

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1285 of 2023

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<b>Date</b>	<b>Order with Signature of Judge</b>
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*Muhammad Khalid Abrar*.....*Petitioner*

*Versus*

*Faisal Yousuf & others*.....*Respondents*

Date of hearing :13.03.2025

Date of announcement of judgment :18.03.2025

Mr. Yasir Saddozai, Advocate for the Petitioner.

Mr. S. Muhammad Jehangir Akhter, Advocate for the Respondent.

**JUDGEMENT**

**MUHAMMAD JAFFER RAZA,J;** - Through the instant petition, the Petitioner has impugned the order dated 21.11.2023 passed in FRA No.128/2023. Facts of the case are summarized as follows: -

1. Rent Application bearing No.50/2021 was filed by the Respondent No.1 against the Petitioner on the sole ground of default of rent under Section 15 2 (ii) of the Sindh Rented Premises Ordinance 1979 (“**SRPO**”). Subsequently, Rent Application was allowed vide ex-parte order dated 14.12.2021. Perusal of the record shows that Notices was served to the Opponent through bailiff, registered post A.D. and Courier, subsequent to the same, Notice was also pasted on the address of the Opponent, which is also incidentally is the tenement in question. Statement of the bailiff in this regard was recorded and lastly publication was made in daily “UMMAT” Karachi dated 07.07.2021 and service upon the Opponent was held good on 27.07.2021. Subsequently, Opponent in the Rent Case was debarred from filing his objections on 03.11.2021.

2. The grounds taken by the Petitioner in the application under Section 12(2) CPC can be summarized as follows: -

(i) No notice of the Rent Application was received by him

(ii) Suit No.1572019 is pending between the Respondent No.1 and one Irfan Riaz in which the latter has challenged the ownership of Respondent No.1 and also sought cancellation of registered sale deed in his favour, and

(iii) Pendency of Rent Case No.143/2022.

3. The application under Section 12(2) CPC was dismissed vide order dated 02.08.2023. Subsequently, the Petitioner preferred FRA No.128/2023, which was dismissed vide impugned order. The Petitioner thereafter approached this Court against the concurrent findings below.

4. Learned counsel for the Petitioner has argued that the application filed under Section 12(2) CPC ought to have been allowed by the Rent Controller as no Notice was received by him. It has also been argued by the learned counsel that Rent Application was not maintainable in the light of the fact that Civil Suit between the Respondent No.1 and one Irfan Riaz was pending. It was stated that prior to adjudication of ownership, the Rent Application should not have been admitted. Thereafter, learned counsel has most vehemently argued that the Rent Application filed by the Respondent No.1 ought to have been dismissed for the reason that after the Rent Application was granted in favour of Respondent No.1 he preferred Rent Case No.143/2022 under Section 8 of the SRPO for fixation of fair rent. He has further argued that in the same vein that the pendency of the suit was not disclosed in either of the ejectment applications.

5. Conversely, learned counsel for the Respondent has stated that the Petitioner was always aware of the proceedings and has himself admitted that the Notice was given to his employee at the said tenement. Learned counsel has further argued that the same Petitioner is appearing in Rent Case No.143/2022, which was filed for fixation of fair rent. Learned counsel has also placed on record copy of order dated 22.05.2024 passed in Rent Case No.143/2022, in which the presence of the Petitioner is reflected.

6. Heard the learned counsel for the parties and perused the record with their assistance. At the outset I inquired from the learned counsel as to why he chose to file application under Section 12(2) CPC as opposed to filing of application for setting aside of ex-parte judgment. Learned counsel in response most vehemently argued that this a classic case of fraud being played on the Court, therefore, he is entitled to the grant of relief and the application under Section 12(2) C.P.C. ought to have been allowed by the learned Rent Controller.

7. On the ground taken by the Petitioner regarding non-issuance of Notice it is held that all modes of service were adopted by the learned Rent Controller and it is not conceivable that the Petitioner did not know about the pendency of Rent Application. Moreover, it is ironic to note that once the orders were issued for taking over possession of the tenement in question the Petitioner within a day approached Court and filed the application under Section 12(2) CPC. Learned counsel for the Petitioner has been unable to show defective service and therefore, the ground taken is devoid of any merit.

8. Further the pendency of Suit No.157/2019 is no ground for the Rent Application to be dismissed. The said suit has been filed by the previous owner of the subject property against the Respondent No.1 and the present Petitioner does not have any nexus with the same. Even otherwise the learned Rent Controller and the learned Appellate Court correctly held that this aspect could not have been examined in rent proceedings.

9. It is also held that the scope of the instant petition is only restricted to the application filed under Section 12(2) C.P.C. by the Petitioner and cannot be expanded to what the learned trial Court ought to have done in relation to pendency of the suit. If at all, this ground was available to the Petitioner had he participated in the Rent proceedings.

10. Learned counsel has further argued that in light of the fact that after the ejectment application of Respondent No.1 was allowed the said Respondent could not have filed application for fixation of fair rent under Section 8 of the SRPO. This argument is misplaced for the reason that the Respondent No.1 was always at

liberty to seek fixation of fair rent till the time the Petitioner was in occupation of the tenement. Moreover, the Court under Section 8 has the power to grant fair rent even from a date prior to allowing the said application. Even otherwise, as has already been held above, the subject matter of the instant petition is only the dismissal of application under Section 12(2) CPC and this Court in its writ jurisdiction will not enlarge the scope of the same. It has been held repeatedly by the Hon'ble Superior Courts that the threshold of Section 12(2) C.P.C. is establishment of fraud and misrepresentation and burden of the same rests entirely on the Petitioner. Reference in this regard can be made in the case of **Sadaqat Ali and Another versus Mst. Nasreen Akhtar**<sup>1</sup>. The facts in the said judgment are largely similar to those in the present petition. Relevant excerpts are reproduced below: -

*“This Petition has been filed by the petitioners challenging the order of the Sindh High Court, Karachi, dated 05.08.2024, (Impugned Order), passed in Constitutional Petition No. S-1363 of 2011, wherein the High Court has confirmed the decisions of both the learned Courts below by holding that the Rent Controller, vide its judgment dated 15.05.2010 and the District Court, vide its judgment date 24.11.2011, had correctly decided that the petitioners have defaulted in payment of monthly rent and have also been illegally inducted as a sublessees in the subject property bearing Nos. 149, 150, Ali Muhammad Goth, Sector 11-E, North Karachi and, that the order dated 18.07.2006 passed by the Rent Controller was not obtained by way of fraud or misrepresentation, as claimed by the present petitioners by filing an application under section 12(2) of the Code of Civil Procedure, 1908 C.P.C.*

*3. Subsequently, on 02.02.2007, the Petitioners filed an application under Section 12(2) C.P.C. seeking to set aside the learned Rent Controller ex parte judgment and decree, dated 18.07.2006, in Rent Case bearing No. 541 of 2005 and Execution Application No. 14 of 2006. This application was however dismissed on the grounds that the petitioners have failed to point out any fraud or misrepresentation played by the Respondent, vide order dated 15.05.2010. Being aggrieved with the same, the petitioners preferred an appeal, which also was dismissed in R.F.A. No.109 of 2010, vide order dated 24.11.2011. Aggrieved again, the Petitioners filed a Constitutional Petition before the Sindh High Court, which confirmed the concurrent findings of two the Courts below hence the instant Civil Petition for Leave to Appeal.*

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<sup>1</sup> 2025 SCMR 358

5. We have heard the learned counsel and have perused the record. At this juncture, we find it pertinent to mention that the learned Rent Controller had attempted to issue notices to the Petitioners through numerous modes, including by way of the Court Bailiff, Registered Post A/D, T.C.S, pasting notice on the wall and gate of the property and finally through publication. It was only after exhausting all the modes of service that the learned Rent Controller held service to be good against the Petitioners. Despite notice, through all its modes and at the correct address, the Petitioners have failed to enter appearance and absented themselves from proceedings in the eviction application. The order for ex parte proceedings and ex parte judgment that followed cannot, therefore, be considered as a result of fraud or misrepresentation but of the willful absence of the Petitioners. Furthermore, the fact that there had earlier been litigation concerning the property is not a valid ground for interference with the findings of the three Courts below. Moreover, the controversy highlighted by the Petitioners that in an earlier rent/ eviction application, the Respondents attorney had claimed to be owner whereas in the instant application he claimed to be the Respondents attorney will not improve their case since it would not change their status as unauthorized sub-lessees of the original lessee.”

11. In the case of **Nasir Khan v. Shabir**<sup>2</sup> it was held as under: -

“7. Under the above-mentioned section, fraud and misrepresentation are pre condition for filing application under Section 12(2), C.P.C. The party must furnish necessary detail of fraud. Where a party alleged fraud, the particular detail of fraud and misrepresentation should be mentioned. Section 12(2), C.P.C. provide a remedy to a person affected by a decree obtained by fraud and misrepresentation. The party must prove the fraud or misrepresentation committed against him was out of knowledge or with collusion with any person or persons, as to prevent the affected person to place his case before the court during proceedings in defence.”

12. The Petitioner has failed to highlight any fraud or misrepresentation and no details of the same have been furnished, despite being repeatedly asked. In the light of what has been held above, I see no reason to interfere in the concurrent findings of the Courts below. Accordingly, instant Constitutional Petition being devoid of any merits is hereby dismissed with no order as to cost.

Judge

Nadeem

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<sup>2</sup> 2022 MLD 543