

IN THE HIGH COURT OF SINDH AT KARACHI

J. M. NO. 33 / 2015

Applicant: Shahzaib Hussain through Rehman Aziz Malik
Advocate.

Respondent: Muhammad Ahsan through Mr. Hassan Akbar
Advocate.

For orders on main application.

Date of hearing: 20.04.2018.

Date of order: 20.04.2018.

ORDER

Muhammad Junaid Ghaffar, J. This J.M. has been filed under Section 12(2) CPC impugning order dated 21.11.2014 whereby, Suit No. 1406 of 2012 was dismissed as withdrawn.

2. Learned Counsel for the Applicant submits that instant Suit was filed for Possession, Permanent Injunction and Mesne Profit and on the premise of the Defendant to hand over possession, and settle the issue, the Suit was unconditionally withdrawn; however, the Defendant failed to honor such commitment and played fraud and so also misrepresented; hence, instant J. M. Learned Counsel for the Applicant made his sincere efforts to convince the Court that such act on the part of the Defendant was a case of fraud and misrepresentation and also read out Para 13 of this J. M. and contended that since fraud has been played the impugned order be set aside. He also tried to trace out the entire history of the transaction between the Applicant and the Respondent to make out a case.

3. I have heard learned Counsel for the Applicant and have perused the record. At the very outset, learned Counsel was confronted as to

how this J. M. is maintainable in view of the unconditional withdrawal of the Suit to which learned Counsel could not satisfactorily respond; but as observed made an effort to argue that since the commitment was not honored; hence, it is a case of fraud and misrepresentation, therefore, this J. M. is competent. However, with utmost respect to the learned Counsel, I am not convinced with such line of arguments for the reason that insofar as the withdrawal of the Suit is concerned, that has not been disputed, nor the authority of the person who was acting as an attorney has been challenged. In fact the father of the Applicant / Plaintiff had acted as an attorney; therefore, even otherwise this could not have been disputed. On perusal of the withdrawal application and the supporting affidavit, it clearly reflects that this is an unconditional withdrawal and once such withdrawal is admitted, the case would not fall within the contemplation of Section 12(2) CPC as this is not a case of any fraud and or misrepresentation with the Court. Moreover, the application itself was under Order 23 Rule 1 CPC for a simplicitor withdrawal and even in that there is no disclosure of any settlement outside the Court. If the case was of some settlement as alleged, then the application ought to have been filed under Order 23 Rule 3 CPC for a compromise Judgment and Decree which is not the case here. In such circumstances, on the face of it, this does not appear to be a case of any fraud or misrepresentation with the Court. It is also a matter of record that even after filing of this J. M. the said Applicant has also filed another Suit on 10.06.2015 i.e. on the same date when this J.M. was filed in respect of same cause of action; therefore, even otherwise, no case is made out for seeking any indulgence from this Court under Section 12(2) CPC. The said Suit is pending and it to be dealt with in accordance with law.

4. It is settled law that the provisions under Section 12(2) CPC would not be attracted when the fraud or misrepresentation is not alleged in connection with the pending proceedings. The provisions under section 12(2), C.P.C. would not be attracted when the fraud or misrepresentation is not alleged in connection with the pending proceedings. A consequent order, which is consciously assented, by the parties or their counsel cannot be normally interfered with unless it is brought through reliable evidence which is apparent on the face of the record that the same was obtained by practicing fraud and misrepresentation. The facts of the present case do not speak out any particulars of fraud or misrepresentation, as alleged by the appellant, to have been practiced upon her. Nor the application under section 12(2), C.P.C. gives out the necessary and requisite details of fraud and misrepresentation as required by the law¹. It is also settled law that an application under Section 12(2) CPC is only competent in case if fraud or misrepresentation is committed with the Court². There is one another aspect for not entertaining this J.M. and that is, that if permitted, there would not be an end to litigation. Every affected party would come to Court through an application under Section 12(2) CPC, after settling and or withdrawing a lis. Even where a claim is false there is a false representation made to a Court but this cannot by itself be a ground for setting aside a decree because if such ground was accepted there would be no end to litigation for every decree which does not proceed on some legal ground alone would be liable to be challenged on the ground that the party has deliberately put forward an untrue case. If it was untrue

¹ (Mrs. Ruba V. Aftab Ahmed and 7 others) 2015 MLD 715

² 2017 YLR 1713 (Province of Sindh, Chief Secretary and others V. Bilqees and 16 others).

it would be untrue, at least in most cases, to the knowledge of the party³.

5. In view of hereinabove facts and circumstances of this case, no case is made out either of fraud or misrepresentation within the contemplation of Section 12(2) CPC and therefore, by means of a short order on 20.04.2018, instant J. M. being frivolous and misconceived, was dismissed with cost of Rs. 10,000/- to be deposited in the account of Sindh High Court Clinic. Above are the reasons thereof.

J U D G E

ARSHAD/

³ Mst. Izat v Kadir Bux (PLD 1959(WP) Karachi 221. Note: though this case pertains to an era when s.12(2) was not part of CPC, but principle remains the same.