

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Jawad Akbar Sarwana

**JM No.15/2016
In Suit No.1644/2006**

Applicant No.1:	Muhammad Yaseen,
Applicant No.2:	Muhammad Murtaza,
Applicant No.3:	Muhammad Mujtaba Sons of Late Muhammad Younas through Mr Iqbal Khurram, Advocate
v.	
Respondent No.1:	Muhammad Hanif Ghanchi s/o Ahmed, and
Respondent No.2:	Muhammad Zubair Farooqui s/o Muhammad Owais Farooqui through Messrs. Mr Liaquat Ali Awan and Imran Hussain
Respondent No.3:	Muhammad Iqbal Mustafa through his legal heirs (i) Uzma Hameed wd/o Muhammad Iqbal Mustafa, and (ii) Sana Mustafa d/o Muhammad Iqbal Mustafa. Nemo.
Respondent No.4:	Muhammad Ahmed s/o Muhammad Younas. Nemo.
Respondent No.5:	Mehar Rukhsana Rafiq w/o Rafiq Ahmed
Respondent No.6:	Shaheed Zia w/o Zia Uddin
Respondent No.7:	Farhana Younas d/o Muhammad Younus
Respondent No.8:	Samina Shafqat w/o Shafqat Hussain
Respondent No.9:	Fakhra Arshad w.o Arshad Masood Khan all Respondent Nos.4 to 9 daughters of Late Muhammad Younus through Muhammad Asghar Malik, Advocate
Date of hearing:	20.02.2025
Date of Judgment:	25.02.2025

J U D G M E N T

JAWAD AKBAR SARWANA, J: The Seller-Applicants, three blood brothers, Muhammad Yaseen, Muhammad Murtaza and Muhammad Mujtaba, allege in this J. Misc. Application No.15/2016,

that the Purchaser-Respondent No.1 (Muhammad Hanif Ghanchi) and No.2 (Muhammad Zubair Farooqui) have played fraud on the Court when an undated HBL Cheque No.3484183 drawn on the Purchaser-Respondent No.2's HBL Bank Ltd. bank account in the sum of Rs,8,000,000 ("80 lacs") which was allegedly handed to them pursuant to the Compromise Application u/O 23 Rule 3 read with Section 151 CPC dated 18.06.2013, was dishonoured. Hence, the Applicant Counsel argued that the Order dated 20.06.2013 and Decree dated 22.06.2013 passed in Suit No.1644/2006 are liable to be set aside under Section 12(2) CPC.

2. Counsel for the Purchaser-Respondent No.1 (Muhammad Hanif Ghanchi) and No.2 (Muhammad Zubair Farooqui), vehemently oppose JM No.15/2016. Purchaser-Respondent Nos.1 and 2 Counsel contended that the Judgment/Decree was tainted with neither fraud nor misrepresentation as the said Judgment/Decree was based on a Compromise Application. The Compromise Application, along with the supporting affidavits filed by the parties in the Court, did not contain any reference to the alleged cheque of Rs.80 lacs. Counsel contended that the reason for Respondent No.2 (Muhammad Zubair Farooqui) writing the cheque was beyond the pleadings and not part of the compromise application. The compromise was lawful, and there was no breach of the agreement—accordingly, the J. Misc. Application No.15/2016 was liable to be rejected.

3. In rebuttal, the Counsel for the Applicants argued that the cheque of Rs.80 lacs was not mentioned in the Compromise Application because it was concealed from the Court and that such concealment was to play fraud and misrepresentation on the Court as the cheque handed over by the Purchaser-Respondents to the Seller-Applicant was bad and would eventually bounce. Thus, the concealment and its malafide with a view to playing fraud upon the Court could be proven by the Seller-Applicants if this bench would allow the Seller-Applicants to lead evidence and prove such fraud

and misrepresentation played with the Court under Section 12(2) CPC.

4. Heard Counsel, and perused the material available on record in the J.M.

5. The reading of the compromise application filed by the parties reveals that it does not refer to the Rs.80 lacs cheque. The three Seller-Applicants did not mention the cheque of Rs.80 lacs at all – neither in the compromise application nor in the affidavits. The compromise application was supported by the affidavits of the three Seller-Applicants (blood brothers) plus two remaining brothers, Muhammad Iqbal Mustafa and Muhammad Ahmed. None decided to make any comment, directly or indirectly, to any payment due to them whatsoever that could support and/or explain the cheque in the sum of Rs.80 lacs, which was drawn on the Purchaser-Respondent No.2 bank account. There was simply no written trail of the Rs.80 lacs in Suit No.1644/2006 to connect the cheque directly or indirectly with the terms of the compromise. Not even a side letter or agreement was available to connect the dots between the compromise agreement and the cheque of Rs.80 lacs. Counsel for the Seller-Applicants' argument that because the cheque was not mentioned in the compromise application, it amounted to concealment from the Court is no ground for opening an inquiry/investigation into such concealment. The purpose of Section 12(2) CPC is not to find out why something was concealed by the parties inter se. Such unnecessary evidentiary exercise would lead the Court nowhere and be beyond the scope of Section 12(2) CPC. Section 12(2) CPC focuses on the Court and whether fraud and misrepresentation were played upon the Court leading up to the judgment and decree. In the circumstances, this bench will not get into a fishing expedition to ascertain the factual basis of a cheque of Rs.80 lacs, which eventually bounced when there is no mention of it in the compromise application.

6. The timeline of events does not inspire confidence in the Applicants' allegation of fraud and misrepresentation played on the Court in Suit No.1644 of 2006. The compromise application was signed on 18.06.2013, suit no.1644/2006 was decreed in terms of the compromise application on 22.06.2013, the alleged cheque of Rs.80 lacs was dated 07.08.2013, it was presented for clearing on 12.08.2013, and the plea of fraud/misrepresentation was raised on 07.04.2016. It took the three Seller-Applicants almost two years and eight months to approach the Court alleging fraud and misrepresentation. After the cheque bounced, it appears that the Seller-Applicants initiated criminal proceedings against the Purchaser-Respondent No.2, but no summary proceedings were filed against the Purchaser-Respondent No.2 under Order 37 CPC. They took no legal recourse against Purchaser-Respondent Nos.1 and 2 regarding the dishonored cheque of Rs.80 lacs except this J. Misc. Application under Section 12(2) CPC which for the several reasons articulated and discussed herein by me cannot be sustained.

7. The chain of events leading to the filing of the J. Misc. No.15/2016 also does not trigger the discretionary powers of this Court to initiate inquiry as to the alleged fraud and misrepresentation played with the Court by the Purchaser-Respondents under Section 12(2) CPC. Apart from the Seller-Applicants, i.e. between the two other brothers, namely, Iqbal Mustafa and Muhammad Ahmed, none of whom impleaded themselves as co-applicants in the J. Misc. Application No.15/2016, except brother, Muhammad Yousuf, had earlier in time, had filed a J. Misc. Application No.02/2014 on 31.01.2014 against the Respondent Nos. 1 and 2. At the time, Seller-Muhammad Yousuf also relied on the provisions of Section 12(2) CPC seeking to set aside the compromise decree dated 22.06.2013, alleging that Purchaser-Respondent Nos.1 and 2 had obtained the decree dated 20.06.2013 by fraud and misrepresentation. But on 04.03.2016, Seller-Muhammad Yousuf

filed an urgent application for unconditional withdrawal of J.M. No.02/2014, which the Court allowed, and the said J.M. was dismissed as withdrawn. The Order dated 04.03.2016 passed in J.M.02/2014 was challenged by Muhammad Yaseen's spouse, Uzma Yaseen. Still, such a challenge was rejected vide the Court's Order dated 17.03.2016 because no fraud or misrepresentation played with the Court was made out. About three (3) weeks later, on 07.04.2016, Muhammad Yaseen and his two brothers filed the present J.M. No.15/2016 against the Purchaser-Respondent Nos.1 and 2 and the other siblings. It may not be out of place to mention here that the real sisters of the three applicant brothers, namely, the five sisters, Mehar Rukhsana Rafiq, Shaheen Zia, Farhana Younus, Samina Shafqat and Fakhra Arshad vide earlier order dated 23.01.2012 passed in Suit No.1644/2016 had got the suit decreed against them in terms of CMA No.8934/2011. Counsel for the Seller-Applicants claimed that the Purchaser-Respondents also promised the five sisters a cheque of Rs.60 lacs for getting Suit No.1644/2006 decreed against the sister, but that cheque, too, got dishonoured. The contention merits no response as the five sisters have take no legal steps to assert their claim against the Purchaser-Respondents.

8. The upshot of the above discussion is that the malafide in this J.M. is/was inter-se between the seller and buyer and not with the Court. The legal heirs of the Late Muhammad Younas, which includes the three Seller-Applicants of J.M. No.15/2016 in their transaction for the sale of the suit property, may have been lured by Respondent Nos.1 and 2 to compromise Suit No.1644/2006, but they did so as defendants, adults, with open eyes, not mentioning for whatever reasons any payment which they did not intend to make part of the deal in the compromise application and based on trust between them as seller and buyer of the suit property. It may well be that this trust between the parties was breached post the compromise decree, but this cannot be grounds for setting aside

the decree dated 20.06.2013 under Section 12(2) CPC. No fraud was played with the Court and the joint concealment, if any, for whatever reasons (to save stamp duty, the incidence of tax, price adjustment of the increased sale price, etc.) of any side understanding between the parties, which everyone wanted to keep off-the-books, such concealment cannot be termed either a fraud or misrepresentation played with the Court. They may have misrepresented each other after the decree, but no fraud or misrepresentation can be inferred to have been played with the Court.

9. Given the above, I do not see any reason to set aside the decree dated 20.06.2013 passed in Suit No.1644/2006 under Section 12(2) CPC as no cause for fraud or misrepresentation played with the Court has been made out based on the record and documents filed in J.M. Application No.15/2006. The said J.M. and all pending applications are dismissed with no order as to costs.

JUDGE