

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

C. P. No. D-2433 of 2018

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Petitioner : M/s. Nimra Builders through
Rizwan Saeed and Moiz Ahmed,
Advocates.

Respondent No.1 : Shaikh Talha Hussain through
Ms. Azhar Iqbal, Advocate.

Respondent No.2 : Nemo.

Respondent No.3 : Nemo.

Intervener : Mrs. Amina Imran through
Masood Anwar Ausaf, Advocate.

Date of hearing : 16.08.2022.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order dated 28.02.2018 made by the learned IVth Additional District & Sessions Judge, Central at Karachi, dismissing Civil Revision Application No.07/2017 filed by the Petitioner against the Order of the learned VIth Senior Civil Judge, Karachi, Central, dated 24.09.2016, whereby its Application under Section 12 (2) CPC in Execution No.15/2017 emanating from Civil Suit No.96/2013 was dismissed.

2. A perusal of the record reflects that the case advanced by the Petitioner through the underlying Application under Section 12 (2) CPC was that it had never been served with a summons and had no notice of the Suit, hence the *ex parte* judgment and decree had wrongly ensued.

3. Neither the Application under Section 12 (2) CPC nor affidavit filed in support thereof provide any insight as to what defect in service formed the basis of such a plea. However, during the arguments it came to the fore that it was predicated on the assertion that the Petitioner had shifted its office from the address mentioned in the Plaint, being Flat No.A-14, Nadir Shah Apartment, Hyderi Market, Block-G, North Nazimabad, Karachi, to that mentioned in the title of the Order of the Revisional Court, being Sector 3, North Karachi, Nai Abadi, Karachi. Additionally, as per the Petitioner, it had purportedly cancelled the booking of the Respondent No.1, and then sold the suit property to a third party, namely the Intervener in this Petition.

4. When those aspects are examined, it transpires that the address mentioned in the title of the Plaint is the same as that reflected in the Application Form through which the suit property is said to have been booked by the Respondent No.1, and when called upon to show whether any correspondence had been addressed by the Petitioner to said Respondent in order to notify him of a change, learned counsel for the Petitioner was found wanting and conceded that no such intimation had been given. Furthermore, when the plea of the Petitioner as to cancellation of the Respondent No.1's booking is

considered, it transpires that the notices dated 10.09.2012 and 03.12.2012 said to have been issued by the Petitioner to the Respondent in that regard also bear the very address given in the title of the Plaint, and for his part, the Respondent No.1 has denied that any such notices were ever received. Moreover, it was pointed out by learned counsel for the Respondent No.1 that the Petitioner had itself specified the same address as given in the title of the Plaint in the Revision Application, and when confronted with this aspect learned counsel for the Petitioner conceded that this was so but was at loss to explain as to how a different address had then come to be reflected in the Revisional Order.

5. Having considered the matter, we are of the view that the Petitioner's plea of a change in address is entirely fallacious and we do not find any perversity or illegality in the Orders of the fora below warranting interference in exercise of Constitutional Jurisdiction of this Court. So far as the case of the Intervener, admittedly her Application under Section 12 (2) CPC remains pending before the concerned forum and she is at liberty to pursue the same for its decision in accordance with law. The instant Petition stands dismissed in such terms, along with the pending miscellaneous applications.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: