

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S-889 OF 2025

A.Z. APPAREL (Pvt.) Ltd... ..v/s... ..Taqees (Pvt.) Ltd.

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

1.For hearing of CMA No.28310/2025

2.For hearing of main case.

Petitioner: Through Mr.Khaliq Ahmed, Advocate
M/s A.Z. Apparel (Pvt) Ltd.

Respondent No 1: Through Mr.Mukhiar Ahmed, Advocate
Taqees (Pvt) Ltd.

Date of hearing & Short Order: 17-08-2026

Date of Reasons: 25.08.2026

ORDER

Nisar Ahmed Banbhro, J: This petition is directed against the Concurrent findings of two Courts below. Vide order dated 31.10.2019 revision application No. 60 of 2019 (M/s.A.Z. Apparel (Pvt.) Ltd. V. Taqees (Pvt.) Ltd.) was dismissed by the Court of learned IVth Additional District Judge, Karachi Central (**Revisional Court**), whereby the order dated 18.07.2019 passed by Court of Learned Vth Senior Civil Judge Karachi Central (**Trial Court**), on an application under Section 12(2) CPC moved by Petitioner, in

Suit No.142/2015 (Taqees (Pvt.) Ltd. V. M/s A.Z. Apparel (Pvt.) Ltd.) was maintained. (hereinafter, both the orders shall be referred as to the “**impugned orders**”)

2. Learned Counsel for the petitioner contended that Learned Trial Court decreed the suit filed by Respondent No 1 vide judgment and decree dated 1.11.2016. He contended that the “impugned orders” passed by the Courts below were erroneous, unjust and not sustainable under the law which are liable to be set-aside. He contended that the trial court had passed the judgment and decree in exparte proceedings without effecting service upon petitioner (Judgment debtor). He contended that Syed Muhammad Zaki who made undertaking on behalf of Petitioner before Trial Court was never engaged by Petitioner; that the said Counsel was mixed up with Respondent No 1 and made an undertaking without consent and knowledge of Petitioner. He further contended that there was a business transaction between the parties at Faisalabad. That Respondent No 1 filed the suit mentioning incorrect address of Petitioner. He contended that Petitioner in past was doing business in Karachi and thereafter, shifted to Faisalabad, which fact was within the knowledge of Respondent No 1. He further contended that Learned Courts below failed to consider that the business transaction was entered into between the parties at Faisalabad and the Court at Faisalabad had the jurisdiction to adjudicate the case. He therefore, prays that it was the case which suffered from jurisdictional defect, and was result of fraud and misrepresentation. He contended that the Judgment and Decree offended the fundamental rights of the Petitioner as to fair Trial enshrined under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. He therefore, prayed to allow this Petition and set-aside the “impugned orders” as well as the judgment and decree.

3. Learned counsel for the Respondent No 1 contended that Petitioner was duly served during the proceedings, pursuant thereto Company engaged Counsel, who appeared before Trial Court and sought time to file written statement, but never turned up to file written statement and contest the matter. He further contended that address given in the plaint was correct and Petitioner was duly served on the said address. He contended that Petitioner Company was doing business at Karachi and Faisalabad; that the Respondent No 1 was residing in Karachi and business transaction was also done in Karachi, therefore, the suit was rightly instituted in Court at Karachi. He further contended that Petitioner also instituted Suit No.531/2015 before the Court of learned Civil Judge First Class/Commercial Court, Faisalabad in the year 2015 on the same subject matter; that in the said proceedings an application under Section 10 of C.P.C. was filed seeking stay of suit on the ground that Respondent No 1 had maintained instant suit at Karachi, for all means and purposes it also constituted sufficient service. He placed on record the copy of judgment dated 23.01.2023 passed by the Commercial Court at Faisalabad in above referred suit. He contended that judgement and decree did not suffer from fraud, misrepresentation or jurisdictional defect. He prayed for the dismissal of Petition.

4. Hear Arguments and Perused the material.

5. Scanning of the case file revealed that Respondent No 1/Plaintiff filed a suit for recovery of Rs.72,07,670/- and mesne profit at the prevailing market value against the defendant/Petitioner before Learned Trial Court. The suit was admitted and notices/summons were issued upon Petitioner,

in response thereof Mr. Syed Zaki Muhammad Advocate, appeared before Trial Court on 23-02-2017, and undertook to file Vakalatnama on behalf of Petitioner on the next date of hearing, but thereafter Counsel and Petitioner remained absent to contest the suit. Consequently, Learned Trial Court conducted ex parte proceedings and decreed the suit as prayed vide judgment and decree dated 01.11.2016.

6. To get decree satisfied Respondent No 1 filed execution application No 18 of 2016. Execution Application was allowed, but Petitioner failed to satisfy the decree, therefore, writ of attachment of immovable property of Chief Executive Officer of Petitioner Company namely Syed Nahid Abbas was issued, the said Director/CEO filed an application under Rule 58 of Order XXI C.P.C. and Petitioner filed an application under section 12(2) of C.P.C. on the ground of fraud, misrepresentation and jurisdictional defect.

7. From perusal of contents of application under Section 12(2) C.P.C., and its supporting affidavit, it revealed that Judgment and Decree were assailed on the ground that address given in the memo of plaint was incorrect and service upon Petitioner was not effected, business transaction between the parties had taken place at Faisalabad, thus cause of action to file the suit arose at Faisalabad. In support of its stance that Petitioner Company had shifted its business from Karachi to Faisalabad, the documents filed with Security and Exchange Commission of Pakistan in year 2018 were furnished.

8. It further demonstrated from record that nothing has been stated in the application under section 12(2) C.P.C. regarding the undertaking furnished by Counsel on behalf of Petitioner Company that such an

undertaking was fake and maneuver in collusion with Respondent No 1 or concerned Bar Council was moved to initiate disciplinary proceedings against the said lawyer. It transpired from para No.9 of the supporting affidavit to application under Section 12(2) C.P.C., that Petitioner shifted its registered office from Karachi to Faisalabad but Respondent No 1 supplied old address of Company and obtained judgment and decree. The stance of incorrect address of service stands vanished on account of the own admission of Petitioner that suit was instituted by mentioning the old address. It is a matter of record that Petitioner Company was operating its business at both places Karachi and Faisalabad, as is evident from the introduction of Company filed by Petitioner and available at page 87 of Court File. If the stance with regard to change in business place in year 2018 is believed to be true, the same will not serve the cause of Petitioner, as the suit was instituted in year 2015 and authorized person of Petitioner Company admitted in affidavit to application that plaint described the old address of Company.

9. It further transpired from record that Petitioner maintained Suit No. 531/2015 before the Court of learned Civil Judge First Class/Commercial Court, Faisalabad in year 2015 and in the said suit an application under Section 10 of C.P.C. was filed seeking stay of the proceedings on the ground that Respondent No 1 had instituted instant suit at Karachi on the same issue which was prior in time. Such fact finds mention in findings to issue No. 7 of the judgment dated 23.01.2023 passed by Learned Commercial Court Faisalabad. Thus, it can be unhesitatingly held that the petitioner was duly served, but he chose to remain absent deliberately, thereafter, the learned trial Court conducted ex parte proceedings and decreed the suit, as such element of fraud and lacking could not be substantiated through

confidence inspiring material, onus for the same lied on the petitioner's shoulders.

10. Adverting to the contention of Learned Counsel that Petitioner Company was operating business at Faisalabad and Court at that place had the jurisdiction to entertain the suit is also not supported from record. Syed Nahid Abass was CEO of the Petitioner Company, and was residing in Karachi as per the address mentioned in affidavit to application under Order XXI Rule 58 maintained by him before Trial Court .C.P.C. Per Company profile at page 87 of Court file, Company was dealing business at Karachi and Faisalabad, therefore, the suit could have been instituted either at Karachi or Faisalabad in terms of Section 17 of C.P.C. as such the proceedings instituted at Karachi did not suffer from any jurisdictional defect and was rightly entertained.

11. Section 12(2) C.P.C. embodied powers to the Court which passed final Decree to set it aside, if satisfied that Decree was procured by way of fraud or misrepresentation or suffered from jurisdictional defect. An aggrieved party, is not required to file a separate suit to get a decree reversed, obtained collusively and such powers can be exercised by the Court which passed the final judgment and decree on an application by the aggrieved party or on its motion upon information. It was for the petitioner to establish that Decree was obtained by way of fraud, misrepresentation or the same suffered from jurisdictional defect. The onerous burden was not discharged, as such no exception can be taken to the concurrent findings rendered by the Courts below.

12. In view of the above, no case for indulgence of this Court in writ jurisdiction is made out, consequently this petition fails and accordingly dismissed.

13. The above are the reasons of short order passed on 17.08.2026.

Judge

nasir

Approved for reporting