

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P No. D-4995 of 2022

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

Fresh case

1. For order on CMA No.21619/2022
2. For order on office objection No.1.
3. For order on CMA No.21293/2022
4. For order on CMA No.21294/2022
5. For hearing of Main Case.

02.09.2022

Mr. Haji Akbar, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J. The Petitioner was apparently the defendant in Civil Suit No.1799 of 2020 filed by the Respondent No.1 before VIth Senior Civil Judge West Karachi, which came to be decreed as prayed through an *ex-parte* Judgment rendered on 29.07.2021, with the decree accordingly been drawn up, *inter alia* for the handing over of possession of the suit property. A Writ of Possession was then issued on 02.02.2022 in the ensuing Execution Application No. 08 of 2021, after which the Petitioner filed an Application under Section 12 (2) CPC, seeking that the Judgment and Decree be set-aside. That application came to be dismissed vide an Order on 15.12.2021, the relevant excerpt of which reads as follows:-

On 13-10-2020, plaintiff has filed this suit for recovery of possession and mesne profit. In the contents of plaint, it was mentioned that on the advice of the Hon'ble IV-Addl. Sessions Judge, Karachi West, plaintiff has approached to this Court. Plaintiff is owner of the suit property on the basis of transfer order and provisional letter executed by the competent authority. During the enquiry of criminal complaint it was come on record that defendant was occupying the suit property on the basis of a sale agreement. Hence, plaintiff has

filed this suit for recovery of possession and mesne profit. After admission, notices were issued to defendant through bailiff, registered post and courier service. In ordinary way, notices were issued to defendant through bailiff on 24.12.2021 bailiff reported that one sister in law of the J.D refused to receive the notice. Thereafter on 01.02.2021 notices were pasted at the outer door of the house of Judgment debtor in presence of the two witnesses. Thereafter notice was published in daily Express dated 08-03-2021 against the J.D.

The Petitioner then preferred Civil Revision No.03 of 2021 before the Vth Additional District & Sessions Judge Karachi (West), which too came to be dismissed in terms of an Order dated 23.08.2022, with it being held that the fora below had made a proper and lawful order which did not warrant any interference.

We have examined the underlying Application filed under Section 12 (2) CPC, and observed that it merely contains a vague and bare allegation of fraud and misrepresentation while questioning the mode of service so as to state that the Petitioner was not properly served, hence had no knowledge of the suit. However, no particulars whatsoever have been set out as to the act or statement perpetrated or made by the Respondent No.1/Plaintiff so as to prompt the *ex-parte* proceeding. In the absence of valid grounds constituting fraud or misrepresentation, the mere assertion as to a defect in service at best constitutes cause for an Application under Order 9 Rule 13, but does not suffice for purpose of Section 12 (2) CPC. In the absence of any foundation to support the assertion of fraud and misrepresentation, the Orders of the fora below appear unexceptionable and no interference is warranted in exercise of the Constitutional jurisdiction of this Court. That being so, while granting the application for urgency we hereby dismiss the Petition *in limine* along with the other pending miscellaneous applications.

JUDGE

CHIEF JUSTICE