<u>ORDER SHEET</u>
<u>IN THE HIGH COURT OF SINDH AT KARACHI</u>
Constitution Petition No.D-8580 of 2019

M/s Shahzad Estate (Pvt.) Ltd
Versus
Mrs. Neelofar Nasreen and others

Constitution Petition No.D-8581 of 2019

M/s Shahzad Estate (Pvt.) Ltd
Versus
Shakil Ahmed and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

Dated 18.04.2024

Mr. Muhammad Arif, Advocate for petitioner.

Mr. Khalid Ahmed, Advocate for Respondent No.1.

Mr. Sandeep Malani, Assistant Advocate General.

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Muhammad Shafi Siddiqui, J.- Suits for specific performance, though under the heading of declaration possession and permanent injunction, were filed against the appellant/defendant having two addresses as disclosed in the plaint. In the first attempt the bailiff was unable to locate the addresses where after the notices/ summons were ordered to be served by bailiff and the *parokar* of the Respondents accompanied. The appellants were then claimed to have been served at the office address described in the plaint. Along with the counter affidavits of one Shakil Ahmed filed against the memo of petitions, the report of the bailiff was filed as attachment "A" along with his handwritten report, which disclosed service made on 19.10.2017. On the following date that is 25.10.2017 one Mr. Salar Jatoi, Advocate appeared for Ms. Mahrukh Maree, Advocate and requested that she may be given time to file Vakalatnama on behalf of defendant/appellant and the

case be adjourned; no request for any copy of the plaint or documents was made. On the following date that is 29.10.2017 Mr. Salar Jatoi, Advocate yet again held brief of Ms. Mahrukh Maree, Advocate and requested for adjournment to file reply/written statement. In consideration of these facts, when the written statement was not filed, the matters proceeded exparte and consequently decreed. It is petitioner's claim that they came to know about the decree when the notice of execution was served.

2.   We have heard learned counsel and perused the material available on record.

3.   On the curtail date when one Mr. Salar Jatoi, Advocate held brief of Ms. Mahrukh Maree, Advocate, it was subsequent to the service date that was effected at the office address and both the addresses disclosed in the plaint were not denied by appellant. The applications under Section-12(2) CPC disclosed the allegation of fraud and misrepresentation, which is not established. Two addresses of appellant disclosed were stated to be correct and the findings reached by the Senior Civil Judge were to the extent that the allegation of fraud and misrepresentation were missing and hence the applications under Sectio-12(2) CPC were dismissed. Aggrieved of it, petitioner then filed Revision Applications which met the same fate on 05.11.2019. Learned Additional District Judge, West Karachi gave detailed reasons as to the requirement of Section-12(2) CPC and reached the conclusion that the allegation of fraud and misrepresentation were missing and hence there was no necessity to probe to such fact by recording evidence after framing of issues. Nonetheless, aggrieved of it, the petitioner has moved to this court under Article-199 of the Constitution of Islamic Republic of Pakistan.

4.   We have enquired as to what was the jurisdictional defect or constitutional error that compelled them to file these petitions under Article-199, learned counsel repeated that in fact the service was not effected. This could hardly be a reason for us to intervene, as this is not the fact-finding court. Unless the jurisdictional defect or a constitutional violation is pointed out, this Court cannot probe further. The jurisdiction, as requested by appellant, was exercised by two courts below. As far as the fact-findings are concerned to the extent of effecting service upon the petitioner, that has reached finality and no interference in that regard is required.

5.   With this understanding of law, both the petitions are dismissed along pending applications.

<div align="right">JUDGE</div>

<div align="center">JUDGE</div>

Ayaz Gul