

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-1793 of 2022

Date	Order with signature of Judge
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FRESH CASE.

1. For orders on Misc. No.8131/2022.
2. For orders on Misc. No.8132/2022.
3. For orders on Misc. No.8133/2022.
4. For hearing of main case.

22.03.2022.

Mr. Zahid Farooque, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J: The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order made on 10.03.2022 by the learned VIIth Additional District & Sessions Judge (MCAC), Karachi, South, dismissing Civil Revision Application No.79/2021 filed by the Petitioner against the Order of the learned VIIIth Senior Civil Judge, Karachi, South, dated 24.09.2021, whereby the Petitioner's Application under Section 12 (2) CPC in Execution No.01/2018 emanating from Civil Suit No.636/2017 was dismissed.

Learned counsel for the Petitioner sought to argue that the Petitioner had never been properly served and that the requisites of the Code of Civil Procedure had not been properly followed in the matter. However, it transpires from a perusal of the Application filed by the Petitioner under Section 12 (2) CPC that such a plea had never been taken at first instance in either the Application or the Affidavit filed in support thereof, with it merely being suggested in vague terms in Paragraph-03 of the Affidavit that it was the Defendant No.2 who was in the tenant of the Plaintiff (i.e. Respondent No.1) and the Petitioner, had only signed the Tenancy Agreement for a period of 11 months.

The Application came to be dismissed with it being observed by the Executing Court that no grounds have been mentioned to show that the Respondent No.1 had obtained the judgment and decree by way of fraud and misrepresentation.

It was then that the Petitioner shifted the focus of its case through Revision Application to the aspect of service, alleging that collusive reports had been submitted by the Bailiff in connivance with the Plaintiff/Respondent. Despite it being noted that such a plea had not been raised earlier and that Application under Section 12 (2) CPC had been bereft of any details to support a plea of fraud and misrepresentation, the matter was nonetheless examined by the Revisional Court in detail along with the case law cited on behalf of the Petitioner, with it inter alia being observed that:-

“7. These contentions of the applicant are without force for the reasons that the after admission of the suit; the learned Trial Court issued summons at the address of the applicant. The applicant has also not urged that the respondent No.1/plaintiff had given wrong or incorrect or incomplete address of the applicant/defendant to avoid the service upon him. The address of the applicant which is given in the title of the plaint is proved to be correct. The bailiff report dated 03.07.2017 shows that the servant of the applicant refused to receive the summons on the pretext that the applicant was not available at that time. The summons was also sent through registered post A/D. The summons were ordered to be pasted at house of applicant and the bailiff report dated 26.07.2017 shows that the bailiff pasted the summons at the address of the applicant in presence of witnesses as well as in presence of the servant of applicant; who also put his signature on the copy of summon. The learned Trial Court recorded the statement of bailiff on Oath and ordered for publication in daily Express Karachi and Islamabad. The copy of the publication in Daily Express Karachi dated 23.08.2017 is available on record. It is apparent from the record that the learned Trial Court had adopted all possible modes as provided under Order V CPC to effect service of summons upon the applicant. The applicant as discussed above has not disputed his address mentioned in the plaint. The respondent No.1/plaintiff had provided the complete address of the applicant. It is also pertinent to note here that it is the same address on which the applicant was previously served in Rent Case No.50/2016 before the learned Additional Controller of Rents Clifton Cantonment Karachi and filed the written statement.”

On query posed as to how a case under Section 12 (2) CPC stood made out as per the averments contained in the underlying Application presented under that Section and how it had come to pass that the entire case now sought to be advanced had not been voiced at first instance, learned counsel for the Petitioner was at loss to offer any plausible explanation and fell-back on the plea that the Petitioner had not been represented by him before the trial Court. Needless to say, such a statement is hardly sufficient to explain such a glaring omission, which is fundamental to the fate of the Application.

Under the given circumstances, we see no perversity or illegality afflicting the Orders of the fora below, hence no case for interference stands made out.

As such, while granting the application for urgency, we dismiss the Petition *in limine* along with other pending miscellaneous applications.

JUDGE

CHIEF JUSTICE

MUBASHIR