

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D – 7458 of 2022

Date	Order .with signature of Judge
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Priority

- 1.For hearing of Misc. No.31559/22
- 2.For hearing of main case

20.11.2023

Mr. Ghulam Rasool Korai, Advocate for Petitioners
Mr. Muhammad Ramzan Tabassum, Advocate for Respondents

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The controversy raised by the Petitioners in this Petition arising out of litigation commenced by way of a Suit for Administration. The Judgment passed in the suit for Administration bearing No.1289/2021 dated 04.02.2022 disclosed in Para 3 that after several attempts to affect service upon the Petitioners/ Defendants, the service was held good on 11.11.2021 and 20.12.2021 respectively and even then sufficient time was provided to the Petitioners to contest the proceedings and consequently they were debarred from filing Written Statement on 03.02.2022 though the proceedings were watched. It appears that perhaps an undertaking was given to file reply but such undertaking alone would not count since extended time was availed and despite availing several chances by the Petitioners to contest the suit, no response was made hence ex-parte judgment was passed. Consequently, an application under Section 12(2) C.P.C. was filed and issues were framed as under :-

1. Whether the judgment dated 04.02.2022 and decree dated 07.02.2022 was obtained by way of misrepresentation and fraud?
2. What should the order be?

The parties led evidence and consequently the application under Section 12(2) C.P.C. was dismissed on merits on the basis of evidence adduced by the parties. Aggrieved of it, the Petitioners

filed a Revision Application which remedy was available to them; however, such Revision met the same fate. Consequently, considering this petition as an available remedy, the Petitioners have filed this Petition.

We have inquired that since the Petitioners have challenged the Judgment by way of an application under Section 12(2) C.P.C. and then through Revision, how this petition as a remedy is available on questions of facts when jurisdiction is exercised by two Courts below and that too on the application of petitioners. Counsel for Petitioners submits that since there is no remedy available to Petitioners, this petition has been filed.

This jurisdiction cannot be utilized as a remedy when efficacious remedies have been availed¹. The statute provides remedy of appeal and against order under Section 12(2) C.P.C. statutory remedy of revision was availed. Unless any jurisdictional defect is pointed out, which has not been done by the Petitioners, he could sum up the alleged misrepresentation of the Court, as jurisdictional defect.

Numerous opportunities were provided by the Court to Petitioners to enable them to contest the suit by way of Written Statement or otherwise which has not been availed hence after exhausting the remedies, this contention cannot be taken up as a ground to challenge the Judgment and Decree on the count of fraud and misrepresentation. This petition is not maintainable on this sole ground and the other grounds which have been raised cannot be considered as grounds to maintain this petition.

Accordingly, this petition is dismissed.

J U D G E

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¹ PLD 1974 SC 139