

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P No. D-59 of 2020**

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DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

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**Fresh case.**

1. For order on CMA No. 24103/2020.
2. For order on Misc. No.306/2020
3. For order on Misc. No.307/2020
4. For hearing of main case.

**13.11.2020**

Mr. Muhammad Vawda, advocate, for the Petitioner.

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1. Granted.
2. Granted, subject to all just exceptions.

3&4. The Petitioner had apparently filed Civil Revision No.117/2019 (the “**Revision**”) before the learned IXth Additional District & Sessions Judge (MCAC), Karachi, East (the “**Revisional Court**”), questioning the propriety of an Order dated 30.10.2019 made by the learned VIIth Senior Civil Judge, Karachi, East, dismissing his Applications under Section 12 (2) CPC and Order XIV Rule 1 CPC (hereinafter collectively referred to “**Subject Applications**”) in Civil Suit No.958/2013 filed by the Petitioner seeking Specific Performance of an Agreement dated 10.12.2010 for sale/purchase of House No.10, Block-16-A, KDA Overseas Bungalows, Gulistan-e-Jauhar, Karachi admeasuring 266.66 sq. yards (the “**Disputed Property**”) and Civil Suit No.1513/2013 instituted by the Respondent No.1 for Cancellation of that Agreement (hereinafter collectively referred to as the “**Underlying Suits**”), which had been consolidated and culminated in a common judgment dated 03.04.2019 whereby Suit No.958/2013 was dismissed and Suit No.1513/2013 was decreed, with an order for possession of the Disputed Property being made in favour of the Respondent and the Petitioner being directed hand over vacant possession within a period of 3 months thereof. Vide this Petition under Article 199 of the Constitution, the Petitioner has now assailed the entire chain of Orders made by the fora below, from the Revisional Court downwards, seeking that the same be suspended and then set aside, with the Respondents being restrained from dispossessing the Petitioner from the Disputed Property.

Briefly stated, the salient facts to be borne in mind for present purposes is that after consolidation of the Underlying Suits, neither the Petitioner nor his Counsel maintained appearance before the trial Court and remained absent at the stage of evidence and successive stage of arguments, with judgment then being entered in the matter as aforementioned.

Subsequently, after lapse of the prescribed period of limitation for filing of an Appeal, the Subject Applications were filed on 18.06.2019 and 27.08.2019 respectively, which were dismissed by the trial Court on the ground that no apparent case of fraud or misrepresentation stood made out, hence the Application under S.12(2) was without merit and framing of Issues in that regard was not necessitated. Such a finding was upheld by the Revisional Court vide the Order dated 06.12.2019 whereby the Revision was dismissed *in limine*, with it *inter alia* being observed as follows:-

“So, it has come on the record that learned trial court passed judgment on merit and applicant participated in the proceeding before the trial court therefore, applicant failed to make out the prima facie case with regard to the fraud and misrepresentation, learned trial court passed the judgment within its jurisdiction. Therefore, there was no need to frame the issues and learned trial court rightly dismissed the application in hand with the observation that where a person was himself contributed in the legal proceedings before trial court or was served but later on chosen to absent from the matter, then only remedy left with him to invoke the remedy of appeal, revision or review, instead of filing application under section 12 (2) CPC. Learned counsel for the applicant has failed to point out that the learned trial court has exercised the jurisdiction not vested in it by law or wrongly exercised.”

On query posed to counsel as to why an appeal had not been filed in the matter along with an application under Section 5 of the Limitation Act, no response was forthcoming. Furthermore, when queried as to what infirmity or illegality afflicted the Order of the Revisional Court under the given circumstances, learned counsel for the Petitioner broadly contended that the factual controversy underpinning the absence of the Petitioner and representation on his behalf in the Underlying Suits required enquiry and that the Application under Section 12 (2) CPC could not have been dismissed without issues having been framed as to connivance between the Respondent No.1 and the counsel who had then been appearing on behalf of the Petitioner in the Underlying Suits.

We have also noted that the Petition was presented on 04.01.2020 but has never been fixed in Court prior to today, however the Office has endorsed a note in the Order Sheet reflecting that the matter has now otherwise been listed to come up on 18.12.2020. When queried as to why the Petition had not been pursued earlier, learned counsel for the Petitioner could not provide a satisfactory answer, and merely fell back on the plea that there had previously been no urgency, which had recently arisen in view of the fact that a writ of possession in respect of the Disputed Property had been issued on 29.10.2020 in Civil Execution No.50/2019 for enforcement of the judgment and decree made in favour of the Respondent No.1 in Suit No.1513/2013. Suffice it to say that such explanation is hardly satisfactory to explain the Petition remaining dormant for a period of eleven (11) months, inaction on the part of the office also requiring scrutiny.

Having nonetheless considered the matter in light of the record and the Orders made in the proceedings below, we are unable to concur with the submissions as to the necessity for issues to have been framed for purposes of the Application under S.12(2) CPC, as it is not incumbent upon the Court to frame issues in every matter under S.12(2) CPC, but only where the factual allegations made are such that a further probe is required, whereas it is manifest in the instant case that the outcome of the Underlying Suits was largely a product of the Petitioner's own indolence and reckless disregard. It is axiomatic that Section 12(2) CPC turns on the aspect of the misrepresentation or fraud, whereas the fraud alleged by the Petitioner in the matter at hand is principally that on the part of his own counsel, at the behest of the Respondent No.1. Needless to say, as the represented party under what is essentially a relationship of agency, the Petitioner was liable for the consequences flowing from the actions of his counsel, or inaction as the case may be, and an allegation of the nature made by the Petitioner do not furnish a valid ground for a factual inquiry for purposes of Section 12(2). The contention as to Respondent No.1 having caused the Petitioner's Counsel to absent himself from the proceedings in Underlying Suits and suppress the Judgment and Decree ensuing therein is fanciful to say the least, and the view taken in the matter by the trial Court and learned Revisional Court appears to be valid and correct.

As such, under the given circumstances, no case for interference through issuance of a writ is made out, and the Petition stands dismissed, alongwith listed applications, but with no order as to costs. However, in view of the failure on the part of the Office to list the Petition over a protracted period, let a proper explanation be called for from the concerned Additional Registrar by the MIT-II in that regard, to be placed on record within 15 days so that further action may ensue, if warranted.

**JUDGE**

**JUDGE**

*MUBASHIR*