

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date	Order with signature of the Judge
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Present:
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Muhammad Osman Ali Hadi.

C.P.No.D-6215 of 2019

Maqsood Ahmed Khan	Petitioner
	Vs.	
Syed Firdous & others	Respondents.

08.05.2025.

Syed Tanveer Ashraf, Advocates for petitioner
Mr. Mansoor Ali, Advocate for respondent No.1.

O R D E R
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MUHAMMAD IQBAL KALHORO J: This petition questions an order dated 22.08.2019 passed by learned VIII-Senior Civil Judge, Karachi South in Civil Suit No.160/2018 and Execution Application No.10/2018 on an application filed u/s 12(2) CPC by the petitioner.

2. This application was filed by the petitioner alleging fraud and misrepresentation of facts in obtaining the decree by the plaintiff in Suit No.160/2018. The suit was for specific performance of contract in respect of sale of property No.95/II, 5th Commercial Street, Phase-IV, Karachi entered into by sub attorney Ms. Zaib Ali. The sub general power of attorney was purportedly given to her by Mst. Aseem Munawar, who was given a General Power of Attorney purportedly by the petitioner, the owner of the property.

3. This application was taken up for hearing after getting necessary verification reports regarding power of attorney in favour of Mst. Aseem Munawar from Dubai Consulate and from the banks, the cheques of which were given to the owner of the property in lieu of sale. The reports suggested that neither the cheques given to the petitioner were encashed nor the power of attorney executed by him in favour of Mst. Aseem Munawar was found genuine. On the consideration of these reports, learned Senior Civil judge decided to frame the issues and invite the parties to lead evidence so that the authenticity of documents and claim of the petitioner could be finally adjudicated. The issues framed by learned Senior Civil Judge are as follows:-

1. Whether order dated 21.07.2018 and decree dated 27.07.2018 was obtained by fraud and concealment of facts?

2. What should the order be?

4. The case of the petitioner is that when the documents brought on record suggest that the fraud has been committed in obtaining the decree; learned Senior Civil Judge should have allowed the application and not framed the issues and invited evidence.

5. On the other hand, learned counsel for respondent No.1 has supported impugned order and has relied upon an unreported judgment of the Supreme Court passed in Civil Petition No.1418/2023 to support his arguments.

6. We have considered pleadings of the parties. Firstly, we would like to observe that we have serious reservations over maintainability of this petition filed against the order passed by a learned Senior Civil Judge. In our view, the course available to petitioner was to file a revision application before learned District judge if he was aggrieved by the said order. Be that as it may, we would like to observe that for deciding an application u/s 12(2) CPC both the courses are available to the court where such application is filed. If on examination of the material, the court comes to a definitive conclusion that fraud has been committed or misrepresentation of the facts is established or that the court had no jurisdiction to decide the case, it can allow the application without recording evidence but where otherwise on the basis of the application and the documents supporting it, the court cannot form a view, it can proceed to require the parties to lead evidence for deciding the application finally and forming a definitive opinion as to whether the application is maintainable or not or whether or not it should be allowed.

7. The case of the petitioner here is that documents sought by the court during hearing of the application establish undeniably that the fraud has been committed. However, we are of the view that although the documents brought on record prima facie lean in favour of petitioner's view, but they have not yet been confronted to the respondents, nor they have been given an opportunity to cross examine the petitioner viz-a-viz these documents. Even if these documents were submitted in compliance of court order, there is no harm in taking them on record in evidence for a deep analysis. So in such event, if the evidence is recorded and the documents are produced by the petitioner and confronted to the respondents for the purpose as above, no prejudice would be caused to either party and on the contrary it would enable the court to conclusively determine fate of the application.

8. This petition is pending since 2019 and in our view had the petitioner opted to proceed with 12(2) application as directed by learned Senior Civil Judge, the application would have been decided by now. Instead of taking that course, the petitioner preferred to file petition against the order which is pending for last six years without any progress. Now, we have heard the parties and are of the view that let in this case evidence be recorded and documents be examined by learned Senior Civil Judge. Since already much time has passed, therefore, we direct learned Senior Civil Judge to undertake the whole exercise within a period of three months and decide the application and transmit order for our perusal in chambers through MIT-II.

The petition stands disposed of in the above terms alongwith pending applications.

JUDGE

JUDGE

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