

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP D-313 of 2019

Order with signature of Judge

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Faisal Farooq Channa

vs.

Muhammad Rehan Saadi & Others

1. For hearing of CMA 1827 of 2019
2. For hearing of main case

04.12.2019

Mr. M. Danish Raza, Advocate for the petitioner.
Mr. S. Yousuf Advocate for respondents 1 to 3.

Muhammad Ali Mazhar J.- Case of the petitioner is that respondents 1 to 3 filed Suit 485 of 2013 against the petitioner for malicious prosecution and damages in the Court of VIIIth Senior Civil Judge, Karachi South and the said Suit was determined vide judgment dated 5th August, 2015. The judgment reflects that the respondent/petitioner filed a written statement and thereafter the learned trial Court framed five issues out of the pleadings. The plaintiff/respondents 1 to 3 filed affidavits in evidence and also affidavit in evidence of his witnesses and examined themselves. They also produced some documents but the learned counsel for the defendant/petitioner failed to cross-examine the plaintiffs and his witnesses, therefore, side of the defendant/petitioner was closed. When the side for adducing the evidence of the defendant/petitioner was opened, the learned trial Court observed in the judgment that the defendant/petitioner also failed to adduce any evidence,

therefore, his side was closed on 19.03.2015. After hearing the arguments the Suit was decreed as prayed. It is an admitted position by the counsel for the petitioner that no appeal was filed against the judgment and decree, therefore, Execution Application 4 of 2017 was filed by the respondents Nos.1 to 3 / plaintiffs and the petitioner/defendant moved an application under Section 12(2) CPC therein in which the grounds were raised that the judgment was obtained by fraud and misrepresentation as the counsel for the defendant/petitioner told him that the Suit has been disposed of as withdrawn. Next ground was urged that the petitioner has already filed complaint in Karachi Bar Association and Disciplinary Committee of Sindh Bar Council against his advocate, therefore, he prayed in the 12(2) CPC application that the execution notice served on the defendant/petitioner is not maintainable and the application may be allowed by setting aside the impugned judgment and decree. The 12(2) CPC application was dismissed vide order dated 02.07.2018, which was challenged in Civil Revision Application 69 of 2018, but vide judgment dated 22nd December, 2018 the learned Revisional Court observed that no illegality on the face of the record was committed by the trial Court and he dismissed the revision application.

Under Section 12(2) CPC any person may challenge the validity of a judgment, decree or order on the plea of fraud and misrepresentation or want of jurisdiction. In that situation, he may seek his remedy by making an application to the Court which passed

the final judgment, decree and order and not by a separate suit. In the instant case we failed to understand as to what fraud and/or misrepresentation has been committed while passing the judgment and the matter is also not hit by want of jurisdiction. The trial Court before passing the judgment applied the entire procedure, issued notices to the defendant/petitioner and they filed their written statements. Issues were also framed and ample opportunity to lead the evidence and cross examining the plaintiffs' witness was afforded to the petitioner/defendant but he failed to do so. This is not the ingredient of Section 12(2) CPC that in case any wrong information is given by the counsel the applicant may allege some fraud or misrepresentation against the plaintiff and seek to set aside the judgment. The petitioner himself, in 12(2) CPC application, admitted that some complaints have been made against his advocate to Karachi Bar Association and Sindh Bar Council which purely is a matter between the advocate and his client and the appropriate remedy is filing of complaint against the advocate which has been done in this case by the petitioner/defendant. We do not find any illegality in the revision order as even in this petition the learned counsel for the petitioner failed to demonstrate any fraud or misrepresentation or any want of jurisdiction in the impugned judgment.

At this juncture, learned counsel for the petitioner submits that he may be allowed to file appeal against the impugned judgment, which has become time barred. We cannot give any such directions,

however, if the petitioner wants to file any appeal he may do so and the question of condonation, if any, shall be decided by the appellate Court.

The petition is dismissed in the above terms.

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