

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No. S-645 of 2025
[Zubair Ahmed v. Mst. Seema Jagirani and others]

Counsel for Petitioner: Mr. Atta Hussain
Chandio, Advocate.

Counsels/ Representatives for Respondents: Mr. Irfan Khaskheli.

Date of Hearing: 24.11.2025.

Date of Judgment: 12.12.2025.

JUDGMENT

RIAZAT ALI SAHAR, J: - Through the instant constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks indulgence of this Court against the arbitrary, unlawful and procedurally defective orders passed by the learned Family Judge and the Revisional Court, which have resulted in grave miscarriage of justice and violation of the petitioner's fundamental rights guaranteed under Articles 4, 9 and 10-A of the Constitution. Thus, seeking following reliefs:

- a)** *Declare that the order dated 06.10.2025 passed by the Revisional Court (Respondent No. 3) is illegal, void, without lawful authority and of no legal effect.*
- b)** *Set aside the impugned order dated 06.10.2025 and direct the Revisional Court to decide the Civil Revision Application filed by the petitioner on merits, after issuance of notice and affording proper opportunity of hearing.*
- c)** *Direct the respondent No.2/Learned Family Judge, Jamshoro to stop all the proceedings which are pending for adjudication.*
- d)** *Grant any other relief deemed just and proper in the circumstances of the case.*

2. Learned counsel for the petitioner contended that the entire proceedings culminating in the impugned order dated

06.10.2025 are vitiated by grave illegality, material irregularity and patent violation of fundamental rights guaranteed under Articles 4, 9 and 10-A of the Constitution. He submitted that the petitioner was condemned unheard, as both the Family Court and the Revisional Court proceeded in complete disregard of the cardinal principle of *audi alteram partem*, which forms the very foundation of fair trial and due process. Learned counsel argued that the application under Section 12 (2) C.P.C., which specifically alleged fraud, misrepresentation and non-service of summons in Family Suit No. 264/2022, was dismissed by the Family Judge in a cursory and mechanical manner, without framing proper points for determination or examining the material placed on record. He further submitted that the Revisional Court committed a more serious jurisdictional defect by dismissing the civil revision in limine, without issuing notice, without calling the record of the trial Court and without affording even a minimal opportunity of hearing, thereby rendering the entire exercise *coram non judice*. Counsel stressed that when allegations of fraud are raised—fraud vitiating even the most solemn judicial proceedings—it becomes incumbent upon the Court to examine the matter with deeper scrutiny rather than adopting a superficial approach.

3. Learned counsel further asserted that the petitioner has been regularly paying maintenance for his minor children at Rs. 13,200/- per month, demonstrating bona fide conduct and negating any presumption of wilful neglect or malafide evasiveness. He argued that both Courts below failed to appreciate the settled law that *ex parte* judgments obtained without proper service or through procedural manipulation must be set aside in the interest of justice, relying upon the well-established principle that fraud unravels everything. He submitted that the Revisional Court further erred by disregarding the case-law cited before it regarding maintainability of civil revision against dismissal of application under Section 12(2), C.P.C. in family proceedings. Counsel emphasized that the impugned orders suffer from non-application of judicial mind, are arbitrary, illegal, violative of natural justice and have caused serious prejudice

to the valuable rights of the petitioner, necessitating intervention of this Court in its constitutional jurisdiction to rectify the miscarriage of justice and ensure a fair adjudication on merits.

4. Before proceeding to examine the factual matrix, it is essential to restate the governing legal position on the maintainability of applications under Section 12(2), C.P.C. in family matters. The Honourable Supreme Court in the landmark judgment **PLD 2024 SC 771 (Fozia Mazhar v. ADJ Jhang & others)** has conclusively settled that Section 12(2), C.P.C. is very much applicable to proceedings before the Family Court where allegations of fraud or misrepresentation are raised. The Honourable Supreme Court has held that although Section 17 of the Family Courts Act, 1964 excludes strict application of the C.P.C., the Family Court may nonetheless adopt the general principles embodied in the Code to ensure justice, prevent abuse of process and examine allegations of fraud that strike at the root of judicial proceedings. The Supreme Court emphatically reiterated that **fraud unravels everything** and an aggrieved party may invoke Section 12(2), C.P.C. to challenge any decree or order of the Family Court that is alleged to have been procured by fraud or misrepresentation.

5. The above authoritative pronouncement, reaffirming earlier jurisprudence in *Sayed Abbas Taqi Mehdi v. Sabahat Batool* (2010 SCMR 1840), *Muhammad Tabish Naeem Khan v. ADJ Lahore* (2014 SCMR 1365) and *Muhammad Arshad Anjum v. Khurshid Begum* (2021 SCMR 1145), decisively answers the question of law and leaves no manner of doubt that the petitioner's application under Section 12(2), C.P.C. before the learned Family Court was fully maintainable. The contention that such an application is barred in family proceedings has been rejected time and again by the superior courts. Therefore, on this legal point, the petitioner rightly invoked Section 12 (2), C.P.C. to seek recall of the decree passed in Family Suit No.264/2022.

6. However, while Section 12(2), C.P.C. is maintainable in family jurisprudence, the burden lies squarely upon the applicant to substantiate allegations of fraud or misrepresentation with clear, cogent and convincing evidence. The Honourable Supreme Court has consistently held that fraud must be pleaded with precision and proved through unimpeachable material; bald allegations, unsupported by record, cannot be the basis to unsettle a judicial order. Reference may again be drawn to the reasoning in **PLD 2024 SC 771**, where it was held that the courts below were justified in rejecting a plea of fraud because it was not supported by the documentary and oral evidence on record and because the applicant's own conduct was inconsistent with his assertions. The Court reaffirmed that a party who has participated in proceedings, directly or indirectly, cannot later feign ignorance to seek the benefit of Section 12(2), C.P.C..

7. Applying this principle to the present case, the petitioner's claim that he had no knowledge whatsoever of the proceedings in Family Suit No. 264/2022 stands materially weakened by the "**On-Oath Agreement**" dated **09-01-2023**, filed as **Annexure-K, page 91 of the petition**. A careful perusal of this document shows that the petitioner expressly acknowledged the pendency of **Family Case No. 264/2022**, which is specifically cited in Clause 2 of the agreement. This explicit acknowledgment is fatal to the petitioner's plea that he was completely unaware of the earlier proceedings. Once the petitioner himself has admitted, through a sworn agreement, knowledge of the very proceedings he now claims were concealed from him, the allegation of fraud or misrepresentation automatically collapses. The plea becomes self-contradictory and stands wholly unsubstantiated.

8. It is also an established principle that Section 12(2), C.P.C. cannot be invoked by a negligent or inattentive litigant to cure his own omissions. The petitioner's conduct, reflected through the aforementioned agreement, indicates not only knowledge of the proceedings but his active awareness of the matrimonial dispute

then pending before the Family Court. Thus, the foundation on which the present petition is built—that the decree was obtained behind his back, without notice, through fraud—finds no support in the record. In fact, the record negates his assertions.

9. It is also of paramount significance that in the Family Suit No. 264/2022, the service upon the petitioner was duly held good by the learned Family Court. The process was served in accordance with law and attained finality, as the petitioner did not challenge the mode, manner, correctness or validity of the service at any stage before the trial Court. More importantly, the petitioner never pleaded—either in his application under Section 12(2), C.P.C. or in the present constitutional petition—that the address furnished by the respondent before the Family Court was incorrect, misleading, fictitious or manipulated to evade proper service. In such circumstances, once service is judicially determined to be valid, a legal presumption arises that the defendant was aware of the pending proceedings and consciously chose not to appear. The very purpose of the doctrine of “service held good” is to prevent a negligent litigant from later taking refuge behind allegations of fraud, when in fact the party deliberately opted not to attend Court despite due notice. A defendant who wilfully remains absent after valid service cannot later impeach the *ex parte* proceedings by alleging fraud or misrepresentation, for the law does not permit a party to take advantage of his own omission. Thus, the petitioner’s subsequent attempt to invoke Section 12(2), C.P.C. on the premise of non-service or lack of knowledge is legally untenable and stands contradicted not only by the record but also by his own conduct.

10. Even otherwise, constitutional jurisdiction under Article 199 cannot be invoked to disturb concurrent factual findings unless they suffer from patent illegality, jurisdictional defect, non-reading or misreading of material evidence, or perversity resulting in miscarriage of justice. The principles reiterated in **PLD 2024 SC 771** on the limited scope of interference by the High Court in matters arising out of family disputes are fully attracted here as well.

Findings recorded by the Family Court and the Revisional Court are based on appreciation of evidence and do not exhibit any jurisdictional defect warranting interference. This Court cannot act as another appellate forum to re-appraise evidence in its writ jurisdiction. Thus, in light of the Supreme Court's authoritative pronouncement, the maintainability of a Section 12(2), C.P.C. application in family matters is affirmed; however, the petitioner's case fails on facts. His allegation that the respondent obtained the decree by fraud or misrepresentation remains wholly unproved. The petitioner's own sworn document contradicts his plea of ignorance. The impugned orders do not suffer from any illegality, infirmity or perversity. No ground is made out for interference by this Court.

11. For these reasons and guided by the ratio settled by the Honourable Supreme Court in **PLD 2024 SC 771**, it is held that although Section 12(2), C.P.C. is maintainable in family proceedings, the petitioner has failed to bring his case within the strict parameters of fraud or misrepresentation. The petition is devoid of merit and is accordingly **dismissed**. All pending applications, if any, stand disposed of accordingly.

JUDGE