

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P. No. S-37 of 2025**

<i>Date</i>	<i>Order with Signature(s) of Judge(s)</i>
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**HEARING/PRIORITY.**

1. For orders on office objections as at A.
2. For hearing of CMA No.396 of 2025.
3. For hearing of Main Case.

**30.05.2025**

Mr. Nadir Khan Burdi, Advocate for the Petitioner.  
Mr. Farooq H. Abbasi, Advocate for the Respondents.

**-X-X-X-X-X-**

1. The instant Petition has been filed impugning the Order of the learned Appellate Court dated 24.12.2024, in which Family Appeal No. 226 of 2024 was dismissed in *limine*. The aforementioned Appeal emanated from the Order dated 15.11.2024 passed in Family Suit No. 183 of 2024. Vide the said Order dated 15.11.2024, the Application filed by the learned counsel for the Petitioner seeking recalling of the Ex-parte Judgment and Decree passed by the learned Family Court dated 20.05.2024, was dismissed.
2. Brief facts of the case are that the Respondent filed Family Suit No. 183 of 2024 in which an Ex-parte Judgment and Decree was passed on 20.05.2024. Subsequently, learned counsel for the Petitioner filed an Application under Section 12(2) CPC for setting aside the Ex-parte Judgment and Decree, primarily on the grounds of defective service. It was further averred in the said application that the Ex-parte judgment and decree is a result of fraud and misrepresentation. The said application was dismissed vide Order dated 15.11.2024. Thereafter, the present Petitioner filed the above-mentioned Family Appeal which, as noted above, was dismissed in *limine* vide the Impugned Order dated 24.12.2024.
3. It is contended by the learned counsel for the Petitioner that the Ex-parte Judgment and Decree was obtained by fraud and misrepresentation. He further contended that earlier four suits had been filed between the same

parties and were subsequently withdrawn. He asserted that the merits of the matter ought to be examined by the learned Family Court and he has filed the instant Petition merely to have the matter remanded to the learned Family Court, for a decision on merits after recording evidence of the respective parties.

4. When posed with the specific question, the learned counsel candidly conceded that he had earlier filed Criminal Miscellaneous Application No.784 of 2024, in which he appears as counsel. He further stated that the address of the Applicant in the said Criminal Miscellaneous Application was inadvertently mentioned by him. This, according to the learned counsel, formed the basis for the dismissal of the recalling Application. Learned counsel stated that he does not wish to prolong the matter and if the instant Petition is allowed and the matter is remanded back, this Court may direct the learned Family Court to proceed expeditiously.
5. Conversely, learned counsel for the Respondent vehemently argued that the present Petitioner is not entitled for the relief sought. He attempted to highlight contradictions within the pleadings of the learned counsel for the Petitioner and referred to the aforementioned Criminal Miscellaneous Application. He further averred that remanding the case after allowing the instant Petition will only delay the matter. The Respondent, according to him, is entitled to the relief granted through the Ex-parte Judgment and Decree of the learned Family Court.
6. I have heard both the learned counsels and have perused the record carefully, particularly the service upon the Petitioner. In this regard, it is noted that publication was made in the Daily Ummat; however, no pasting was made on the Petitioner's address. The learned counsel contends that he no longer resides at the stated address. Furthermore, the courier receipts annexed are from a company by the name of "Perfect Courier". The learned counsel has solemnly stated on oath that he was not served. I find no reason to disbelieve

this contention that he was not served and was unaware of the pendency of the Family Suit.

7. Moreover, the law favors adjudication on merits rather than technicalities. The averments raised by the learned counsel for the Respondent may be addressed before the learned Family Court during recording of evidence. In this respect, the instant Petition is *allowed*, and the Impugned order is set aside. The matter is remanded to the learned trial Court for decision afresh after filing of written statement, framing issues and recording evidence of the respective parties within a period of 60 days from today, excluding Summer Vacations. Any observations made in this Order shall not influence adjudication by the learned trial Court on merit.

The instant Petition is allowed in the above terms.

***JUDGE***

Jamil