

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-499 of 2023

Date	Order with signature of Judge
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FRESH CASE.

1. For orders on Misc. No.2194/2023.
2. For orders on Office Objection No.31.
3. For orders on Misc. No.2195/2023.
4. For orders on Misc. No.2196/2023.
5. For hearing of main case.

24.01.2023.

Mr. Abdul Qadir Khan, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order made by the learned District Judge, Malir, Karachi on 23.12.2022, allowing Civil Revision Application No.72/2022 filed by the Respondent No.3 so as to set aside the Order passed by the learned Senior Civil Judge-IV, Malir, Karachi on 24.09.2022 and allow the underlying Application under Section 12 (2) CPC filed by said Respondent while setting aside the *ex-parte* Judgment and Decree dated 08.09.2021 obtained by the Petitioner in Civil Suit No.475/2020.

2. Succinctly, the salient facts underpinning the matter are that the Petitioner had filed the Suit alleging that an oral agreement had been entered into on 17.06.2019 for the sale/purchase of an immovable property, with it being said that the owner thereof, the Respondent No.3, had telephonically authorized his brother, the Respondent No.4, to undertake the transaction on his behalf. While the summons was served upon the Respondent No.5 (i.e. Bahria Town), which appeared and filed its written statement, the matter proceeded in the absence of the Respondents Nos. 3 and 4, who were arrayed as the Defendants No.1 and 2 in the Suit, and came to be decreed against them on the strength of the evidence produced by the Petitioner and his witnesses.

3. While the Application under S.12(2) was dismissed by the trial Court, upon consideration of the matter, the Revisional Court concluded that service on the Respondents No.3 and 4 had been defective. The relevant excerpt from the Order of the Revisional Court, reflecting the reasoning of the Court, reads as follows: -

“Perusal of record shows that after admission of the suit, trial court issued summons for service upon the applicant and respondent No.1, which return un-served and such fact is evident from the record. Record further shows that one notice dated 15.09.2020 was issued and as per Bailiff’s report the same was received by one person who disclosed to bailiff that both the brothers namely Asif Ahmed/respondent No.1 and Muhammad Abid/applicant are at Dubai and not residing at the given address at Karachi. Despite of this fact the trial Court ordered for pasting of notice on such address, where both defendants No.1 & 2 (present appellant and respondent No.2) were not available and further proceeded to order for substituted mode of service through publication in daily “Express” Karachi. When both the brothers/applicant and respondent No.2 respectively were reported to be at Dubai then the notice should have been published in daily, in its international edition having circulation at Dubai, but same was not done by learned trial Court and notice was ordered to be published in Daily Express Karachi while the applicant was admittedly at Dubai, so what could be the purpose of such publication in daily “Express” Karachi dated 06.10.2020, which by no means can be termed as sufficient proof of service of summons upon the applicant and respondent No.1. The trial court failed to consider all these factual as well as legal aspects of the case, which are available on record, and acted in the exercise of its jurisdiction illegally, with material irregularity and without considering all such material facts erred in dismissing the application filed under section 12(2) CPC.”

4. On query posed as to what perversity or illegality afflicted the Order of the Revisional Court, learned counsel for the Petitioner was at a loss to offer any cogent argument other than to submit that the Bailiff’s Report had been misread, with it being contended that it reflected that only the Respondent No.3 was abroad, but that the Respondent No.4 was available at the premises.

5. However, having examined the Bailiff's Report, we are unable to accept such contention. Even otherwise, the same does not advance the cause of the Petitioner in respect of the Respondent No.3, who is admittedly the owner of the property.

6. That being so, we are of the view that the Petition is devoid of force, with no real case for interference being made out. Hence, while granting the application for urgency, we dismiss the Petition *in limine* along with other pending miscellaneous applications.

JUDGE

CHIEF JUSTICE

MUBASHIR