THE HIGH COURT OF SINDH KARACHI

C.P. No. S-1243 of 2025
[Muhammad Rashid & another vs. Muhammad Moin]

Petitioner	:	Muhammad Rashid & another through M/s. Saalim Salam Ansari and Waris Ali, Advocates.
Respondent	:	Muhammad Moin through Syed Talat Abbas Shah, Advocate.

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Date of hearing	:	29.10.2026
Date of decision	:	05.11.2026

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O R D E R

Zulfiqar Ali Sangi J.– Through this constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have called into question the legality and propriety of the order dated 31.07.2025, passed by the learned XIIth Additional District Judge/Model Civil Appellate Court, Karachi-South, in Civil Revision Application No.96 of 2025, whereby the revision preferred by the petitioners against the order dated 15.05.2025, passed by the learned XIIth Senior Civil Judge, Karachi-South, in Civil Suit No.191 of 2022, dismissing their application under Section 12(2), read with Section 151, CPC, for setting aside the judgment and decree dated 24.08.2024, was dismissed and the order of the learned trial Court was maintained.

2. The relevant facts, briefly stated, are that respondent No.1 instituted Civil Suit No.191 of 2022 against the petitioners, seeking rendition of accounts and recovery of 710.090 grams and 5.230 grams of 24-karat gold, respectively, or their equivalent market value, allegedly entrusted to the petitioners in connection with a partnership business. The claim was founded upon an alleged partnership agreement dated 25.09.2019, stated to have been executed in continuation of an oral partnership arrangement commencing in 2016. The petitioners contested the suit by filing their respective written statements, denying the claim and disputing the alleged partnership arrangement and the execution of the agreement in question. After framing of issues and recording of

evidence from both sides, the learned trial Court, vide judgment and decree dated 24.08.2024, partly decreed the suit.

3. The petitioners challenged the aforesaid judgment and decree by filing Civil Appeal No.304 of 2024 under Section 96, CPC, which was dismissed vide order dated 21.11.2024, on the ground of limitation. The subsequent Second Appeal No.446 of 2024, preferred before this Court, was also dismissed vide order dated 20.12.2024, on the same ground. The petitioners thereafter approached the Honourable Supreme Court of Pakistan by filing CPLA No.328-K of 2025, stated to be withdrawn subsequently. Meanwhile, the petitioners filed an application under Section 12(2), read with Section 151, CPC, before the learned trial Court, seeking setting aside of the judgment and decree dated 24.08.2024, principally on the grounds of fraud, misrepresentation, fabrication of the partnership agreement and want of jurisdiction in view of the alleged prohibition contained in Section 69 of the Partnership Act, 1932. The said application was dismissed vide order dated 15.05.2025. Feeling aggrieved, the petitioners preferred Civil Revision Application No.96 of 2025, which too was dismissed by the learned revisional Court vide impugned order dated 31.07.2025. Hence, the instant petition.

4. Learned counsel for the petitioners contended that both the Courts below have failed to appreciate the true scope and applicability of Section 12(2), CPC, particularly in the context of the allegations of fraud, misrepresentation and want of jurisdiction. He argued that the judgment and decree dated 24.08.2024 were procured through a purported partnership agreement containing forged signatures and fabricated entries, whereas the respondent/plaintiff had failed to establish the execution and genuineness of the said document in accordance with the requirements of the Qanun-e-Shahadat Order, 1984. He further contended that the suit itself was barred under Section 69 of the Partnership Act, 1932, as the alleged partnership was unregistered and the claim for rendition of accounts had been brought without seeking dissolution of the partnership in accordance with law. According to him, the decree passed in a suit instituted in violation of a statutory prohibition is without jurisdiction and constitutes a nullity, which can be challenged at any stage through an application

under Section 12(2), CPC. He further submitted that the dismissal of the appeals on the ground of limitation does not operate as a bar to the maintainability of the application under Section 12(2), CPC, in view of the exceptions recognized by the Honourable Supreme Court in *Sahabzadi Maharunisa v. Mst. Nighat Sultan and others* (PLD 2016 SC 358). In support of his submissions, learned counsel also relied upon *Habib ur Rehman v. Abdul Karim* (2025 SCMR 1262), *TCP v. Dewan Sugar Mills* (PLD 2018 SC 828), *Happy Family Associates v. Messrs Pakistan International Trading Company* (PLD 2006 SC 226), besides other judgments referred to in the petition.

5. Conversely, learned counsel for respondent No.1 supported the concurrent orders passed by the Courts below and contended that the petitioners had fully contested the original suit by filing written statements and producing evidence, and that the allegations now being advanced had already been raised and adjudicated upon during the trial. He submitted that an application under Section 12(2), CPC, cannot be converted into a substitute for a regular appeal or a device to reopen the findings recorded in a judgment after a party has failed to avail the statutory remedy within the prescribed period of limitation. He further contended that no specific particulars of fraud allegedly practised upon the Court had been furnished, nor had the petitioners established any jurisdictional defect warranting interference with the impugned orders. He, therefore, prayed for dismissal of the petition.

6. I have heard the learned counsel for the parties and examined the material available on record with their assistance. The controversy essentially revolves around the question whether the learned Courts below committed any illegality, material irregularity or jurisdictional defect in dismissing the petitioners' application under Section 12(2), CPC, and whether the impugned revisional order warrants interference by this Court in its constitutional jurisdiction.

7. At the outset, it may be observed that Section 12(2), CPC, provides a specific remedy to a person challenging the validity of a judgment, decree or order on the grounds of fraud, misrepresentation or want of jurisdiction. The provision, however, does not confer an unrestricted right upon a litigant to reopen an

adjudication merely by attaching the labels of fraud, misrepresentation or want of jurisdiction to allegations which essentially relate to the merits of the controversy already adjudicated upon. The party invoking such jurisdiction is required to establish, through specific and material particulars, that the judgment or decree sought to be impugned was obtained by practicing fraud upon the Court, through material misrepresentation, or was passed by a Court lacking inherent jurisdiction to entertain the matter. A distinction, therefore, has to be maintained between a decree allegedly obtained by practicing fraud upon the Court and a decree which a party considers to be erroneous on account of appreciation of evidence, failure to examine a particular witness or an incorrect determination of a legal or factual controversy.

8. So far as the contention of learned counsel for the petitioners regarding the doctrine of merger and the applicability of the judgment in *Sahabzadi Maharunisa* (PLD 2016 SC 358) is concerned, there can be no cavil with the proposition that where an appeal, revision or constitutional petition is dismissed on grounds other than merits, including limitation, the exceptions to the doctrine of merger, as explained by the Honourable Supreme Court, may become applicable. In such circumstances, the forum competent to entertain an application under Section 12(2), CPC, is determined in accordance with the principles laid down therein. Thus, dismissal of the petitioners' earlier appeal and second appeal on the ground of limitation, by itself, would not necessarily render the remedy under Section 12(2), CPC, unavailable before the competent Court. However, the aforesaid principle does not dispense with the requirement that the applicant must independently satisfy the essential ingredients of Section 12(2), CPC. The determination of the competent forum to entertain such an application and the question whether the allegations contained therein actually constitute fraud, misrepresentation or want of jurisdiction are two distinct matters. The former cannot, by itself, establish the latter. Therefore, even if the application filed by the petitioners before the learned trial Court is examined on the premise that the said Court was competent to entertain it, the petitioners were still required to demonstrate that the judgment and decree

dated 24.08.2024 suffered from one or more of the defects contemplated by Section 12(2), CPC.

9. Adverting to the allegations of fraud and fabrication, the record reveals that the petitioners had appeared in the original proceedings, filed their respective written statements and contested the claim of respondent No.1. The specific controversy regarding the alleged partnership agreement, its execution and the liability arising therefrom was part of the controversy between the parties. The petitioners also disputed the agreement and the claim of the respondent during the trial. The learned trial Court, after recording evidence and considering the material produced by both sides, adjudicated upon the controversy and passed the judgment and decree dated 24.08.2024. The petitioners have not been able to demonstrate, through any convincing material, that the respondent introduced a forged document or deliberately made a false representation before the Court in circumstances which escaped adjudication and thereby procured the decree through fraud practiced upon the Court. Their principal grievance relates to the manner in which the alleged partnership agreement was proved, the number of marginal witnesses examined, the alleged contradictions in the testimony of the witnesses and the appreciation of documentary evidence. Such objections, in their essence, pertain to the evidentiary value of the material and the correctness of the findings recorded by the trial Court. These matters ordinarily fall within the domain of appellate scrutiny and cannot be reopened under Section 12(2), CPC, merely because the petitioners were unsuccessful in the original proceedings.

10. It is settled that every false assertion or an allegedly incorrect finding does not, by itself, constitute fraud within the contemplation of Section 12(2), CPC. The fraud contemplated by the said provision must be such as to affect the judicial process and must be specifically pleaded with sufficient particulars. In the instant matter, the petitioners have not been able to identify any particular deliberate misrepresentation, concealment or fraudulent act practiced upon the Court, independent of the controversy already raised and contested in the original suit. The mere allegation that the respondent failed to prove the partnership agreement in the manner required by law, or that the trial Court placed reliance upon

insufficient evidence, does not automatically render the decree one obtained through fraud or misrepresentation.

11. The contention regarding violation of Articles 59, 61, 79 and 84 of the Qanun-e-Shahadat Order, 1984, and the alleged failure of the respondent to prove the partnership agreement through the requisite witnesses, likewise concerns the admissibility, proof and evidentiary appreciation of the document. Whether the agreement was duly executed, whether its attestation was proved in accordance with law, and whether the evidence led by the respondent was sufficient to establish the claim were matters falling within the adjudicatory domain of the trial Court. The petitioners had the opportunity to contest these matters during the proceedings. Any alleged error in the appreciation of such evidence could appropriately have been agitated through the statutory appellate remedy. Section 12(2), CPC, cannot be employed to secure a fresh appraisal of evidence or to obtain a retrial under the guise of fraud.

12. The next and more substantial contention raised by learned counsel for the petitioners relates to Section 69 of the Partnership Act, 1932. It is argued that the alleged partnership was unregistered and that the suit for rendition of accounts was instituted without seeking dissolution of the partnership; therefore, the suit was barred by law and the decree passed therein was without jurisdiction. Reliance has been placed upon *Ch. Nazir Ahmed v. Ali Ahmed and another* (PLD 2016 SC 214). There is no dispute with the general proposition that the statutory restrictions contained in Section 69 of the Partnership Act, 1932, have to be given effect in accordance with their true scope and that a suit falling within the prohibition contained therein cannot be maintained merely by describing the relief in a different manner. The Honourable Supreme Court, in *Ch. Nazir Ahmed* (supra), has explained the legal position concerning a suit for rendition of accounts between partners and the applicability of the statutory exceptions. Nevertheless, the applicability of the said provision to the present controversy requires examination of the nature of the alleged partnership, the legal character of the claim, the status of the firm, the relief actually sought and the circumstances in which the suit was instituted. The mere assertion that the partnership was unregistered does not, without examination of the relevant statutory ingredients,

automatically establish that the Court lacked inherent jurisdiction. In particular, the question whether the suit was barred under Section 69, Partnership Act, 1932, and whether the decree is consequently liable to be treated as a nullity, cannot be determined solely on the basis of the petitioners' assertions in the proceedings under Section 12(2), CPC, without establishing the necessary factual and legal foundation.

13. It is also significant that the petitioners had participated in the original proceedings and the question of the maintainability of the suit was among the issues framed by the learned trial Court. The petitioners had the opportunity to raise and substantiate their objections concerning the alleged partnership, its registration and the maintainability of the claim. The learned trial Court thereafter adjudicated upon the suit and passed its judgment and decree. The petitioners, having failed to secure appellate examination of the decree on merits owing to dismissal of their appeal on limitation, cannot, merely on that account, convert every alleged error in the determination of the original suit into a jurisdictional defect within the meaning of Section 12(2), CPC. It is clarified that a genuine objection concerning inherent lack of jurisdiction is not rendered non-existent merely because a party participated in the proceedings. However, the party invoking Section 12(2), CPC, must establish that the defect alleged is one of inherent jurisdiction and not merely an error committed by the Court while deciding a matter falling within its jurisdiction. In the present case, the petitioners have not established such a patent jurisdictional defect warranting the setting aside of the decree through the summary invocation of Section 12(2), CPC.

14. The argument that the learned trial Court was bound to order an independent inquiry into the allegations of fraud or frame additional issues also does not advance the petitioners' case. An inquiry under Section 12(2), CPC, is not an automatic consequence of every allegation of fraud. The Court is first required to examine whether the application contains specific and material particulars disclosing a prima facie case falling within the statutory grounds. Where the allegations are merely a reiteration of the pleas already raised during the original proceedings, or relate to the appreciation of evidence and the correctness of the decree, the Court is not

obliged to embark upon a fresh trial or conduct an inquiry into matters which do not constitute fraud or misrepresentation within the meaning of the provision.

15. The plea concerning the alleged negligence of the previous counsel, resulting in the dismissal of the appeal on the ground of limitation, also does not establish that the decree was obtained by practicing fraud upon the Court. The petitioners' grievance against their former counsel, including the complaint allegedly lodged before the concerned Bar Council, may give rise to such remedies as are available to them under the relevant law; however, the alleged professional negligence of their counsel, by itself, does not render the judgment and decree dated 24.08.2024 a product of fraud or misrepresentation attributable to respondent No.1. Nor does it confer an automatic right to reopen concluded proceedings under Section 12(2), CPC.

16. The learned revisional Court, while examining the order dated 15.05.2025, considered the material available on record, the nature of the objections raised by the petitioners and the legal principles governing the invocation of Section 12(2), CPC. It also examined the effect of the petitioners having contested the original proceedings and thereafter pursued the appellate remedies. Although the reasoning concerning the doctrine of election of remedies cannot be treated as an absolute bar against every application under Section 12(2), CPC, irrespective of the nature of the allegations, the ultimate conclusion of the revisional Court calls for examination in the context of the actual grounds advanced by the petitioners. For the reasons discussed hereinabove, the petitioners have failed to demonstrate that the allegations raised by them constitute an independent case of fraud, misrepresentation or inherent want of jurisdiction warranting interference with the original decree under Section 12(2), CPC.

17. The judgments relied upon by learned counsel for the petitioners, including *Habib ur Rehman v. Abdul Karim* (2025 SCMR 1262), *TCP v. Dewan Sugar Mills* (PLD 2018 SC 828) and *Happy Family Associates v. Messrs Pakistan International Trading Company* (PLD 2006 SC 226), have been considered in the light of the propositions advanced. There can be no disagreement with the

settled principles that fraud vitiates judicial proceedings, that a decree passed without inherent jurisdiction cannot be sustained in law, and that an application under Section 12(2), CPC, is not a substitute for an ordinary appeal. However, the applicability of these principles depends upon the facts and circumstances of each case. The petitioners have not been able to establish the factual foundation necessary to attract the protection of the first two principles, whereas the prohibition against using Section 12(2), CPC, as a substitute for an appellate remedy squarely requires consideration in the circumstances of the present case.

18. It is equally settled that the constitutional jurisdiction of this Court is not intended to provide another forum for reappraisal of evidence or to substitute the opinion of the constitutional Court for that of the Courts below merely because another view may be possible. Interference is warranted where the impugned order suffers from patent illegality, material irregularity, perversity or an assumption or refusal to exercise jurisdiction contrary to law. In the present matter, no such defect has been demonstrated. The petitioners have essentially attempted to reopen the findings recorded in the original judgment and decree through an application under Section 12(2), CPC, without establishing the requisite statutory grounds.

19. In view of the foregoing discussion, I am of the considered opinion that the petitioners have failed to point out any illegality, material irregularity or jurisdictional defect in the impugned order dated 31.07.2025, warranting interference by this Court in its constitutional jurisdiction. Consequently, the instant constitutional petition, being devoid of merit, is hereby **dismissed**, and the impugned order dated 31.07.2025, passed by the learned XIIth Additional District Judge/Model Civil Appellate Court, Karachi-South, as well as the order dated 15.05.2025, passed by the learned XIIth Senior Civil Judge, Karachi-South, are maintained.

JUDGE