

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-5704 of 2020

Amjadullah Khan
Versus
Syed Muhammad Iqbal and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

Priority

1. For hearing of CMA No.24344/2020.
2. For hearing of main case.

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Dated 08.11.2023

Mr. Muhammad Zahid, Advocate for the Petitioner.
Mr. Abdul Jaleel Zubedi, Assistant Advocate General.

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We have heard learned counsel for the petitioner as well as learned A.A.G and perused the material available on record.

An exparte judgment and decree in a suit for Administration, where an amount of Rs.4,299,000/- was adjudged to be recovered by the respondent/ plaintiff, was challenged in terms of Section 12(2) CPC. It is claimed that it was obtained by fraud and misrepresentation and that no summons were ever served as the respondent was not the resident of the premises which was shown in the title of the suit. When an application under Section 12(2) CPC was filed, it was made conditional to be heard subject to deposit of decretal amount. The order was challenged in Revisional court which maintained it, though the directions were given to the trial court to decide the application under Section 12(2) CPC, however, the burden of depositing the amount, before the application could be heard, remained intact.

It is not the mandate of Section 12(2) CPC that before such an application could be heard, the requisite amount ought to have been deposited. The Judge hearing application could have dismissed or

allowed it, as the law permits but it cannot within frame of Section 12(2) CPC be subjected to deposit of amount first. Had there been any fraud committed by any of the litigants, the court by taking such cognizance could have passed appropriate order, but before such application could be heard and the question of fraud and misrepresentation yet to be determined and unearthed, this condition amounts to burden the objector to be discharged when law does not require. Thus, we are of the view that the trial court as well as the revisional court exceed in their jurisdiction when the petitioner was asked to deposit the decretal amount first before application could be heard. This is neither a suit under summary chapter nor a case where the law requires that the outstanding amount should be secured first.

In view of the above, the petition is allowed only to the extent that until the application under Section 12(2) CPC, which is pending, is heard and decided, the petitioner may not be asked to deposit the decretal amount first, which view could ultimately be formed, once the application under Section 12(2) CPC is heard and decided.

The instant petition stands disposed of in the above terms along with pending application(s).

JUDGE

JUDGE

Ayaz Gul