

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

C.P No. D-5991 of 2022

Dated Order with signature of Judge.

Fresh case

1. For order on CMA No. 26589/2022
2. For order on CMA No. 25432/2022
3. For order on CMA No. 25433/2022
4. For hearing of Main Case

21.10.2022.

Mr. M. Arshad Tariq, 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 dated 02.08.2022 made by learned VIIth Additional District Judge, Karachi (East) / Model Civil Appellate Court, dismissing Civil Revision No.7 of 2022 filed by the Petitioner against the earlier dismissal of his Application under Section 12 (2) CPC in Civil Execution No.1 of 2021 emanating from Civil Suit No.2357 of 2019 before Court of Vth Senior Civil Judge, Karachi (East), vide Order dated 12.09.2021.

The backdrop to the matter is that the aforementioned Suit had apparently proceeded and been decreed *ex-parte* against the Petitioner, with the Application under Section 12 (2) CPC having then been filed on the ground that the Petitioner had not been served. That argument was repelled by the fora below, with the relevant excerpt from the Order of the Revisional Court reading as follows:-

“7. I have given due consideration to arguments advanced by learned counsel for the both side and perused the material of the case, which reveals that applicant/defendant was summoned by learned trial Court through ordinary modes which was personally served upon him on address mentioned in title of the suit as apparent from bailiff report. As per bailiff report the summon was duly served upon applicant/defendant on dated 30.01.2020, which further reflects that the summon applicant/defendant put his signature as well as CNIC number thereon. Despite of personal service upon applicant/defendant through bailiff, the learned trial Court adopted the all modes of service including the substituted mode of service by way of publication and then matter was adjourned for filing written statement on several dated of hearing 28.02.2020 till 13.10.2020 but the applicant/defendant has chosen to remain absent. Ultimately the learned trial Court debarred applicant/defendant from filing written statement vide order dated 17.10.2020 and adjourned the matter for filing ex-parte proof. Ultimately, the learned trial Court passed the ex-parte Judgment and decree as prayed by respondent/plaintiff. After filing of execution application, the summons were again issued to applicant/defendant on same address. In personas of the applicant/defendant has put his appearance and contested the matter by filing application U/s 12 (2) C.P.C. In view of above discussion, it cannot be said that the applicant/defendant was not served. However, the bailiff report available on record clearly / reflects that the respondent/plaintiff was duly served on 30.01.2020 in terms of rule 16 of the order V CPC. According to this rule where process server serves the summon on applicant/defendant personally or to an agent or other person on behalf of the applicant/defendant, he shall require the signature of the person on behalf of the applicant/defendant, he shall require the signature of the person to whom the copy is so tendered by way of acknowledgment on service endorse of the original summon. In present case, the acknowledgment of service is duly endorsing on its original summon, which bear the signature as well as his CNIC number. Under these circumstances, the date of the knowledge in the instant case would be presumed from the date of 30.01.2020, when applicant/defendant was personally served through bailiff on same address during proceeding of the suit.

On query posed as to what scope remained under S. 12(2) in the wake of the finding of personal service, learned counsel sought to argue that the signature appearing on the relevant bailiff's report had been manipulated and forged. However, as it transpires, a perusal of the underlying Application reflects it to be bereft of any pleading in that regard and the Revision Application is similarly silent on the aspect.

Under the given circumstances, where the Orders of the Courts below speak for themselves and appear to be properly reasoned, no case for interference stands made out. That being so, while granting the application for urgency, we hereby dismiss the Petition in *limine* along with the other miscellaneous applications.

JUDGE

CHIEF JUSTICE

TariqAli/PA