

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. S-1283 of 2025

Petitioner : Ghulam Hyder Shaikh through Mr. Rasheed Ahmed Mughal, Advocate

Respondent No.1 : Ghulam Rasool Rajput & Ors. through Mr. Muhammad Ali Leghari, Advocate

Respondent No.2 : Through Chaudhary Muhammad Rafique
& 3 Rajori, Assistant Advocate General Sindh

Date of hearing : 28.08.2026
& Order

ORDER

Nisar Ahmed Bhanbhro, J. This order shall decide the fate of the instant petition, which is directed against the concurrent findings of fact recorded in an application filed under Section 12(2) of the CPC, seeking reversal of the judgment and decree dated 11.11.2017 passed by the learned Ist Senior Civil Judge, Malir, Karachi, in Civil Suit No. 155 of 2019.

2. The case of the petitioner has a chequered history. An application under Section 12(2) CPC filed by the petitioner was dismissed by the learned trial Court vide order dated 01.08.2019. However, the said findings were set aside by the learned District & Sessions Judge-II, Malir, Karachi, vide order dated 05.11.2025, while deciding Civil Revision Application No. 70 of 2025. The learned trial Court was accordingly directed to frame issues and decide the application under Section 12(2) CPC on merits. The petitioner, however, failed to appear before learned trial Court to proceed with the application under Section 12(2) CPC, which was consequently dismissed for non-prosecution vide order dated 04.11.2023. Thereafter, an application under Order IX Rule 13 CPC was preferred, which was also dismissed vide order dated 14.03.2024. Revision Application No.24 of 2024 was also dismissed by the learned Vth Additional District & Sessions Judge, Malir, Karachi. The petitioner thereafter preferred Constitutional Petition No. D-151 of 2025, which was allowed vide order dated 11.03.2025, with directions to learned trial Court to decide the application under Section 12(2) CPC after recording evidence on the issues already settled.

3. It is the case of the petitioner that the suit was decreed ex parte and that the petitioner was not duly served. Therefore, according to the petitioner, the judgment and decree are defective, and a case under Section 12(2) CPC was made

out. It is contended that, although Petitioner was a resident of the premises mentioned in the memo of plaint, he was not available in Karachi at the relevant time due to the registration of criminal cases against him. It is further the case of the petitioner that he was residing in the upper portion of the house, whereas the notice was pasted on the lower/ground portion. The bailiff, according to the petitioner, served the notice upon his son, who neither informed nor apprised him of the proceedings pending before the Courts below. Learned counsel relied upon the judgment of the Hon'ble Supreme Court rendered in the case of *Messrs Mobiserve Pakistan (Pvt.) Limited v. Messrs V-Tech and Others*, reported as 2025 SCMR 1936. He, therefore, prayed that the orders passed by the Courts below may be set aside and the application under Section 12(2) CPC may be allowed.

4. Mr. Ch. Muhammad Rafique Rajori, learned Assistant Advocate General Sindh supports the impugned orders.

5. Mr. Muhammad Ali Leghari, learned counsel for the respondent, argued that the petitioner was duly served but chose to remain absent. He further submitted that the Petitioner, in his evidence, admitted that the impugned judgment and decree did not suffer from fraud or misrepresentation; therefore, no case under Section 12(2) CPC was made out. He, therefore, prayed for dismissal of the instant petition.

6. Heard arguments and perused the material available on record.

7. Scanning of the record reveals that, pursuant to the order passed by the Revisional Court, the learned trial Court, while hearing the application under Section 12(2) CPC, framed issues regarding fraud, misrepresentation, and concealment of facts. The parties were afforded an opportunity to lead evidence. The petitioner himself appeared in the witness box and denied service of notice. However, he failed to produce his son, who, as per the bailiff's report, had received the notice, or the tenant residing in the lower portion of the subject house, as claimed by the petitioner. The suit was decreed vide judgment dated 02.11.2017, whereas the application under Section 12(2) CPC was preferred in November 2018. The sole ground taken in the said application was non-service of notice upon the petitioner. However, no convincing evidence was produced before the learned trial Court to establish that the bailiff's report was contrary to the provisions of Rule 19 of Order V CPC. Upon examination and appraisal of the evidence, the Courts below concluded that the petitioner had been duly served and was deliberately avoiding his appearance in the proceedings.

8. Moreover, the judgment and decree were passed ex parte, and, by his own admission, the petitioner conceded that the same did not suffer from any fraud or misrepresentation. In such circumstances, the provisions of Order IX Rule 13 CPC were applicable for setting aside the judgment and decree passed ex parte. Though the Court, by invoking the provisions of Section 151 CPC, was competent to convert the proceedings under Section 12(2) CPC into proceedings under Order IX Rule 13 CPC. Even if the proceedings in the present case are treated as proceedings under Order IX Rule 13 CPC, the petitioner was still required to establish that he had not been duly served. In this regard, the petitioner was required to examine his son as well as the tenant residing in the premises, particularly when the petitioner himself claimed that the lower portion of the subject premises had been rented out. In the absence of such evidence, it cannot be held that the premises were rented out or that the petitioner was not duly served in the manner prescribed under the provisions of Order V Rule 19 read with Order IX Rule 13 CPC. Petitioner's failure to discharge his burden to prove his case will tilt in favor of Respondents claims that he was duly served.

9. For the foregoing reasons, no exception can be taken to the concurrent findings recorded by the Courts below. Consequently, the instant petition fails and is hereby dismissed, along with all pending applications, if any.

JUDGE

Approved for reporting.