

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-280 of 2026

[Mst. Hameeda V. Masood Ali and others]

Petitioner : Through Mr. Muhammad Ayoub Chaniho,
Advocate along with Petitioner.
Respondent No.1 : Through Mr. Sikandar Ayoub Khaskheli,
Advocate along with Respondent No.1.
Respondent No.2 & 3. : Through Mr. Salahuddin Chandio, A.A.G.
Date of Hearing : **28.09.2026**
Date of Decision : **12.10.2026**

Judgment

Abdul Hamid Bhurgri, J.- Through the instant constitutional petition, the petitioner has called in question the orders dated 27.11.2025 and 26.02.2026, passed by the learned trial Court and the learned appellate Court, respectively, whereby her application under Section 12(2) CPC, challenging the earlier proceedings concerning custody of the minor, was dismissed and the said dismissal was maintained in appeal.

2. Briefly, the facts giving rise to the instant petition are that the respondent/father instituted proceedings seeking custody of the minor, wherein an order dated 18.10.2025 was passed directing handing over of custody to him. The petitioner/mother, asserting that she had not been lawfully served in the said proceedings and had consequently been deprived of an opportunity to contest the matter, filed an application under Section 12(2) CPC, questioning the validity of the order on the grounds pleaded therein. The learned trial Court dismissed the application vide order dated 27.11.2025, which was maintained by the learned appellate Court through order dated 26.02.2026. Hence, the instant petition.

3. Learned counsel for the petitioner contended that the learned Courts below failed to properly appreciate the objections regarding service of process and the circumstances in which the original custody order had been passed. It was argued that the question of lawful service was fundamental to the validity of the proceedings and required proper examination of the relevant record and the material produced by

the parties. It was further submitted that the impugned orders suffer from non-reading and misreading of material aspects of the case and are therefore not sustainable in law.

4. On the other hand, the respondent's position is that the proceedings before the learned trial Court were conducted in accordance with law and that the petitioner failed to establish any ground warranting interference with the orders passed by the Courts below.

5. I have heard learned counsel for the parties and examined the material available on record. The controversy requiring determination in the instant petition is whether the application under Section 12(2) CPC was decided in accordance with law, particularly in the context of the disputed service of process and the alleged denial of opportunity of hearing. The question of entitlement to custody of the minor does not directly arise for determination in the present proceedings.

6. It is settled that where judicial proceedings are challenged on the ground of fraud, misrepresentation or want of lawful service, the Court is required to examine the allegations in the light of the relevant record and the material produced in support thereof. Where disputed questions of fact arise which require determination through evidence, the matter ought to be examined after affording the concerned parties an adequate opportunity to substantiate their respective positions. In this regard, reference may be made to the judgment of the Honourable Supreme Court reported as *Fozia Mazhar v. Additional District Judge and others* (PLD 2024 SC 771), concerning the applicability of the principles underlying Section 12(2) CPC in family proceedings. The requirements of due process and fair hearing, as guaranteed under Article 10-A of the Constitution, also demand that a party whose rights are likely to be affected must be afforded an effective opportunity of hearing.

7. In the present case, the objection concerning lawful service was a material question requiring proper examination. The learned Courts below were required to consider the relevant record and determine whether the petitioner had been duly served and whether the grounds pleaded in the application under Section 12(2) CPC had been established. In the circumstances of the case, the impugned orders cannot be sustained without proper determination of these questions. It

is, however, clarified that no finding is being recorded by this Court regarding the correctness or otherwise of the allegations of defective service, fraud or misrepresentation. These questions shall be determined independently by the learned trial Court on the basis of the material and evidence brought before it.

8. Consequently, the instant petition is allowed to the limited extent indicated herein. The impugned orders dated 27.11.2025 and 26.02.2026 are set aside, and the application under Section 12(2) CPC is remanded to the learned trial Court for decision afresh, strictly in accordance with law, after affording the parties an adequate opportunity of hearing and, where necessary, permitting them to lead evidence on the disputed questions of fact. The learned trial Court shall make every endeavour to decide the application expeditiously, preferably within forty-five (45) days from the date of receipt of this judgment, without being influenced by any observations made herein.

9. It is clarified that the present judgment is confined to the legality of the impugned orders passed on the application under Section 12(2) CPC and shall not be construed as an expression of opinion on the merits of the original custody proceedings or the respective custodial rights of the parties. Admittedly, the minor was in the physical custody of the petitioner/mother at the time of institution of the instant petition and continues to remain in her custody. It shall be open to either party to approach the learned trial Court for appropriate orders concerning custody, implementation of the existing custody order or any consequential proceedings arising therefrom, as the case may be. Any such application shall be considered and decided expeditiously, strictly in accordance with law, after affording the concerned parties an opportunity of hearing and keeping in view the paramount consideration of the welfare of the minor. It is further clarified that the original custody order has neither been set aside nor affirmed on merits by this Court.

10. The petition stands disposed of in the above terms, along with all pending applications, including CMA No.1974/2026.

JUDGE

Ayaz Gul