

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

**C.P. No.S-1124 of 2025**

[ *Muhammad Sohail v. Mst. Ambreen Jamal and others* ]

Petitioner: Through Mr. Hassan Khan Afridi, Advocate

Date of Hg. & order: **22-10-2025.**

\*\*\*\*\*

**ARSHAD HUSSAIN KHAN, J.-** The petitioner, through the instant Constitutional Petition, has called in question the order dated **31.07.2025** passed by the learned VI-Additional District Judge, Karachi-Central, in Civil Revision No. 33 of 2025, whereby the revision was dismissed and the order dated **19.12.2024**, passed by the learned XI-Civil Judge, Karachi-Central, dismissing the petitioner's application under Section 12(2) of the Code of Civil Procedure, 1908, in Civil Suit No. 1276 of 2024, was upheld.

2. Briefly, the facts giving rise to the present petition are that respondent No.1 instituted Family Suit No. 1276 of 2024 for dissolution of marriage by way of *Khula* and recovery of her maintenance as well as maintenance of two minors. Upon admission of the suit, summons/notices were issued to the petitioner/defendant through bailiff, TCS, pasting and publication. Thereafter, the service was held good and the matter was fixed for filing of written statement, however, despite sufficient opportunities, the petitioner failed to file the same. Consequently, vide order dated 29.07.2024, the petitioner was debarred from filing the written statement and respondent No. 1 was directed to lead *ex parte* evidence. The respondent No.1 accordingly examined herself where after the suit was partly decreed *ex parte*, vide judgment and decree dated **12.08.2024**.

Thereafter, the petitioner filed an application under Section 12(2), C.P.C. challenging the aforesaid judgment and decree on the grounds that the same had been obtained through fraud, misrepresentation and concealment of material facts, and that the petitioner had not been duly served. Respondent No.1 contested the said application by filing objections and a counter-affidavit. After hearing both sides, learned Senior Civil Judge dismissed the application, vide order dated 19.12. 2024. The said order was impugned in Civil Revision No. 33 of 2025, which too was dismissed. Hence, the present constitutional petition.

3. Learned counsel for the petitioner has contended that the impugned orders passed by both the courts below are illegal, arbitrary, and contrary to the settled principles of law. He has submitted that the petitioner was never

duly served in the family suit, and that the proceedings were conducted in his absence without affording him an opportunity of hearing, thereby rendering the ex parte judgment and decree void ab initio. It is further argued that the judgment and decree dated 12.08.2024 were obtained through fraud and concealment of material facts, falling within the mischief of Section 12(2), C.P.C. Learned trial court, however, dismissed the application without appreciating the substance of the petitioner's plea. It is also argued that the revisional court has also failed to exercise its jurisdiction lawfully, as it merely endorsed the findings of the trial court without independent examination of the record or application of judicial mind. He has maintained that both the orders suffer from material irregularity and jurisdictional defect, warranting interference by this Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution.

4. Heard learned counsel for the petitioner and perused the material available on the record.

The record reflects that respondent No. 1's Family Suit No. 1276 of 2024 was duly proceeded in accordance with law, wherein summons were issued to the petitioner through bailiff, TCS, pasting, and publication. Upon his non-appearance, service was held good and he was debarred from filing a written statement. Respondent No. 1 then led her ex parte evidence, which culminated in a judgment and decree dated 12.08.2024. The petitioner did not challenge the said decree through appeal or revision within the prescribed period, allowing it to attain finality. Instead, he later invoked Section 12(2), C.P.C., alleging fraud and misrepresentation. However, neither before the Family Court nor before the Revisional Court did he produce any credible material to show that the decree had been procured through deception or that he remained unaware of the proceedings. His plea of non-service also stands disproved in view of the available service reports.

5. It is a settled proposition that for invoking **Section 12(2), C.P.C.**, the burden lies squarely on the applicant to specifically plead and prove fraud, misrepresentation, or lack of jurisdiction. Mere allegations, unsupported by documentary or corroborative evidence, are insufficient. Both the courts below have concurrently found that no such elements were established. Their concurrent findings are based on due appreciation of the evidence and are in consonance with settled principles of law.

6. Furthermore, the revisional jurisdiction under **Section 115, C.P.C.** is limited to correcting jurisdictional errors, material irregularity, or perversity, none of which are apparent in the impugned orders. This Court, while exercising constitutional jurisdiction under **Article 199 of the Constitution**,

cannot sit as a court of appeal to reappraise evidence or substitute its own findings for those of the subordinate courts, particularly where no illegality or perversity is demonstrated.

7. In view of the foregoing discussion, it is manifest that the petitioner, having failed to avail the statutory remedies provided under the law, cannot invoke the extraordinary constitutional jurisdiction of this Court to assail concurrent findings of the courts below. The powers conferred under Article 199 of the Constitution are discretionary and are to be exercised only to advance the cause of justice, not to reopen matters where a party's own negligence has resulted in an ex parte decree. No case of jurisdictional defect, mala fide, or violation of law has been made out to warrant interference. Accordingly, this petition, being devoid of merit, is **dismissed in limine**, along with all pending applications, if any.

JUDGE

jamil