

Judgment sheet

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

**Civil Revision Application No. 09 of 2025**

**Present**

**Mr. Justice Muhammad Jaffer Raza**

Muhammad Shahid Iqbal ..... Applicant.

Versus

Gopal Das ..... Respondent.

Mr. Muhammad Ali Phulpoto, Advocate for the Applicant.

Mr. Abdul Monem, Advocate for the Respondent.

Date of Hearing: 06.03.2025

Date of announcement: 25.03.2025

**J U D G M E N T**

**MUHAMMAD JAFFER RAZA – J:** The Applicant has filed the instant Revision Application being aggrieved and dissatisfied with the Impugned order dated 08.01.2025 passed in Summary Suit No.144/2024 whereby the application under Section 12(2) C.P.C. was dismissed. Facts of the case are summarized as follows:

2. The Respondent filed Summary Suit No.144/2024 on 19.05.2024 under Order XXXVII C.P.C. against the Applicant and thereafter ex-parte judgment and decree was passed by the learned trial Court dated 08.08.2024.

3. The Applicant being aggrieved with the said judgment and decree filed an application under Section 12(2) C.P.C. on 04.11.2024 on the ground that he was not served and had no knowledge about filing and pendency of the above-mentioned Summary Suit.

4. It is stated on behalf of the Applicant that the Summary Suit was filed in a manner which can only be described as malafide. The learned counsel has stated that he had no notice of the said Summary Suit and he was therefore prevented from appearing and ex-parte judgment and decree has been passed against him. He

has further stated that the service was ineffective in the present case as an FIR No.124/2024 was lodged in respect of the same cheques and promissory note which was the subject matter of the Summary Suit. He lastly contended that service was “managed” by the Respondent and therefore he was condemned unheard. Learned counsel in this respect has relied upon the following case law:

***a) Mehr Din through legal heirs v. Azizan and another;<sup>1</sup>***

***b) Muhammad Aslam and others v. Mst. Kundan Mai and others;<sup>2</sup>***

5. Conversely learned counsel for the Respondent has argued that the Applicant was served through various modes and summons were issued on 11.07.2024 and the report was submitted before the trial Court on 13.07.2024. Learned counsel also stated that the criminal proceedings in respect of the same negotiable instruments were being held in the adjacent Court and the Applicant had complete knowledge about the pendency of the Summary suit. The learned trial Court having no option ordered for pasting in presence of two witnesses. Report whereof was filed by the bailiff and lastly Court ordered for issuance of summon/notice by way of publication on 08.10.2024. Thereafter the Applicant was declared ex-parte and the ex-parte judgment and decree was pronounced by the trial court on 08.08.2024 and 13.08.2024 respectively.

6. Heard counsel, perused the record. At the outset it was enquired from the learned counsel as to why he preferred to move an application under Section 12(2) C.P.C. as the remedy for setting aside decree in Summary suits is provided for in Order XXXVII Rule 4 CPC. The same is reproduced as under:

*“4. Power to set aside decree. —After decree the Court may, under special circumstances set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.” (Emphasis added)*

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<sup>1</sup> 1994 SCMR 1110

<sup>2</sup> 2004 SCMR 843

7. The learned counsel in reply stated that a fraud has been committed on the Court, and therefore provision of Section 12(2) C.P.C. are applicable. It is a settled proposition of law that the burden to prove “fraud” and “misrepresentation” rests squarely on the Applicant. There is no evidence to support the claim of fraud and the learned counsel has been unable to show that the ineffective service was a result of fraud.

8. The judgements relied upon by the learned counsel for the Applicant are distinguishable for the following reasons: -

a) In the case of **Mehr Din** (supra) the case pertained to pardanashin ladies and the suit in question had been decreed in the year 1967 without adopting the modes of service under the C.P.C. No further deliberation in respect of the service is warranted in light of what has been held in the succeeding paragraphs.

b) In the case of **Muhammad Aslam** (supra) it was held that a judgement and decree can be set aside if the fraud has been played between the parties inter se. A consent decree was obtained by the parties to the proceedings and the same were set aside by the learned Appellate courts.

9. It is evident that the Applicant has only filed application under Section 12(2) C.P.C. after execution proceedings had commenced. I would refrain myself from adjudicating whether the Applicant was properly served as that may subsequently become the subject matter of an application under Order XXXVII Rule 4 CPC. However, it is held that the Applicant has failed to make out a case of fraud and misrepresentation as set out under section 12(2) C.P.C.

10. In view of what is discussed above, the instant Revision Application is not maintainable and the same is hereby dismissed. However, the Applicant is at liberty to file necessary application under the relevant provision of law for setting aside the ex-parte judgment and decree.

Nadeem Qureshi “PA”

J U D G E