

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. S-1351 of 2025

PRESENT: Mr. Justice Muhammad Saleem Jessar

Petitioner, Muhammad Aqeel : through Mr. Khursheed
S/o Muhammad Suleman Javed Advocate

Respondent 1, Dr. Uzma : through Mr. Abdul Rehman,
Ghazanfar Wd/o Dr. Ghazanfar Advocate
Abbas (late)

Respondent No.2 DHA : None present

Date of hearing : 09.02.2026

Date of Judgment : 20.02.2026

J U D G M E N T

Muhammad Saleem Jessar, J.- By means of this Constitutional Petition, the petitioner has assailed the order dated 04.01.2014 passed by District Judge, Karachi South, whereby he allowed Revision Application filed by respondent No.1, Dr. Uzma Ghazanfar, and consequently set aside the order dated 21.12.2012 passed by Vth Senior Civil Judge, Karachi South allowing application under Section 12(2) CPC filed by petitioner, Muhammad Aqeel.

2. Brief facts of the case are; that petitioner herein namely, Muhammad Aqeel, filed Civil Suit No.240 of 2012 for declaration, specific performance of contract, permanent injunction and damages against Respondent Nos.1 and 2, stating therein that defendant/respondent No.1, Dr. Uzma Ghazanfar, was owner of Plot No.19-E, Sahil Street 13, Phase-VIII, E-8, admeasuring 300 Square Yards, situated in Pakistan Defense Officers Housing Authority, Karachi and plaintiff/petitioner entered into a contract with her in respect of above said property and the petitioner accepted the price of the suit property and the sale consideration thereof was fixed to the tune of Rs.41,25,000/-. Accordingly, one Asif Mehmood son of Mirza Masood Baig, on behalf of plaintiff Muhammad Aqeel, had paid an amount of Rs.4,00,000/- through pay order No.0071059 dated 14.11.2011, Barkley Bank for the amount of Rs.3,00,000/- and another amount of Rs.1,00,000- was paid through Cheque No.5570748 dated 14.11.2011 of Bank Al-Habib Ltd. and the remaining amount of Rs.37,25,000/- was to be paid at the time of signing and verification of

transfer of documents of the suit property in presence of concerned officer of DHA. It is the case of the plaintiff/petitioner that defendants No.1(a) & 1(b) in the suit, are minors, however defendant/ respondent No.1 was their guardian *ad litem* being their real mother and they all were absolute owners of the suit property and were in possession thereof. She also provided Photostat copies of relevant documents to the plaintiff/ petitioner. She also executed a transfer affidavit on 20.12.2011 and other undertaking for cancellation and relinquishment of the suit plot for transferring the same in favour of the plaintiff with the Office of DHA but they raised objection for producing proper permission letter/sale certificate of suit property on behalf of minors from the competent court of law. Defendant No.1 also submitted indemnity bonds before DHA thereby indemnifying that she will comply with all the objections and so also she will bare all the adverse claim of the D.H.A. arising out from the said deal and she will resubmit the transfer papers after obtaining fresh permission for the sale of suit property from the competent court of law. Accordingly, one month's time was allowed to her to obtain such permission from the concerned court of law. After expiry of such stipulated period, the plaintiff had approached to her for transferring the suit property in his favour but she avoided to perform her part of performance for the reasons best known to her. It was claim of the plaintiff that he is *bona fide* purchaser of the suit property and has paid part payment to the tune of Rs.4,00,000/- out of total sale consideration and is ready to make payment of the balance amount to her, thus he filed aforesaid suit.

3. The respondent/defendant No.1 resisted the suit through her attorney S.M. Raza son of Syed Faiq Hussain Rizvi and filed an application under Order VII Rule11 CPC with the prayer to reject the plaint. In support of said application, attorney of defendant/respondent No.1 filed his affidavit and alleged that the plaintiff is bio-product of fraud and misrepresentation of one Asif Masood Mirza, who had entered into an agreement to purchase suit property from defendant/respondent No.1 at Wah Cantt on 04.11.2011 and prior to that date said Asif Masood Mirza had delivered a cheque for Rs.1,00,000/- to one Wahid at Wah Cantt and said Wahid had transferred the amount of Rs.1,00,000/- online to the brother of defendant No.1 at Lahore and thereafter a pay order for Rs.3,00,000/- was sent by one Sahil Ahmed, an employee of Islamabad Standard Chartered Bank, and the balance amount was to be paid on or before 14.12.2011 in term of clause-II of the said agreement dated 04.11.2011. According to him, original agreement to sell is

available with Asif Masood Mirza and it was specifically mentioned in the contents of the agreement to sell that the advance amount would be forfeited in favour of defendant No.1 if second party was not in a position to make the payment of balance amount to her within stipulated time because she was in dire need of money as she had started to raise the construction of her house at Wah Cantt for the benefit of her minor children as she along with her children were residing in the official accommodation, which was allotted to her husband and she had extended the time to materialize said transaction. It was stated that she along with her minors and brother arrived at Karachi where she had delivered all the original documents to the satisfaction of said Asif Masood Mirza for preparation of transfer documents and she had come to know at the office of DHA at the time of reexamination of the documents whereon she had put her signatures, that suit property was being transferred in the name of one Syed Moeed Ahmed though, she had entered into the agreement to sell with Asif Masood Mirza and he had not intimated to her in respect of such development. She had raised objection in presence of officials of DHA, who had advised her to withdraw the application for transfer by submitting the indemnity bond as documents were short of permission for the sale of minor's share to be issued by the Guardian Judge of Taxila in G&W Petition No.90/09 and the said indemnity bond was the result of force coercion and misrepresentation and was got prepared by the staff members of DHA.

4. The application under Order VII Rule 11 C.P.C. was heard and consequently, the same was allowed with the result, plaint was rejected vide order dated 26.09.2012 with the observation that the suit was not maintainable and was barred by law.

5. Petitioner/plaintiff then filed an application under Section 12(2) CPC read with Section 151 C.P.C. praying therein that the Order dated 26.9.2012 may be recalled and the suit may be restored to its original position. It was pleaded in the application that defendant/respondent No.1 had concealed the material facts from the court at the time of filing application under Order VII Rule 11 C.P.C. to the effect that she had moved an application before the competent court at Taxila on 16.2.2012 in order to enable her to obtain permission to sell out the property alongwith the shares of her minor children being their lawful guardian; however, she has played a fraud with the court by misrepresentation with *mala fide* intention, thus, misguided the trial court

in order to obtain order dated 26.09.2012. It was further asserted that defendant/respondent No.1 had executed the indemnity bond before the D.H.A. indemnifying therein to produce proper permission of the court of law. It was pleaded that, in fact, the said permission was already available with her at the relevant time and there was no need to obtain the same afresh. The said application was allowed on 21.12.2012 and the suit was restored to its original position. The said order was challenged by defendant/respondent No.1 by preferring Civil Revision Application No.08 of 2013, which was allowed vide impugned order dated 04.01.2014 and ultimately the order dated 21.12.2012 was set aside, resultantly the order of rejection of plaint stood maintained. Against the said order passed by the Revisional Court, instant Constitutional Petition has been filed by the petitioner/plaintiff.

6. I have heard learned counsel for the petitioner and respondent No.1, whereas none appeared on behalf of respondent No.2, DHA. I have also perused material available on the record.

7. Learned Counsel for the petitioner submitted that the civil revision filed by respondent No.1 was not maintainable but the Revisional Court did not properly take into consideration this legal aspect of the case. It was further submitted that the plaint was rejected in the first instance by the trial court in a hasty manner without appreciating the fact of fraud and misrepresentation having been played by defendant/respondent No.1; however, while hearing the application under section 12(2) CPC the trial Court re-appreciating the material available on record, passed a well-reasoned and justified order by allowing the said application and restoring the suit to its original position. It was further submitted that while deciding the application under section 12 (2) CPC it is not necessary for the trial court to frame issues and record evidence as it is settled law that it is the prerogative of the trial court to decide such application in the manner as deemed fit and proper keeping in view the facts and circumstances of the case, as such the order passed by the trial court allowing the application under section 12(2) CPC was not warranted to be interfered with by the Revisional Court and the Revisional Court while reversing findings of the trial court and allowing the revision application, acted in excess of its jurisdiction and was also in contravention of the relevant law. It was prayed that by allowing instant petition, the order passed by the Revisional Court may be set aside and the order passed by the trial court over an application under section 12 (2) CPC, may be maintained.

8. Conversely, learned counsel for respondent No.1 opposed the petition. It was submitted that the trial court in the first instance rightly allowed the application under Order VII Rule 11 CPC thereby rejecting the plaint of the suit filed by the petitioner; however, while hearing the application under section 12 (2) CPC, the trial court sat over upon its own order and allowed the said application without framing the issues and recording the evidence which, in the peculiar circumstances of the case, was necessary. It was further submitted that it is settled law that the order of rejection of plaint is a decree therefore, it was incumbent upon the petitioner to challenge the same by filing appeal under section 96 CPC; however, the petitioner instead of doing so, filed application under section 12 (2) CPC, thus the same was not maintainable. It was further submitted that there was no privity between respondent No.1 and the petitioner in respect of contract, therefore, the suit for specific performance of the contract was void *ab initio* and as such the plaint was rightly rejected by the trial court. It was further submitted that the order passed by the Revisional Court reversing the finding of the trial court while allowing the application under section 12 (2) CPC, was a well-reasoned and lawful order having been passed after appreciating all relevant factual and legal aspects of the case, thus the same does not require any interference by this court in exercise of its extraordinary constitutional jurisdiction. He therefore, prayed for dismissal of the petition.

9. From perusal of the record, it appears that in reply to the application under Order VII Rule 11 CPC for rejection of the plaint, the petitioner/plaintiff had filed Objections. From perusal of the objections, it seems that not a single word was uttered therein in respect of any fraud and/or misrepresentation having been played by defendant/respondent No.1. It is not understandable that as to what prevented the petitioner at that stage to urge the plea of fraud and misrepresentation and it was only after the said application was allowed and resultantly the plaint was rejected by the trial court, that the petitioner came with a plea that the said order was obtained by fraud and misrepresentation.

10. The main ingredients for invoking provisions of Section 12(2) CPC are; that it should be proved by tangible material that the party obtaining the order/judgment from the trial Court played fraud by misrepresenting and concealing the material facts from the Court or that the said court lacked the

jurisdiction to try the suit. However, in the instant case, the petitioner/plaintiff in the application under Section 12(2) CPC instead of establishing such fact, has mostly attacked the order of rejecting the plaint on the grounds that the trial court did not properly take into consideration the factual and legal aspects of the case; that it has granted unclaimed relief to plaintiff/petitioner to file fresh suit against the defendant/respondent No.1 for recovery of the paid amount to her in respect of the property as well as for damages. Even while pointing out that defendant/respondent No.1 had executed indemnity bond which left no doubt that the defendant/respondent No.1 had already possessed permission to sell the property in question, very surprisingly the petitioner does not blame that she played fraud by means of misrepresentation and/or concealment of material facts with malafide intention. Even, the petitioner did not alleged that it was defendant/respondent No.1 who withdrew the indemnity bond, rather he pleaded that it was malafide of defendant No.2 (DHA) while returning the same indemnity bond. Again he pleaded that had the trial court properly perused the contents of said indemnity bond, it would not have passed the order for rejection of the plaint; meaning thereby, the defendant/respondent No.1 did not conceal anything from the trial Court and/or made fraud and misrepresentation but it was the trial Court who did not properly perused the contents of the said indemnity bond, which resulted in rejection of the plaint. This also establishes that the rejection of plaint was not the result of making any fraud, misrepresentation or concealment of any material facts by defendant/respondent No.1 but it was, as per stand taken by the petitioner, due to the mis-appreciation of facts by the trial Court.

11. Needless to emphasize provisions of Section 12(2) CPC are invoked only when the validity of a judgment, decree or order is challenged specifically on the plea of fraud, misrepresentation or want of jurisdiction and not on any other ground. For the sake of convenience, the contents of Section 12(2) CPC are reproduced hereunder:

Section 12(2) CPC:

“Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit”.

12. It seems that in instant case, the application filed under Section 12(2) CPC was not specifically confined to the plea of fraud and misrepresentation and/or lack of jurisdiction which are the only ingredients for invoking the provisions of Section 12(2) CPC. Even the plea of fraud and misrepresentation is required to be proved by producing tangible material/ evidence and mere vague or bald assertions are not sufficient for invoking the said provisions of law. In this connection, reference may be made to the case reported as *ASIF MUNAWAR Vs. BANK ISLAMI PAKISTAN formerly CITI BANK and 3 others* (2024 C L D 126 [Sindh]), wherein a Division Bench of this Court held as under:

“12. Moreover, it is well settled principle that if fraud is alleged in an application filed under section 12(2) of the C.P.C., its necessary ingredients must be pleaded, so as to subsequently prove the same. General and bald allegations of fraud and misrepresentation could not form basis to upset a decree, validly passed by a court of competent jurisdiction. Further the applicant was required to prove that the fraud and misrepresentation was done during proceedings in the court; that the alleged fraud was due to false statement and concealment of facts and that the judgment and decree was collusively obtained on the basis of forged documents, which in the present case is missing. It may be noted that the active concealment and suppression of facts in words and deeds is an essential ingredient of fraud, which cannot be inferred by mere assertion rather it must be proved through strong, independent, clear and convincing evidence and the burden would be more heavier in the cases in which a decree or judgment has been passed by a court of competent jurisdiction under which valuable rights have accrued in favour of the opposite-party. There can be no exception to the rule of law that without bringing the essential facts on the record and the evidence in proof of the fraud the plea of ignorance and lack of knowledge simpliciter would not be sufficient to constitute fraud and dislodge the sanctity attached with the official acts and judicial proceedings.”

In the case of *Mst. NASIRA KHATOON and another Vs. Mst. AISHA BAI and 12 others*, reported in 2003 S C M R 1050, a Full Bench of Honourable Supreme Court held as under:

“9. The concealment of material facts by a person having knowledge or belief of such facts may constitute fraud but the same must be proved through clear and convincing evidence and the burden of proof of fraud would lie on the party which alleges fraud except in a case in which the fraud is floating on the face of record. The active concealment and suppression of facts in words and deeds is an essential ingredient of fraud which cannot be inferred by mere assertion rather it must be proved through strong, independent, clear and convincing evidence and the burden would be more heavier in the cases in which a long

period has passed since passing of the decree or judgment under which valuable rights have accrued in favour of the opposite-party. There can be no exception to the rule of law that without bringing the essential facts on the record and the evidence in proof of the fraud the plea of ignorance and lack of knowledge simpliciter would not be sufficient to constitute fraud and dislodge the sanctity attached with the official acts and judicial proceedings. The fraud undoubtedly vitiates solemn proceedings and time would not sanctify, an action of fraud and misrepresentation but no inference of fraud can be drawn merely on the basis of an oral assertion in absence of any proof of the allegation of fraud. The appellants in the present case having taken plea of fraud were under heavy burden to substantiate the allegation of fraud through clear and convincing evidence but they have not been able to discharge their onus to the satisfaction of law."

In the case of *ASGHAR ALI and 5 others Vs. MUHAMMAD ISMAIL and 9 others* 2017 YLR Note 423 [Sindh (Sukkur Bench)], it was held by this Court as under:

"As the petitioners remained failed to avail the remedy of appeal, and subsequently attempted to resort to section 12(2) of C.P.C., which is not permissible under the law. Section 12(2), C.P.C. is no substitute for an appeal and can only be invoked, if it is shown that the judgment/decree has been obtained on the back of a party by playing fraud upon the Court."

13. The grounds taken in the application under Section 12(2) CPC by the petitioner were those which could have been taken by him by filing an appeal under Section 96 CPC, which lies from **every decree** passed by any Court exercising original jurisdiction. For the sake of convenience, the contents of Section 96 CPC are reproduced hereunder:

"Section 96-- Appeal from original decree

- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court.*
- (2) An appeal may lie from an original decree passed ex-parte.*
- (3) No appeal shall lie from a decree passed by the court with consent of parties."*

14. In fact, it was incumbent upon the plaintiff/petitioner to have challenged the order of rejection of plaint by filing an appeal under Section 96 CPC because now it is well settled that although the order whereby an application filed under Order VII Rule 11 CPC is dismissed is an interlocutory

order; however, if such application is allowed and consequent thereupon the plaintiff is rejected, such order is a **decree** for all purposes, thus the same could be assailed by filing an appeal under Section 96 CPC. In this connection, reference may be made to the case of *MUHAMMAD ALI and others Vs. PROVINCE OF PUNJAB and others*, reported in 2009 SCMR 1079, where it was held by the Honourable Supreme Court as under:

“6. We have heard learned counsel and are not impressed by either of the contentions. In the first place an order rejecting a plaint is most certainly a decree in terms of the definition of the expression "decree" contained in section 2(2), C.P.C. which explicitly provides that the aforesaid expression shall be deemed to include the rejection of a plaint. It would, therefore, follow that it would carry the same degree of finality and enforceability unless, provided otherwise by law. As such after the expiry of the period of limitation for a second appeal against the order, dated 21-2-2005 passed by the learned Additional District Judge the order rejecting the plaint acquired complete finality.”

15. The petitioner instead of filing appeal under Section 96 CPC, challenged the order of rejection of plaint by moving an application under section 12(2) CPC which, as stated above, was not maintainable as the same was not filed specifically on the plea of fraud, misrepresentation and/or lack of jurisdiction and even the same was not supported by tangible material/evidence. Even in the objections filed earlier against the application under Order VII Rule 11 CPC, not a single word was uttered in respect of fraud or misrepresentation.

16. It is significant to point out at this juncture that the main ground taken by defendant/respondent No.1 in her application for rejection of plaint was that there is no privity between the parties in respect of contract. In reply to this legal objection, the plaintiff/petitioner took the stand that defendant No.2 (DHA) in their written statement had admitted that there was privity between petitioner and respondent No.1 in respect of contract. However, except this there is no tangible material put forward by the petitioner to establish such plea. Perusal of the agreement to sell relied upon by the petitioner, reveals that said agreement was executed between one Asif Masood and respondent No.1, Dr Uzma Ghazanfar. There is no mention, at all, of the plaintiff namely Muhammad Aqeel in the said agreement. Even the payment of sale consideration was also not made by the plaintiff. During the trial proceedings, attorney of defendant/respondent No.1 filed his affidavit and alleged that the said Asif Masood Mirza had delivered a cheque for Rs.1,00,000/- to one

Wahid at Wah Cantt and said Wahid had transferred the amount of Rs.1,00,000/- online to the brother of defendant No.1 at Lahore and thereafter a pay order for Rs.3,00,000/- was sent by one Sahil Ahmed, an employee of Islamabad Standard Chartered Bank, and the balance amount was to be paid on or before 14.12.2011 in terms of clause-II of the said agreement dated 04.11.2011. The petitioner/plaintiff has not brought any tangible material on the record to rebut such assertion made by the defendant/respondent No.1. On perusal of the agreement to sell, the assertion made by the plaintiff that there was no privity between the parties in respect of contract appears to be correct. In fact, the said agreement was executed between aforesaid Asif Masood and respondent No.1 Dr. Uzma Ghazanfar and there is, at all, no mention of plaintiff Muhammad Aqeel in the sale agreement and even the payments were also not made by the plaintiff and same were made by said Asif Masood and one Sahil. This apparently establishes that there was no privity between the parties to the Suit in respect of contract.

17. The upshot of above discussion is that I find no illegality and/or infirmity in the order dated 04.01.2014 passed by the Revisional Court, which may require any interference by this Court in exercise of its extra-ordinary constitutional jurisdiction. Consequently, this Constitutional Petition is dismissed and the order dated 26.09.2012, whereby plaint of the suit filed by the petitioner was rejected, is maintained. It is made clear that the order passed by the trial Court while rejecting the plaint to the effect that the plaintiff/petitioner shall be at liberty to file fresh suit for recovery of the paid amount in respect of the property in question as well as to claim damages, shall also remain intact.

Office is directed to send back the R&Ps of cases viz. **(1)** Civil Suit No. 240/2012 {*Muhammad Aqeel V/S Mst. Dr.Uzma Ghazanfar*} to Vth Senior Civil Judge Karachi South and **(2)** Civil Revision No. 08/2013 {*Dr. Uzma Ghazanfar V/S Muhammad Aqeel & others*} to the District & Session Judge, Karachi South along with copy of this judgment for compliance. Learned MIT-II to ensure compliance.

Karachi
Dated: 20.02.2026.
Approved of Reporting.

JUDGE
HEAD OF CONST. BENCHES