ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-7325 of 2019

Date	Order with signature of Judge

DIRECTION.
1. For orders on CMA No.8101/2022
2. For orders as to maintainability of Petition.

08.09.2022.

Mr. Fakir Ghazi Darban Hisbani, Advocate for the Petitioner.
Mr. Sandeep Malani, Assistant Advocate General, Sindh.

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, assailing the Order dated 10.10.2019 made by the learned IXth Additional District & Sessions Judge (MCAC), Karachi, East, dismissing Civil Revision Application No.29/2019 that had been filed against the Order dated 02.02.2019 passed by the learned Vth Senior Civil Judge, Karachi, East, in Execution No.09/2016 emanating from Civil Suit No.1329/2009, whereby the Petitioner's Application under Section 12 (2) CPC for setting aside the Judgment and Decree dated 25.04.2013 was dismissed.

A perusal of the impugned orders reflects that prior to filing the underlying Application under Section 12 (2) CPC, the Petitioner had already availed a remedy by way of a Civil Appeal, which was dismissed, without any Second Appeal or Revision having then been filed in that regard. Furthermore, that fact had been suppressed at the time of filing the underlying Application. As such, in view of the Doctrine of Election as well as due to concealment of that fact, the underlying Application was dismissed and the Revisional Order followed in the same vein. On

query posed, learned counsel for the Petitioner did not controvert that the appellate remedy had earlier been pursued.

Having considered the matter, we find no illegality or infirmity in the orders of the fora below as it is well settled that a litigant is to choose a particular remedy from the options available to him and once such election is made, cannot then be allowed to change course. Indeed, in the case of Trading Corporation of Pakistan vs. Devan Sugar Mills Limited (PLD 2018 SC. 828), it was inter alia observed on that note that:-

> *"8. Heard the counsel and perused the record. We have examined the contents of the application under section 12(2) C.P.C. which was filed on 7.12.2011, heard and decided by the executing Court on 7.8.2012 and maintained by High Court on 9.8.2016 and the one filed under section 47 C.P.C. on 14.10.2016. We have noted that facts and ground in both set of the proceedings are substantially same. The moment suitor intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst host of actions or remedies available under the law. The choice to initiate and pursue one out of host of available concurrent or co-existent proceeding/ actions or remedy from a forum of competent jurisdiction vest with the suitor. Once choice is exercised and election is made then a suitor is prohibited from launching another proceeding to seek a relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/action and or remedy, which in legal parlance is recognized as doctrine of election, which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2) C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of res-judicata as articulated in section 11, C.P.C. and its explanations. Doctrine of election apply both to the original proceedings/action as well to defences and so also to challenge the outcome on culmination of such original proceedings/ action, in the form of order or judgment/decree (for illustration it may be noted that multiple remedies are available against possible outcome in the form of an order/judgement/decree etc. emanating from proceedings*

of civil nature, which could be challenged/defended under Order IX, rule 13 (if proceedings are ex-parte), section 47 (objection to execution), section 114 (by way of review of an order), section 115 (revision), under Order XXI, rules 99 to 103 C.P.C. and section 96 C.P.C. (appeal against the order/judgment) etc. Though there is no bar to concurrently invoke more than one remedy at the same time against an ex-parte order/judgment. However, once election or choice from amongst two or more available remedy is made and exhausted, judgment debtor cannot ordinarily be permitted subsequently to venture into other concurrently or coexisting available remedies. In a situation where an application under Order IX, rule 13, C.P.C. and also an application under section 12(2), C.P.C. seeking setting aside of an ex-parte judgment before the same Court and so also an appeal is filed against an ex-parte judgment before higher forum, all aimed at seeking substantially similar if not identical relief of annulment or setting aside of ex-parte order/judgment. Court generally gives such suitor choice to elect one of the many remedies concurrently invoked against one and same ex-parte order/judgment, as multiple and simultaneous proceedings may be hit by principle of res-subjudice (section 10, C.P.C.) and or where one of the proceeding is taken to its logical conclusion then other pending proceeding for the similar relief may be hit by principles of res-judicata. Giving choice to elect remedy from amongst several coexistent and or concurrent remedies does not frustrate or deny right of a person to choose any remedy, which best suits under the given circumstances but to prevent recourse to multiple or successive redressal of a singular wrong or impugned action before the competent forum/court of original and or appellate jurisdiction, such rule of prudence has been evolved by courts of law to curb multiplicity of proceedings. As long as a party does not avail of the remedy before a Court of competent jurisdiction all such remedies remain open to be invoked. Once the election is made then the party generally, cannot be allowed to hop over and shop for one after another coexistent remedies."

In view of the foregoing, the instant Petition stands dismissed, along with the pending miscellaneous application.

JUDGE

CHIEF JUSTICE

MUBASHIR