

# THE HIGH COURT OF SINDH KARACHI

Present:  
Mr. Justice Adnan Iqbal Chaudhry  
Mr. Justice Zulfiqar Ali Sangi.

C.P. No. D - 3405 of 2023

[Dr. Hazoora Shaikh vs. Learned XIth ADJ, Karachi (South) & Others]

Petitioner : Dr. Hazoora Shaikh w/o Muhammad  
Ayub Shaikh through Mr. Abdul  
Majeed Khoso, Advocate.  
Date of hearing : 19-07-2023  
Date of order : 19-07-2023

## ORDER

Adnan Iqbal Chaudhry J. - The Petitioner's application under section 12(2) CPC for setting aside *ex-parte* judgment and decree in Suit No. 816/2017 was dismissed by the trial court by order dated 20-12-2022. Against that, a Civil Revision preferred by the Petitioner before the Additional District Judge was also dismissed by order dated 25-05-2023. The Petitioner now seeks a writ against said decree and order.

2. The facts are that the Petitioner filed Suit No. 645/2012 through her husband and Attorney against the Respondent No.4 before the Senior Civil Judge for specific performance of a verbal sale agreement whereby the Respondent No.4 had allegedly agreed to sell a flat to the Petitioner and had delivered possession to the Petitioner on receiving part payment. An amended plaint was filed in the year 2015 adding the Respondent No.3 as a defendant after the Petitioner came to know that the flat had in fact been conveyed by the Respondent No.4 to the Respondent No.3 by a registered conveyance deed dated 21-04-2010. The amended plaint prayed for cancellation of that conveyance deed, and as an alternative to specific performance, the Petitioner prayed for refund of the part payment made to the Respondent No.4. Conversely, the Respondent No.3 filed Suit No.

816/2017 [subject suit] against the Petitioner and the Respondent No.4 before the Senior Civil Judge for possession of the flat. That suit was decreed *ex-parte* by judgment and decree dated 17-12-2018, and a writ of possession was issued against the Petitioner by the executing court on 24-10-2019. The Petitioner then filed an application under section 12(2) CPC for setting aside the *ex-parte* judgment/decree in Suit No. 816/2017, which was dismissed, so also her civil revision as mentioned first above.

3. Heard learned counsel and perused the record.

4. The fraud alleged by the Petitioner under section 12(2) CPC was that while she was working and residing in Dubai, the Respondent No.4 colluded with the bailiff to show that the Petitioner was served with summons of Suit No. 816/2017 at the suit flat at Karachi; and hence played a fraud upon the court in obtaining an *ex-parte* judgment and decree against the Petitioner. The trial court framed issues and recorded evidence to determine the fraud alleged, but found the allegation to be unfounded.

5. The address of the Petitioner given by the Respondent No.4 in Suit No. 816/2017 was that of the suit flat, which was the same address given by the Petitioner for herself in filing Suit No. 645/2012. It was not her case that the flat was lying vacant, but that no summons at all were received thereat by her relatives who were residing there. As per the evidence recorded by the trial court, while summons were received at the given address by a cousin of the Petitioner, nonetheless service was also effected by pasting in the presence of witnesses, and also by way of publication. Be that as it may, an Advocate had entered appearance for the Petitioner in the suit, filed a vakalatnama, and had sought time to file written statement but never did. Though the Petitioner's Attorney and husband denied that he had engaged such counsel, on cross-examination he acknowledged his signature on the vakalatnama. Thereafter, he did not summon that counsel as witness to confront

him with the vakalatnama. Therefore, the Petitioner was not able to prove that the Respondent No.4 had committed fraud with the court in obtaining the *ex-parte* judgment/decree in Suit No. 816/2017.

6. Learned counsel has not been able to demonstrate any misreading or non-reading of the evidence discussed by the courts below. Therefore, we see no reason to interfere with the impugned orders in writ jurisdiction. The petition is dismissed in *limine* alongwith pending application(s).

**JUDGE**

**JUDGE**

SHABAN\*