

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

J.M. No.43 of 2022

Dewan Muhammad Yousuf Farooqui
Vs.
Abdul Manan Mutaqi and others

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| DATE | ORDER WITH SIGNATURE OF JUDGE(S). |
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1. For orders on CMA No.18113/2022 (if granted).
 2. For orders on CMA No.18114/2022 (U/O 39 R-1&2 CPC).
 3. For orders on main application under section 12(2) CPC).
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Dated 02.12.2022

Syed Muhammad Abbas Hyder, Advocate for the Applicant.
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1. Urgency granted.
- 2&3. Applicant has attempted to invoke the jurisdiction of this Court within the frame of Section 12(2) CPC. In a suit for administration, filed as Suit No.1183/2011 an order was passed on 31.10.2022 whereby Nazir's report was taken on record subject to any objection. It was further observed that if there is no objection to the Nazir's report, then in pursuance of preliminary decree, Nazir can proceed.

The present applicant is defendant No.2 in the said suit and was present in suit through an Advocate, who filed this J.M. Hence for all intent and purposes if defendant No.2, as disclosed in the order and applicant here is aggrieved by the order, he may pursue his remedy before the appellate bench of this Court, however, by filing application under Section 12(2) CPC this Court has to see whether the question as raised is within frame of Section 12(2) CPC. To be in this frame of Section 12(2) CPC it is pleaded that some of the respondents were not served in the suit and yet a preliminary decree was passed and Nazir was directed in the above terms.

I do not see any fraud that has been committed or any misrepresentation is made. For those who were not in attendance

before learned Judge despite notice to them or those who claim notices, it is for them to pursue their remedy and the applicant before me is neither holding their brief nor could represent them in the present facts and circumstances when no powers have been assigned to the applicant by them. This is not even the case of Applicant. This being the situation and facts of the case, I do not see applicant's case within the frame of Section 12(2) CPC and this J.M as such is dismissed in limine alongwith pending application(s).

JUDGE

Ayaz Gul