

**THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Present:
Justice Jawad Akbar Sarwana

R.A.No. 227 of 2021

For hearing of CMA 2895/2023.

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| Applicant | : | Ghulam Hussain s/o Muhammad Sharif through Mr. Imtiaz Ali Abbasi, Advocate. |
| Respondent | : | Sajidur Rehman s/o Haji Abdul Rehman. Nemo. |
| Date of Hearing | : | 18.12.2025 |
| Date of Order | : | 18.12.2025. |

ORDER

JAWAD AKBAR SARWANA, J: This Civil Revision Application was dismissed for non-prosecution on 23.10.2023 whereafter four (4) days later i.e. 27.10.2023 the applicant filed this restoration application under Order 9 Rule 9 r/w Section 151 CPC. I have read the same and given the facts and arguments put forth by the Applicant Counsel the same constitutes sufficient ground for restoration and the same application is granted. Resultantly the revision stands restored. I now proceed with the main hearing of the Revision.

2. The case of the applicant Ghulam Hussain is that he has been condemned unheard. His Counsel contends that the service of the summons in Summary Suit No.63/2019 which was filed in the month of May 2019 was never affected on him. He alleges that a fraud has been played upon the Court and he denies his signature which his Counsel argues has been fabricated on the summons allegedly received by him in Special Prison Nara, Hyderabad. Furthermore, Counsel contends that the applicant/defendant never received summons. Counsel contends that although he may have been

released on bail on 11.05.2019 concerning the FIR No.23/2019, however, he submits that there was another FIR, namely FIR No.148/2018 but he had been acquitted as of 15.12.2018 and therefore he was only in incarceration on 10.05.2019 in FIR No.23/2019. Finally, he submits that because of the blatant fraud allegedly played upon the Court viz. service of summons when the applicant/defendant was released on bail on the following day i.e. on 11.05.2018 he did not prefer any appeal against the judgment and decree dated 07.09.2019 and 11.09.2019, respectively. Instead he filed the application under Section 12(2) CPC on 25.09.2019 to bring the alleged fraud played on the Court viz. someone fabricated his signature on the Court summons when he was in prison. Therefore, he contends that he has a good case for setting aside of the judgment and decree and for this reason the matter should be remanded to the District Judge for fresh hearing after giving him opportunity to file Written Statement.

3. Heard Counsel. Based on the documents available on record, it appears that Summary Suit No.63/2019 was filed sometime in May 2019. It is apparent from the record too and the order impugned in this Revision i.e. order dated 21.09.2021 that at the time when the summary suit was filed the applicant was incarcerated in Special Prison Nara, Hyderabad. At the same time the record reveals that service of summons was also affected on him on 10.05.2019. This is affirmed in the impugned order dated 21.09.2021 wherein the learned Vth Additional District Judge, Hyderabad has confirmed that he has analyzed the signature and thumb impression of the applicant and positively identified the same match that of the applicant. Thus the learned Vth Additional District Judge, Hyderabad concluded that the service, stood duly affected on the applicant/defendant on 10.05.2019. Thereafter, it also appears that the applicant was released on bail on 11.05.2019 in FIR No.23/2019. Yet there is neither any document nor information available on

record to suggest the applicant/defendant bonafidely made efforts to enter appearance and/or challenge any order wherein because of his failure to file leave to defend application, the exparte proceedings had been initiated against him. The record does not reflect any action on the part of the applicant/defendant to set aside the exparte proceedings. Instead the record reflects that even after obtaining bail on 11.05.2019 he did not bother to challenge any of the proceedings in the summary suit. This would have included his right to cross examine the plaintiff's witnesses which even if the proceedings were exparte he always had the right to do so. Rather, it appears that the applicant/defendant waited for the Vth Additional District Court, Hyderabad to announce its judgment dated 07.09.2019. Even thereafter when he had the time to file appeal and challenge the entire judgment and decree he chose instead to file an application under Section 12(2) CPC when he could raise the same points with regard to those he had raised in his 12(2) application in appeal including those on merits as he has agitated today yet he chose a narrower path and challenged the judgment and decree on the limited grounds of Section 12(2) CPC. This was a restrictive challenge to the Judgment and Decree which he has not been able to shake.

4. As discussed above there is no ground made out for any fraud and/or misrepresentation played on the Court in the judgment dated 07.09.2019. In the circumstances, I do not find any defect in the said judgment and decree. There is no irregularity. Accordingly, the Revision is hereby dismissed.

5. The learned counsel has placed on record the copy of order dated 15.12.2018 passed in Criminal Bail Application No.63/2018 by VIth Judicial Magistrate, Hyderabad and judgment dated 23.11.2019 passed in Criminal Case No.442/2019 passed by Model Trial Magistrate Court-II, Judicial Magistrate-I, Hyderabad, the same are taken on record.

JUDGE

Tufail