

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**Constitution Petition No.D-46 of 2024**

Muhammad Hassan Hoth  
Versus  
Muhammad Tayab and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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**Present:**  
**Mr. Justice Muhammad Shafi Siddiqui**  
**Mr. Justice Omar Sial.**

Fresh Case

1. For orders on CMA No.77/2024 (Exemption).
2. For orders on CMA No.78/2024 (Stay).
3. For hearing of main case.

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**Dated 12.01.2024**

Mr. Altaf Ahmed Shaikh, Advocate for the petitioner.

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A suit for cancellation, possession, damages and mesne profits was decreed against the petitioner. Learned counsel initially submits that appellant hails from Gawadar and the notice was never served at the address disclosed in the plaint that is of Gawadar, whereas, on second address of Gulshan-e-Iqbal, Karachi notices were never sent and he was only informed by the inhabitants of Gulshan-e-Iqbal and then, on learning such facts, he moved an application under Section 12(2) CPC. He further relied upon the diary sheet of the trial court dated 19.01.2022 whereby an undertaking was provided by the counsel, who represented the petitioner being defendant No.1 in the suit.

Two stances taken by the counsel are contrary to each other. In case he pleads that he was never served, he cannot rely on the diary sheet of 19.01.2022 on which date his counsel appeared and claimed copy of the plaint. If that is the case, the party that is defendant No.1 stood served, as it appears from the diary sheet dated 19.01.2022 and it cannot be a case of fraud and misrepresentation.

At the most his counsel or defendant No.1/petitioner himself avoided to appear or to claim copies on the next date and eventually that led to passing a decree in the suit. Eventually, he found no alternate but to move application under Section 12(2) CPC which was dismissed followed by dismissal of civil revision No.140/2023 by IX-Additional District Judge, East, Karachi. These are parallel concurrent findings of two courts below as far as the facts are concerned.

This jurisdiction has been invoked under Article 199 of the Constitution of Islamic Republic of Pakistan and no ground of either jurisdictional defect or of a fraud has been explained. After availing the remedy of a revision, this petition does not automatically becomes a remedy, unless jurisdictional error is explained which the petitioner has failed; hence, in view of the above, no interference or indulgence is required and the petition is dismissed along with pending applications.

JUDGE

JUDGE

Ayaz Gul