt." To give the parties time to try mediation, the court continued the case to March 25 for status. It also directed Pathak to file a written appearance by March 21 if the parties had not yet settled.

¶ 4 Pathak did not file a written appearance before the March 25 status hearing, and he also was not in attendance on that date. Finding that Pathak had failed to file an appearance, the court entered an order of default and then set the case for a prove-up on April 23. It directed Jayaraj to send Pathak a copy of the default order. There is no indication that he did so. (It appears from the record that Pathak instead obtained a new alias summons commanding Pathak's appearance in court for possible trial on the date of the prove-up hearing, but somewhere along the line, someone crossed out "April 23rd" and wrote "05-14-25." The most likely explanation is that someone in the clerk's office realized that the rules required the appearance date to be at least 40 days out, and April 23 was too soon. See Ill. S. Ct. R. 101(b)(1) (eff. April 20, 2023).)

¶ 5 The next day, March 26, Pathak filed a written appearance. Five days later, on March 31, he was served with the new alias summons directing him to appear in court on May 14.

¶ 6 The change to alias summons had no effect on the prove-up hearing, which went ahead as scheduled on April 23. Jayaraj was present; Pathak was not. Finding that Pathak had "failed to appear or respond," the court entered a judgment of nearly $4,800 against him based on Jayaraj's "sworn affidavit, documentary evidence, and testimony."

¶ 7 The electronic case summary provided in the record indicates that the May 14 appearance date was canceled by the court, though there is no information in the record about when that cancelation took place.

¶ 8 On May 23, Pathak filed a "Motion to: (I) Appeal the judgement [and] (II) Vacate the judgement." The motion alleged that he had attended court as directed on May 14 only to be told that the hearing had been cancelled and that judgment had been entered against him on April 23.

He asked the court to give him a chance to present his side of the case. Pathak's notice of motion indicated that the motion would be heard on June 9. Roughly one hour later, Pathak filed a separate notice of appeal.

¶ 9 Jayaraj appeared for the June 9 hearing on Pathak's motion. Pathak did not. The court's brief order from that date states: "Defendant[']s motion is strike [*sic*] off call."

¶ 10 On appeal, Pathak argues that the trial court erred by (1) entering judgment "before the scheduled hearing on May 14"; (2) not considering his evidence, which he asserts would have shown that he already paid the amount being claimed; and (3) failing to provide him with notice and an opportunity to be heard. All of these alleged errors, however, flow from the court entering judgment by default for want of an appearance, and the record in this case contradicts the court's determination that Pathak failed to enter an appearance.

¶ 11 To the extent that Pathak forfeited challenging the judgment on this basis, we would note that forfeiture is a limitation on the parties, not the court, and our responsibility for ensuring a just result can trump forfeiture considerations. *People v. Green*, 2024 IL App (1st) 231167, ¶ 17 n.4. Illinois law favors resolving disputes on the merits and views default judgment as "a drastic remedy" that "should be used *only* as a last resort." *Warren S. Winkler, LLC v. Weld All, Inc.*, 2026 IL App (3d) 240722, ¶ 52. Given the strong preference for disposing of the cases on the merits rather than by default, this is an appropriate case for exercising our discretion to excuse any forfeiture.

¶ 12 Under the Civil Practice Law (735 ILCS 5/art. II (West 2024)), "[j]udgment by default may be entered for want of an appearance, or for failure to plead." 735 ILCS 5/2-1301(d) (West 2024). When it entered the default judgment on April 23, 2025, the court specifically found that Pathak had "failed to appear or respond." The finding that Pathak failed to appear is flatly contradicted by the record, which shows that he appeared personally before the court on February 18 and also filed a written appearance on March 26. Further, although Pathak did not file any response to the complaint, he did not have to. This is a small-claims case, and the rules say that a small-claims defendant who appears does not have to file a responsive pleading such as an answer unless the

court orders otherwise. Ill. S. Ct. R. 286(a) (eff. Feb. 2, 2023). Here, Pathak appeared, and the court did not order him to answer or otherwise respond to the complaint. So, neither basis for a default judgment was available in this case, and it was therefore error to enter one.

¶ 13 We recognize, of course, that at the time the court entered the default order on March 25 and set the case for a prove-up, Pathak had not yet filed a written appearance. As the court was presumably aware that Pathak had appeared personally at the February 18 hearing, the fact that he did not file a written appearance by March 21, as the court had directed him to at that previous hearing, seems to have been the basis on which the court defaulted him. Whether that was proper is debatable. By default, Rule 286 only requires personal appearance on the date specified in the summons. Ill. S. Ct. R. 286(a) (eff. Feb. 2, 2023). Courts are free to adopt alternative requirements, but those requirements must be specifically stated on the notice portion of the summons. See Ill. S. Ct. R. 286(a) (eff. Feb. 2, 2023); Ill. S. Ct. R. 286, Committee Comments. None of the summonses in the record instructed Pathak to file a written appearance. That aside, though, Pathak filed a written appearance the very next day—which, incidentally, was the day that the alias summons had directed him to appear for trial. He cured his omission. By the time the court entered the default judgment, Pathak's appearance had been on file for more than three weeks.

¶ 14 Finally, we note that Pathak moved to vacate the default judgment but failed to attend court on the date he had set for the hearing, which led to the motion being stricken. While we certainly do not approve of his failure to show up for a court hearing at which this could have been resolved, the consequence was that he forfeited his opportunity to explain why he had not attended the prove-up hearing on April 23. No explanation is necessary in this case because, no matter the reason Pathak was not present for the prove-up, the fact remains that he had entered his appearance, which precluded the entry of a default judgment against him.

¶ 15 Because the record shows that Pathak had entered his appearance, we hold that the trial court erred when it found to the contrary and entered a default judgment on April 23. We therefore vacate that judgment and remand to the trial court for further proceedings on the complaint.

¶ 16 Vacated and remanded.