# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**C.P No.S-406 of 2025.**

*Abdul Karim and another Vs. Nasarullah (since deceased) through LRs.*

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| Petitioners: | Abdul Karim & another **through Mr. Sunder Das, Advocate.** |
| Respondent No.1 (i to vi): | Nasarullah (since deceased) through LRs Mst. Naseem and others **through Mr. Pirbhulal-u-Goklani, Advocate.** |
| Respondent No.2&3: | NEMO. |
| Date of hearing: | 26.01.2026. |
| Date of decision: | 16.02.2026. |

## J U D G M E N T

**RIAZAT ALI SAHAR, J.-** Through this Petition, the Petitioners have impugned the order dated 29.01.2018 passed by learned VIII-Additional District Judge, Hyderabad ("Revisional Court"), whereby the Civil Revision Application No.41 of 2017 filed by the Petitioners against the order of learned Senior Civil Judge-III, Hyderabad ("Trial Court") dated 09.03.2017 passed in F.C Suit No.187 of 2013 (Re: Nasarullah Vs. Abdul Karim & another) on Application U/s 12(2) C.P.C filed by the Petitioners.

2. The crux of the case in hand are that the Respondent (Nasarullah) had filed F.C Suit No.187 of 2013 against the present Petitioners for Declaration, Possession, recovery of Mesne Profits and Permanent Injunction and the said Suit was decreed as ex-parte vide Judgment dated 21.11.2013 and Decree dated 26.11.2013. After such ex-parte Decree, an Execution Application No.01 of 2014 was filed by the Respondent / Plaintiff / D.H, wherein the present Petitioner No.1 (Abdul Karim) being defendant / J.D had filed Application U/s 12 (2) C.P.C with prayer to set-aside the ex-parte Judgment dated 21.11.2013 and Decree dated 26.11.2013. During pendency of such Application before learned Trial Court, an Execution Application No.01 of 2014 filed by the Respondent / D.H was allowed vide order dated 21.07.2014 and writ of possession was issued against Petitioners / Judgment Debtors. Such

order passed in Execution Application was challenged by the Petitioners through Civil Misc Appeal No.20 of 2014, which was allowed vide order dated 22.01.2016, whereby the order dated 21.07.2014 passed in Execution Application was set-aside and directions were issued that Execution Application be decided after disposal of Application U/S 12 (2) C.P.C filed by the Petitioner No.1 / Defendant No.1. After such reversal order passed in Civil Misc Appeal No.20 of 2014, the learned Trial Court i.e. 3rd Senior Civil Judge, Hyderabad vide order dated 09.03.2017 had dismissed the Application U/s 12 (2) C.P.C filed by the Defendant (Abdul Karim). Such dismissal order passed by learned Trial Court on Application U/s 12 (2) C.P.C was challenged by both the Petitioners / defendants through Civil Revision Application No.41 of 2017 but remained unsuccessful, hence being aggrieved and dissatisfied, this Petition is preferred.

3. Learned counsel for Petitioners contended that the ex-parte Judgment and Decree were passed in a slip shod manner by learned Trial Court, which are against the law, facts and without adopting proper procedure of service; that the learned Trial Court did not consider the ground mentioned in the Application U/S 12 (2) C.P.C and had passed the order and even did not consider that the ex-parte Judgment and Decree were obtained through fraud and misrepresentation; that the learned Trial Court was very much competent to set-aside the ex-parte Judgment and Decree; that the Suit filed by the Respondent was even time barred; that admittedly the legal heirs of Mst. Hawa at the time of filing Suit No.150 of 2006 for declaration of LRs were not in possession of Suit property and they had omitted to seek the relief of possession, hence their Suit No.187 of 2013 was barred U/O 2 Rule 2 C.P.C and was even liable to be dismissed, but the learned Trial Court did not consider the same fact and passed the ex-parte Judgment and Decree as prayed. Lastly, he prayed that the Application filed by the Petitioner before learned Trial Court U/s 12 (2) C.P.C may be allowed and ex-parte Judgment and Decree may be set-aside.

4. On his turn, learned counsel for Respondent No.1 argued that the orders passed by the learned Trial Court as well as learned Revisional Court are very much speaking and no illegality or irregularity has been committed by both the learned Courts below. He further contended that

the process for service upon defendants / Petitioners was issued and they were duly served; that after service, the defendants appeared in Trial Court and filed an application for grating time, therefore, the plea of Petitioners that the ex-parte Judgment and Decree were obtained through fraud and misrepresentation is nothing but the wastage of precious time of Court because the Petitioners after seeking time had chosen to remain absent, hence the matter proceeded ex-parte. He submitted case laws through statement and prayed for dismissal of this Petition.

5. I have heard learned counsel for the parties and perused the record with their assistance. At the outset, it may be noted that the jurisdiction under Article 199 is discretionary, and ordinarily not invoked to convert this Court into a further appellate forum against concurrent findings of the courts below, unless jurisdictional error, misreading/non-reading of material evidence, or findings based on no evidence are shown.

6. The following points arise for determination:

(a) Whether this Court, in exercise of constitutional jurisdiction under Article 199, should interfere with concurrent orders of the courts below on the section 12(2), C.P.C. application?

(b) Whether the Petitioners established, through pleadings and material on record, that the ex parte judgment and decree were obtained by fraud, misrepresentation or want of jurisdiction so as to attract section 12(2), C.P.C.?

(c) Whether the pleas of limitation and bar under Order II, rule 2, C.P.C., in the circumstances of this case, constitute grounds for setting aside the ex parte decree under section 12(2), C.P.C.?

**7.** Article 199 empowers the High Court to pass certain orders, inter alia, where “no other adequate remedy is provided by law”, and the exercise of such jurisdiction is supervisory and corrective, not appellate. The Supreme Court has repeatedly underscored that the High Court

should not interfere with findings on controversial questions of fact based on evidence, even if arguably erroneous, unless the impugned findings suffer from misreading or non-reading of evidence or are based on no evidence resulting in miscarriage of justice; the constitutional jurisdiction cannot replace an appeal or revision. Shajar Islam v. Muhammad Siddique and 2 others (PLD 2007 SC 45) has been consistently treated as a leading authority on this limitation.

8. In the present case, the Petitioners are assailing orders whereby their section 12(2), C.P.C. application was dismissed, and such dismissal was maintained in revision. The controversy largely turns on (i) whether the Petitioners were duly served and had knowledge of the proceedings; (ii) whether any fraud or misrepresentation was practised upon the Court; and (iii) whether the Petitioners produced material to dislodge the sanctity attached to judicial proceedings. These matters are primarily factual and record-based. Therefore, unless the Petitioners demonstrate a jurisdictional defect or perversity of findings in the sense recognised in Shajar Islam (supra), constitutional interference is not warranted.

9. The legal standard under section 12(2), C.P.C. Section 12(2), C.P.C. (as applicable in Pakistan) provides that where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, the remedy is by application to the Court which passed the final judgment, decree or order, and not by a separate suit. This provision is aimed at enabling the Court to recall its own judgment/decree where the judicial process itself is shown to have been subverted by fraud/misrepresentation or where the order is a nullity for want of jurisdiction, but it is not designed to provide a parallel substitute for appeal, review, or a second round on merits.

10. The superior courts have also emphasised that allegations of fraud and misrepresentation are serious in nature, and must be pleaded with requisite particulars; vague assertions do not meet the legal threshold, particularly in view of Order VI, rule 4, C.P.C. principles which require particulars where fraud is alleged. Further, while fraud allegations often involve questions of fact, it is not an inflexible rule that issues must be framed and evidence recorded in every case; rather, it is for the Court

seized of the application to regulate its proceedings and adopt such mode for disposal as the circumstances and justice of the case require. The Supreme Court has articulated this approach in cases including Warriach Zarai Corporation v. F.M.C. United (Pvt.) Ltd. (2006 SCMR 531), and the same principle has been relied upon in later jurisprudence.

11. Similarly, in Mrs. Amina Bibi through General Attorney v. Nasrullah and others (2000 SCMR 296), it has been noted in later reported decisions that while dealing with allegations under section 12(2), it is not incumbent upon the Court in all circumstances to frame issues and record evidence; the approach depends upon the nature of allegations and the material available.

12. Applying the above principles to the facts at hand, the Petitioners' principal plank is that the ex parte judgment and decree were obtained through fraud and misrepresentation, essentially anchored in alleged improper service and alleged procedural illegality leading to ex parte proceedings. However, the Respondent's position (also reflected in the reasoning adopted by the courts below) is that the Petitioners were duly served and even appeared, sought time, and thereafter remained absent deliberately.

13. On perusal of the record as available, I find no basis to disturb the concurrent conclusions that (i) service was effected and (ii) the Petitioners' conduct showed knowledge of proceedings. Where a defendant appears and seeks time, the plea of total lack of notice ordinarily loses its force, because the mischief that section 12(2) seeks to redress in service-related fraud cases is the obtaining of an order behind the back of a party by subverting the Court's process; once knowledge/appearance is established, the foundation for alleging that the process of the Court was practised upon becomes materially weakened.

14. More importantly, beyond assertions, the Petitioners have not been able to point out material demonstrating that any fraudulent act was committed upon the Court, such as fabrication of service reports, impersonation, forged acknowledgements, or concealment going to jurisdiction. In section 12(2) proceedings, the burden is upon the applicant to bring forth material sufficient to prima facie demonstrate

fraud/misrepresentation or want of jurisdiction; mere dissatisfaction with an ex parte outcome, or the desire to reopen defences after remaining absent, does not satisfy the statutory standard.

15. The Petitioners argued that the suit was time-barred and also barred under Order II, rule 2, C.P.C., asserting that earlier proceedings (Suit No.150 of 2006, as referred) were instituted without seeking possession and therefore a subsequent suit seeking possession was barred.

16. As to Order II, rule 2, C.P.C., the bar is not to be applied mechanically. The rule is attracted where a plaintiff, having a cause of action, omits to sue for or intentionally relinquishes a portion of the claim arising from the same cause of action, and later institutes a second suit on that same cause of action for the omitted relief. The controlling inquiry is whether the causes of action are the same, which is ordinarily to be examined by comparing the foundational pleadings of both proceedings; the bar is against splitting the claim in respect of a cause of action, not against the cause of action in the abstract.

17. In the present proceedings under section 12(2), the Petitioners did not demonstrate, through proper and complete material, the identity of causes of action in the manner required for a conclusive finding under Order II, rule 2. Even otherwise, a plea of Order II, rule 2 is a defence on merits to be raised and determined in the suit (or in an appeal therefrom); it does not, by itself, establish that the decree is a nullity for want of jurisdiction, nor does it automatically prove that the decree was obtained by fraud practised upon the Court.

18. Likewise, the plea that the suit was time-barred is, in ordinary course, a defence which should be raised and adjudicated upon in the suit. An error (if any) on limitation, unless it demonstrates lack of inherent jurisdiction, is not ordinarily a ground to declare a decree void within the narrow contours of section 12(2), particularly when the allegation is not that the Court lacked inherent jurisdiction to entertain the suit, but that the claim ought to have failed on a defence. The architecture of section 12(2) is to address fraud/misrepresentation/want of jurisdiction, and not to provide a second chance to canvass defences that could and should have been raised in the original proceedings.

19. It is also relevant that, where a suit has been decreed ex parte, the procedural law provides a spectrum of remedies, including an application under Order IX, rule 13, C.P.C., and an appeal against the ex parte decree under section 96(2), C.P.C. (amongst others), depending on the nature of grievance. Later judicial pronouncements have referred to this "panorama" of remedies while explaining that section 12(2) is not to be used to collapse all procedural routes into one omnibus device, particularly where the grievance is essentially of non-appearance or service, and where record indicates knowledge/appearance.

20. The Petitioners also asserted that the ex parte decree was passed in a "slipshod manner" and "against law". Such a challenge essentially invites this Court to re-evaluate how the Trial Court assessed pleadings and evidence in the suit and whether the decree was rightly granted. That exercise is appellate in nature. In constitutional jurisdiction, especially against concurrent orders, and in the absence of demonstrated perversity (in the Shajar Islam sense), this Court does not substitute its own appreciation for that of the forums below.

21. As regards the contention that the Trial Court "did not consider" the grounds in the section 12(2) application, I have examined the nature of grounds as emerging from the pleadings referred and the manner in which the courts below dealt with the core allegation (service/fraud). The substance of the Petitioners' case centred on improper service and resultant ex parte decree; the courts below addressed that central axis by upholding service/knowledge and by finding absence of credible proof of fraud/misrepresentation. Even if the Petitioners would prefer a more elaborate treatment of every subsidiary argument (such as limitation and Order II, rule 2), that by itself does not establish jurisdictional error.

22. In view of the above, I find that the Petitioners have failed on both planes: (i) they have not brought the case within the limited compass of section 12(2), C.P.C.; and (ii) they have not demonstrated any jurisdictional defect or perversity warranting constitutional interference under Article 199, particularly in the face of concurrent orders.

23. For the foregoing reasons, this Constitutional Petition is **dismissed**. The impugned order dated 29-01-2018 passed by the Revisional Court, and the order dated 09-03-2017 passed by the Trial

Court, do not suffer from jurisdictional infirmity, material illegality, or perversity so as to warrant interference under Article 199 of the Constitution. Parties shall bear their own costs.

***JUDGE***

Ali.