

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Muhammad Ali Mazhar and
Yousuf Ali Sayeed, JJ

Constitutional Petition No. D-6736 of 2018

Petitioner : Francis S. Paul, through Jawaid Iqbal, Advocate.

Respondent No.1 : Nemo.

Respondent No.2 : The Manager, United Bank Limited (UBL) Azam Town Branch, Karachi, through Aijaz Ali Shirazi, Advocate.

Date of hearing : 06.10.2020

ORDER

YOUSUF ALI SAYEED, J - The main protagonists to the matter are the Petitioner and Respondent No.1, who are apparently step-brothers, with the genesis of the dispute apparently lying in Civil Suit No.371/2013 filed by the Respondent No.1 against the Petitioner and Respondent No.2 before the learned Xth Senior Civil Judge South (the “**Suit**”), essentially seeking the cancellation of two cheques in the sum of Rs.300,000/- and Rs.200,000/- respectively, which were said to have been stolen in blank by the Petitioner and forged accordingly.

2. The Suit culminated in an *ex parte* Judgment being entered against the defendants on 24.01.2014 and a decree being drawn up accordingly on 27.01.2014, whereafter an Application under S.12(2) CPC was filed by the Petitioner before the trial Court, but was dismissed on 05.05.2016, and Civil Revision Application No.140/2016 then preferred to the learned XIIth Additional District Judge, Karachi, South, also meeting the same fate vide an Order dated 07.08.2018.

3. It is those Orders, as made on 05.05.2016 by the trial Court and on 07.08.2018 by the revisional Court (the “**Impugned Orders**”) that have been assailed through this Petition under Article 199 of the Constitution, with the relevant excerpts therefrom reading as follows:

The trial Court’s Order of 05.05.2016

“I have also gone through the record in respect of service of process upon the Defendant. It appears that court has issued summons upon the Defendant by means of registered (AD) courier express service and through Bailiff. It is the report of the Bailiff that wife of Defendant after taking summons of suit but thereafter, did not accept the summon. It will be relevant to mention that Defendant has not denied about the place of his residential address in Karachi where summon were sent. Besides, notice was published against Defendant in daily Express, Karachi dated 22.08.2013. Then there is statement of Bailiff on oath that the wife of Defendant once received the summon and thereafter, did not accept the same. Apart from above, the notice was also pasted at the outer door of the Defendant in presence of two witnesses by the bailiff.

All above mentioned modes of service appears to be effected and no one can say that proceedings of suit was not in the knowledge of Defendant. The version of Defendant for setting aside exparte judgment and decree is far from satisfactory. This version has not convinced me to set aside the exparte judgment and decree. I, therefore, dismiss the application in hand.”

The revisional Court's Order of 07.08.2018

“8. I have examined the application filed by the Applicant under section 12 (2) R/w 151 CPC before learned trial court and found nowhere the Applicant has alleged that address of Applicant given in title of the suit is wrong and the Applicant is not residing on the address given in the title of the suit. Record shows that summons through bailiff, Reg. A/D and TCS were issued to the Applicant. The bailiff reported summon to have been received by the wife of Applicant and in this regard statement of bailiff was recorded on oath. The receiving of summons of main suit by the wife of Applicant is nowhere denied by the Applicant in his application under section 12 (2) R/w 151 CPC. Record further shows that despite this, summon of main suit was pasted on the outer door of the residence of Applicant in presence of two witnesses. The substitute service through publication in newspaper daily Express dated 22.08.2013 was also complied by the Respondent which is on record. All modes serving the Applicant were fulfilled.

9. Apparently no case of fraud and misrepresentation is made out. I don't find any substance in the instant revision to interfere in the impugned order passed by the learned trial court, resultantly the instant revision is dismissed with no order as to cost.”

4. Learned counsel for the Petitioner sought to argue that the judgment and decree had been obtained through fraud and misrepresentation, with it being contended that the Petitioner had never received any notice of the Suit, however, he was unable to identify any act or omission on the part of the Respondent No.1 that could be regarded as being egregious in that respect or point out any infirmity or illegality underpinning the Impugned Orders. Indeed, when the Impugned Orders are examined, it appears that the given address of the Petitioner for purposes of the Suit was the very address that the Petitioner has himself stated in the title of the Petition as being his place of residence, with all modes of service having been adopted accordingly, and, as observed by the Courts below, it has not even been

alleged in the Application under S.12(2) CPC that the address of the Petitioner given in title of the Suit was incorrect or that the Applicant was not residing there at that given point in time or even that the summon were not initially received by his wife, as reflected in the bailiff's report and apparently reiterated through his statement recorded on oath.

5. Furthermore, as per the counter-affidavit submitted in response to the Petition by the Respondent No.2, the bank account on which the two cheques were purportedly drawn stands closed since as far back as the year 2009 and neither of the cheques had been presented till then.
6. As such, it is apparent that under the given circumstances the Petitioner has failed to demonstrate any error or infirmity afflicting the Impugned Orders, and no case warranting interference by this Court in exercise of its writ jurisdiction stands made out. The Petition, being abjectly devoid of merit, stands dismissed accordingly along with the pending miscellaneous application.

JUDGE

JUDGE

Karachi
Dated _____