

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

J.M. No.NIL (-1911) of 2023

Pakistan Medical International (PMI)
Versus
Safir Welfare Association & another

Date	Order with signature of Judge
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1. For orders on CMA 15111/23
2. For orders on office objection No.1 at Flag 'A'
3. For orders on CMA 15112/23

Dated: 06.10.2023

Mr. Zahid Mehmood for applicant.

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Through instant Judicial Miscellaneous under section 12(2) CPC, applicant seeks setting aside of compromise decree dated 31.05.2019 passed in a suit for specific performance bearing Suit No.2357 of 2018.

Heard the learned counsel.

I have perused the impugned order which shows that on an application under order 23 rule 3 CPC the suit was decreed in terms of the compromise in presence of authorized representative of plaintiff being buyer and defendant being seller. Defendant of the suit is the applicant in this Judicial Miscellaneous. Thus, at the very outset learned counsel for applicant was asked to satisfy the Court as to maintainability of this application on the touchstone of ingredients of Section 12(2) CPC, to which the only reply the respondents have committed fraud with them and at that time they were not aware of such fraud being committed with them. The fraud that is alleged in the application is that plaintiff being an NGO is not registered.

I am afraid such assertion of the learned counsel does not fall within the frame of Section 12(2) as neither there is any fraud or misrepresentation nor jurisdictional defect appearing on the face of the

order and/or material placed before the Court. Even if the contention of learned counsel is accepted, it would be an allegation and counter-allegation in between the parties whereas the ingredients of Section 12(2) pertains to a fraud or misrepresentation with the Court. Furthermore, the impugned order is in fact a consent order, followed by the consent compromise decree, in presence of representative of the applicant as well as their counsel and such fact is not denied by the learned counsel during course of his arguments. Even otherwise, the understanding reached was lawful and such exercise could have been done at the time of agreement and/or signing of compromise at least. The order was very much in the knowledge of applicants, as being passed in their presence, but they kept quiet for about 4½ years without any plausible explanation.

In view of above since applicant's counsel has not been able to point out any cogent grounds within the frame of Section 12(2) CPC, impugned order does not call for any interference. Resultantly, this Judicial Miscellaneous Application is dismissed along with listed applications.

Judge