

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. S-1392 of 2025

Petitioner Muhammad Yahya Bandhani	:	Through M/s. Ahmed Madni & Peer Ali, Advocates
Respondent No.1 Shahzad Hussain	:	Through Mr. Shahid Yaseen, Advocate
State	:	Through Mr. Kamran Baloch, A.A.G
Date of Hearing	:	21.09.2026
Date of Judgment	:	08.10.2026
Date of announcement	:	12.10.2026

J U D G M E N T

Muhammad Saleem Jessar, J.:- By means of instant constitutional petition, the petitioner, has assailed the order passed in Civil Revision Application No 85 of 2025 passed by VIIth Additional District Judge, Karachi South whereby he dismissed the Revision Application filed against order dated 15.03.2025 passed by learned XIIth Senior Civil Judge, Karachi South vide Civil Suit No. 114 of 2023 dismissing the Application under section 12(2) CPC filed by the petitioner.

2. Brief facts of the case are that Respondent No.1 filed rent case bearing No. 244 of 2021 in the Court of XIIth Senior Civil Judge, Karachi South against the petitioner and respondents No. 2 to 4 in respect of suit property viz. Commercial Premises, bearing No. G-1 (together with constructed Two Shops & one Godown) on ground Floor, measuring 379, Sq. Yds, on Plot of Land Bearing Survey No 1-A/2, Sheet No. RB-11, (Old Survey No. F-14/PO68) MPL land situated at Rambagh Quarters, Karachi. Said rent case was contested by the opponents / tenants. However, ultimately vide judgment dated

22.11.2022, the ejectment application was allowed and for recovery of rent arrears, the plaintiff / respondent No.1 was set at liberty to approach proper forum. Thereafter, shop in question was got vacated through execution proceedings. Subsequently, a Civil Suit bearing No.114 of 2023 was filed by the landlord for recovery of rent arrears. Despite issuance of notice through different modes, the defendants / tenants did not appear to contest the suit, therefore, the matter proceeded *ex parte* and ultimately it was decreed vide judgment and decree dated 29-05-2023. Thereafter, Decree Holder viz. respondent No.1 herein, initiated execution proceedings. At the initial stage the Judgment Debtors / defendants did not appear; however, at a later stage, JD / defendant No.1 appeared and filed an application under Section 12(2) CPC on 18-08-2023. Said application was contested by Decree Holder / plaintiff by filing objections through attorney. After hearing advocates for the parties, the trial court dismissed said application and allowed execution application No.06 of 2023. As per record, when the plaintiff / decree holder, in order to satisfy the decree, filed an application to sell out the movable properties of the judgment debtors which were lying in the safe custody in compliance with the order passed in the execution proceedings, defendants No.1 and 2 appeared in the court along with their counsel and received copies of said application. However, thereafter, only defendant No.1 filed objections / counter affidavit while other defendants / JDs chose to remain absent. In the circumstances, they were debarred from filing objections. However, when the application for selling out the safe custody articles was about to be decided, defendant / JD No.2 appeared through his attorney and filed an application under Section 12(2) CPC read with Section 151 CPC, so also an application under Order XXI Rule 26 CPC; however, both applications were dismissed vide order dated 15-03-2025. Said order was assailed by preferring Civil Revision No.85 of 2025. After hearing advocates for the parties, said revision application was dismissed vide impugned order, which has been assailed thorough instant constitutional petition.

3. I have heard learned counsel for the parties and also perused the material made available before me on the record.

4. Learned counsel for the petitioner submitted that petitioner's ancestor had got the demised premises on rent-cum-pugri basis in the year 1989 and since then rent was being paid regularly to the previous owner till the year

2020 vide rent receipts (available at pages 39 to 47 of the Court file), when the previous owner sold out the premises to respondent No.1 vide Conveyance Deed dated 29.06.2020 (available at page 73 of the Court file). He next submitted that respondent No.1 after purchasing the property, filed an application under Section 15 of the SRPO, 1979 in the Court of XIIth Rent Controller, Karachi (South) being Rent Case No. 244 of 2021 (available at page 91 of the Court file) with the prayers for issuing direction to the tenant to pay arrears of rent to the applicant at the rate of Rs.75,000/- per month from January, 2018 to February, 2021 and also for payment of future monthly rent. He also prayed for issuing directions to the opponents to handover peaceful cum vacant possession of demised shop to the applicant.

5. Learned counsel further submitted that the Rent Controller ultimately decided the rent case in favour of respondent No.1 vide judgment dated 22.11.2022 (available at page 119 of the Court file), and the petitioner / tenant was also directed to vacate the demised premises. He next submitted that against said judgment FRA was filed by the petitioner, which too was decided against him. Thereafter, Rent Execution Application No.03/2023 filed by respondent No.1 was allowed vide order dated 05.08.2023 (available at page 199 of the Court file). He further submitted that after eviction of the petitioner through execution proceedings, respondent No.1 filed Civil Suit No. 114 of 2023 for recovery of rental arrears amounting to Rs.2,566,560/- and other expenditures amounting to Rs.1,150,000/- and also for damages of Rs.5,000,000/- (copy of plaint is available at page No.147 of the Court file). Said suit was decreed *ex parte* vide judgment dated 29.05.2023 penned down by XIIth Senior Civil Judge, Karachi (South) (copy available at page 175 of the Court file), whereby the trial Court granted relief to the extent of prayer clause (a) of the civil suit i.e. for recovery of rental amount to the tune of Rs.2,566,560/- with prevailing interest rate till recovery.

6. According to learned counsel, for decreeing the suit to the extent of prayer clause (a), evidence was required to be recorded, but the trial Court passed the judgment in a haphazard manner. He further submitted that the petitioner had filed an application under Section 12(2) CPC (copy available at page 207 of the Court file) against the judgment dated 29.05.2023 passed by XIIth Senior Civil Judge, Karachi (South), which was dismissed vide order dated 15.03.2025 (copy available at page 239 of the Court file). Such dismissal

order was challenged by means of Civil Revision Application No.85 of 2025 (available at page 243 of the Court file) under Section 115 CPC before the District Judge, Karachi (South), which was subsequently assigned to VIIth Additional District Judge, (Model Civil Appellate Court), Karachi (South), who dismissed the same by impugned order dated 24.10.2025 (copy available at page 21 of the Court file), hence this petition.

7. Learned counsel for the petitioner submitted that before deciding the application under Section 12(2) CPC, evidence was necessarily to be recorded. He, therefore, submitted that the trial Court as well as Revisional Court have not properly considered such aspect of the case. According to learned counsel, every party is required to stand on its own shoes instead of owing others. In support of his contention he placed reliance upon the case of ALLIES BOOK CORPORATION through L.Rs. Vs. SULTAN AHMED and others (2006 SCMR 152). He next submitted that as far as the enhancement of rent from Rs.3,000/- to Rs.75,000/- is concerned, neither respondent No.1 / landlord had moved any application in terms of Section 8 of the SRPO, 1979 nor the petitioner had paid even a single month rent at the rate of Rs.75,000/-. In support of his contentions, learned counsel placed reliance upon the case of MUHAMMAD AYUB, SHOP MANAGER BATA PAK. LTD. Vs. MUHAMMAD RAHMAN and others (2026 SCMR 31). Learned counsel lastly prayed that the impugned orders passed by the Courts below may be set aside and the case may be remanded back to the trial Court for deciding the applications afresh after recording pro and contra evidence of the parties.

8. Conversely, learned counsel for respondent No.1 / landlord opposed the petition on the ground that the Courts below have committed no wrong or illegality, which may warrant interference by this Court. He next submitted that after grant of execution application filed by respondent No.1, the decree has been satisfied. As regards the rent proceedings in respect of subject tenement, learned counsel submitted that the same had been decided by two forums, as the FRA filed by the petitioner was also dismissed. He also placed on record copies of memo of FRA and the judgment passed therein by the first appellate Court. It was also submitted that even otherwise the concurrent findings of two courts below cannot be interfered with by this Court in exercise of its constitutional jurisdiction. He lastly prayed for dismissal of instant petition.

9. Learned AAG also opposed the petition and supported the impugned orders on the ground that the petitioner had not pursued his case vigilantly, hence the Courts below have committed no wrong.

10. It seems that the main question to be decided in instant case is as to whether the Judgment and Decree passed in Civil Suit No. 114 of 2023 was the result of fraud and mis-representation?

11. By insertion of subsection (2) in Section 12 CPC, intention of the legislature was to provide a substitute for filing a fresh suit against a Judgment, decree or Order obtained by fraud and misrepresentation. Proceedings under Section 12(2) CPC are in the nature of a declaratory suit, seeking declaration to the effect that the decree passed by a Civil Court was the result of fraud and misrepresentation. However, there is a distinction between two; inasmuch as, that a civil suit is to be decided after framing of issues and recording of evidence; however, while deciding an application under Section 12(2), the concerned court is not bound to frame issues and record evidence in each and every case, but it would depend upon the circumstances of each individual case. In this view of the matter, the main ingredients and prerequisites for seeking relief in an application under Section 12(2) CPC are; 'fraud' and 'misrepresentation'.

12. At this stage, it also seems to be necessary to highlight the background in which said application was moved. From perusal of record and impugned orders, it appears that the decree in Civil Suit No. 114 of 2023 was passed on 29.05.2023. During execution proceedings, the defendants / JDs No. 1 and 2 made their appearance through their counsel; however, after receiving copy of the execution application, defendant / JD No.2 viz. the petitioner herein, did not turn up, nor filed any objections although several opportunities were afforded to him. However, defendant / JD No. 1, who is real brother of defendant / JD No.2, filed objections. During pendency of execution proceedings, JD No.1 also filed an application under Section 12(2) CPC which was dismissed by the executing court. However, such dismissal order was not assailed before the higher forum by filing any appeal or revision, thus the same attained finality. It seems that, thereafter, as soon as the Decree Holder / Respondent filed an application for passing order to sell out the moveable property / articles of JDs, which were already lying in safe custody in

pursuance of execution proceeding, defendants / J.Ds appeared through their counsel and received copies of said application and then only defendant / J.D No.1 opted to file his objections on 29.04.2024 in the shape of counter affidavit while other defendants / J.Ds have opted to remain absent, as such, they were debarred from filing objections / Counter Affidavit. Thereafter, during pendency of said application for selling out the articles of J.Ds, defendant / J.D No.2 through his attorney appeared and filed applications under Section 12(2) CPC and under Order XXI Rule 26 CPC, with the prayer to set aside *ex parte* decree dated 29.05.2023 and to stay the proceedings.

13. It was in these circumstances, that both captioned applications were dismissed by the trial Court which was affirmed by the Revisional Court.

14. It may be pointed out that; as both, defendants / Judgment Debtors No.1 and 2, are real brothers *inter se*, therefore, apparently defendant No. 2 was fully aware of all the proceedings including filing of application under Section 12(2) CPC by defendant No.1 and its subsequent dismissal. However, instead of joining defendant No.1 or supporting that application, he was silently watching the proceedings throughout and when he realized that the execution application is about to be decided, then he surfaced on the scene and filed a separate application under Section 12(2) CPC almost on the same grounds which were already raised in and adjudicated upon in the earlier similar application filed by defendant / JD No.1. Apparently, such conduct can surely be termed as 'malice' on the part of said defendants / JDs.

15. In view of above, the courts below rightly held that subsequent application moved by defendant No.2 under Section 12(2) CPC was not maintainable, as same was apparently filed with *malafide* intention on almost same grounds which were raised in the previous application filed by defendant / JD No.1 and was dismissed after dealing with such grounds by the trial Court.

16. The main attack by learned counsel for the petitioner on the impugned orders was that the trial Court before rejecting the application under Section 12(2) CPC should have framed the issues and recorded evidence of the parties in order to arrive at a just and proper conclusion as to whether; the judgment

and decree of the trial court was obtained by means of fraud and / or misrepresentation?

17. There is no cavil to the proposition that if nature of controversy involved in an application under Section 12(2) CPC is of such a nature, that the same cannot be resolved without framing of issues and recording evidence of the parties, then certainly issues must be framed and evidence must be recorded; however, such exercise is not mandatory in each and every case, and the Court is not handicapped and powerless to dispose of an application under Section 12(2) C.P.C. without framing issues, recording evidence of the parties and without following the procedure meant for trial of a civil suit, if the glaring circumstances surfaced on the record are otherwise.

18. In this connection, reference may be made to the case of **Hafiz Malik KAMRAN AKBAR and others Vs. MUHAMMAD SHAFI (deceased) through L.Rs. and others**, reported in **PLD 2024 SC 262**, it was held by Honourable Supreme Court as under:

“7. It is a well-settled exposition of law that for determining the grounds of alleged fraud, misrepresentation or want of jurisdiction, if any, raised in the application moved under section 12(2), C.P.C., **the Court is not obligated in each and every case to frame issues mandatorily in order to record the evidence of parties** and exactly stick to the procedure prescribed for decision in the suit but it always rests upon the satisfaction of the Court to structure its proceedings and obviously, after analyzing the nature of allegations of fraud or misrepresentation, the Court may decide whether the case is fit for framing of issues and recording of evidence, without which the allegations levelled in the application filed under Section 12(2), C.P.C. cannot be decided.

It was further held.

“8. In the case of Ghulam Muhammad v. M. Ahmad Khan and 6 others (1993 SCMR 662), this Court articulated that the availing of remedy under Section 12, C.P.C. is quite encumbersome. Subsection (2) of Section 12, enacted by virtue of Ordinance 10 of 1980, expressly ordains that the validity of judgment and decree obtained by fraud and misrepresentation can be assailed through an application to the Court, which passed the final judgment, decree, order and not by a separate suit. It was further held that seemingly, a two-fold purpose is sought to be achieved by the amending provision; firstly, from jurisprudential point of view it is the obligation of the Court on whom the fraud is practiced to undo the fraud. Such application lies before the Court passing the final judgment, decree or order. Since on appeal or revision, against the judgment, decree or order, obtained by fraud, the matter is

reopened before the Appellate or Revisional forum, as the case may be, the application has to be filed before the higher court seized of such matter. Secondly, by conferment of the remedy through a simple application, the litigating party is to a large extent, saved from the hardship and encumbersome procedure involved in prosecuting a suit, and the delay in the final decision thereof. It is correct that the determination of allegations of fraud and misrepresentation usually involve investigation into the questions of fact **but it is not in every case that the Court would be under obligation to frame issues, record evidence of the parties, and follow the procedure prescribed for decision of the suit.** If it were so, the purpose of providing the new remedy would be defeated. The matter is left to the satisfaction of the Court which has to regulate its proceedings, and keeping in view the nature of the allegations in the application, may adopt such mode for its disposal, as in consonance with justice, the circumstances of the case may require. Whereas in the case of Mrs. Amina Bibi through General Attorney v. Nasrullah and others (2000 SCMR 296), it was held by this Court that while dealing with the allegations under section 12(2), C.P.C., **it is not incumbent upon the Court that it must, in all circumstances, frame issues, record evidence and follow the procedure prescribed for decision of the suit.** In the case of Amiran Bibi and others v. Muhammad Ramazan and others (1999 SCMR 1334), this Court held that there is no cavil that determination of allegations of fraud and misrepresentation ordinarily involve investigation into the questions of fact and in such cases an inquiry should ordinarily be held to adjudicate upon the matter in issue but **it is not the requirement of law that the Court, while dealing with the allegation under section 12(2), C.P.C., must in all circumstances frame issues, record evidence and follow the procedure prescribed for decision of the suit which depends upon the facts of each case in consonance with justice."**

19. In another case reported as *Mst. NASIRA KHATOON & ANOTHER Vs. Mst. AISHA BAI & 12 OTHERS* (2003 SCMR 1050), the Apex Court held:

"7. The remedy of civil suit available for setting aside the judgment and decree obtained by fraud and misrepresentation prior to the enactment of subsection (2) of section 12, C.P.C. was taken away by this subsection but this remedy would not be available like a regular suit and the Court may dispose of an application under section 12(2), C.P.C. **without framing issues, recording evidence of the parties** and following the procedure for trial of the suit."

20. In view of this legal position, the above said plea raised on behalf of the petitioner that the trial court prior to deciding the application under Section 12(2) CPC, should have framed issues and recorded evidence of the parties, is not tenable.

21. In instant case, there are concurrent findings of the two Court below. Needless to emphasize that now it is well settled that concurrent findings of the Courts below could be interfered with by this Court in exercise of its extraordinary constitutional jurisdiction **only in exceptional cases**, which is not the case here.

22. In this context, reference may be made to the case of **MUHAMMAD SALIK ATHAR through Attorney Vs. MUHAMMAD OBAID and 3 others**, reported in **P L D 2023 Sindh 411**, wherein it was held as under:

"5. Now, before proceeding further, it needs to be reiterated that this Court, normally, does not operate as a Court of appeal in rent matters rather this jurisdiction is limited to disturb those findings which, prima facie, appearing to have resulted in some glaring illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather tightened. It is pertinent to mention here that captioned petition fall within the writ of certiorari against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence."

23. The upshot of above discussion is; that instant constitutional petition against concurrent findings of the courts below being not maintainable, is also devoid of merits. Consequently, the petition is hereby dismissed and the impugned orders passed by courts below are maintained.

Karachi

Dated: 08.10.2026

Approved for Reporting.

JUDGE

HEAD OF CONST. BENCHES