

*Order Sheet*

IN THE HIGH COURT OF SINDH, KARACHI

**Civil Revision No.81/2025**

***M/s. Sami Trading v. Sardar Abdul Rehman & others***

Applicant: M/s. Sami Trading  
Through Muhammad Nadeem Baloch, Advocate  
Respondents: Nemo.  
Date of Hg & Order 03.09.2025

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**ARSHAD HUSSAIN KHAN, J.** The Applicant, through the instant Civil Revision Application, has assailed the order dated **19.03.2025**, passed by the learned IInd Additional District Judge, Karachi (East) in Summary Suit No. 50 of 2019, whereby the application under Section 12(2), CPC, filed by the present applicant challenging the judgment and decree dated **30.04.2021**, was dismissed. In the present proceedings, the applicant has thus impugned both the order dated **19.03.2025** and the judgment and decree dated **30.04.2021**.

2. Brief facts giving rise to the present Civil Revision Application are that respondent No.1/plaintiff instituted Summary Suit No. 50 of 2019 for recovery of amounts on the basis of two cheques, namely Cheque No. SSHR-15788032 for Rs.42,71,000/- and Cheque No. A-63351256 for Rs.34,25,000/- [hereinafter collectively referred to as the “**subject cheques**”]. The said cheques, upon being presented for encashment, were dishonoured. It is the case of respondent No.1/plaintiff that despite repeated demands, the applicant failed to return the said amount, compelling him to file the suit for recovery. Upon service of summons, respondent No.2/defendant No.1 filed an application seeking leave to defend, whereas respondents No.3 and 4/defendants No.2 and 3 chose not to contest the matter. Respondent No.2, however, failed to pursue his application despite having been afforded sufficient opportunities. Consequently, his application for leave to defend was dismissed, and the suit was ordered to proceed ex parte. Thereafter, respondent No.1/plaintiff led ex parte evidence, and the trial court, while noting that the civil revision earlier filed by the defendants against dismissal of their leave application had also been dismissed, proceeded to decree the suit in favour of respondent No.1/plaintiff. The defendants/respondents No.2 to 4 thereafter

preferred First Appeal No. 57 of 2021, which too was dismissed. Subsequently, on 19.10.2024, the present applicant filed an application under Section 12(2), C.P.C., challenging the judgment and decree dated **30.04.2021**, passed in Summary Suit No.50 of 2019, on the ground that the same had been obtained through fraud and misrepresentation. However, neither any particulars of the alleged fraud nor any nexus with the subject cheques was pleaded in the said application. Resultantly, the application was dismissed, vide order dated **19.03.2025**. Both the aforesaid order and the judgment and decree dated **30.04.2021** have been impugned through the present proceedings.

3. learned counsel has contended that the impugned order dated **19.03.2025** suffers from jurisdictional infirmity. He has further argued that the learned court either exercised a jurisdiction not vested in it by law or failed to exercise the jurisdiction that was so vested, thereby rendering the order without lawful authority. He has contended that the dismissal of the application under Section 12(2) CPC, despite the petitioner's clear and specific plea of fraud, amounts to a material illegality. It is further contended that the applicant was a necessary party within the meaning of Order I Rule 10 CPC, whose rights were directly affected by the decree obtained through concealment. The Court's refusal to implead the applicant or to consider his locus standi amounts to failure to exercise jurisdiction vested in law. It is also contended that fraud unravels everything. A decree obtained by practicing fraud upon the court is a nullity and untenable in the eyes of law. Such decree can be challenged at any stage, as limitation does not cure fraud. By ignoring this cardinal principle, the learned trial court not only failed to exercise jurisdiction but also perpetuated illegality.

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

From perusal of the record, it appears that the application under Section 12(2), C.P.C. was filed after almost three years on the ground of fraud and misrepresentation. However, the applicant has miserably failed to disclose any particulars of the alleged fraud, nor has he demonstrated in what manner it stands aggrieved by the judgment and decree passed in Summary Suit No. 50 of 2019, as admittedly the subject cheques were not issued by him, nor was the judgment and

decree directed against him. It is a well-settled principle of law that allegations of fraud must be pleaded with specificity, setting out the precise acts, dates, and circumstances constituting the alleged fraud. The applicant's application under Section 12(2), C.P.C. is bereft of such particulars and rests only on bald assertions, without disclosing any material facts or establishing a nexus between the alleged fraud and the decree under challenge. It is observed that vague and sweeping allegations, unsupported by particulars, cannot be made the basis for dislodging a duly passed judgment and decree.

5. It is also noted that the decree dated **30.04.2021** was passed after due proceedings, wherein the defendants who had issued the subject cheques were afforded full opportunity to contest the matter. The said decree thereafter attained finality upon dismissal of First Appeal No. 57 of 2021. In these circumstances, and after having exhausted the appellate remedies, the applicant, by merely claiming to be a necessary party, cannot be permitted to reopen a concluded matter collaterally through an application under Section 12(2), C.P.C.

6. It is also a matter of record that the application under Section 12(2), C.P.C. was filed on 19.10.2024, more than three years after the decree dated 30.04.2021. No explanation for such inordinate delay has been offered, rendering the application barred by laches and constituting an abuse of the process of law. It is well settled that Section 12(2) cannot be invoked as a substitute for appeal or revision so as to circumvent limitation.

7. The record further reflects that the trial court decreed the suit on the basis of dishonoured cheques, duly supported by ex parte evidence led by the plaintiff/respondent. The dishonour of the subject cheques was never denied; rather, the applicant failed to pursue the leave to defend application despite opportunities. The decree thus rests on admitted liability and cogent documentary evidence, not on any alleged fraud.

8. It may be observed that an application under Section 12(2) C.P.C. is maintainable only where it is shown that the judgment or decree was obtained by fraud, misrepresentation, or want of

jurisdiction. In the absence of any such proof, reopening a decree that has already withstood trial and appeal is impermissible in law.

9. No illegality or infirmity has been demonstrated so as to warrant interference with the impugned decisions. It is well settled that where no error of law or defect in procedure has been committed in arriving at a finding of fact, the High Court cannot substitute its own view merely because a different conclusion could also have been reached. Equally settled is the principle that findings of the courts below are not to be disturbed in revisional jurisdiction unless extraordinary circumstances are shown which, in the present case, are conspicuously absent.

10. In the circumstances, this Court finds that the learned trial court has rightly passed the impugned judgment and decree and that the applicant has miserably failed to make out any case in his application under Section 12(2) CPC, as such the same was also rightly dismissed by the trial court. Accordingly, this Civil Revision Application, being without merit, is dismissed in limine, along with all pending applications.

JUDGE