

## IN THE HIGH COURT OF SINDH AT HYDERABAD

RA 91 of 2023 : Tahir Ahmed Vs. Muhammad Afzal  
For the Applicant : Mr. Rashid Raees Advocate  
Date/s of hearing : 30.11.2023.  
Date of announcement : 30.11.2023.

### ORDER

**Agha Faisal, J.** Summary Suit No.80 of 2020 was decided vide judgment and decree dated 25.07.2022 by the 3<sup>rd</sup> Additional District Judge Hyderabad; and per learned counsel, an appeal has been filed there against before the competent court.

In addition thereto, the applicant filed an application under Section 12(2) CPC against the same judgment and it was dismissed vide order dated 20.12.2022. Operative part of the order is reproduced herein below:

*“4. Heard. Record perused, In this summary suit, the defendant was allowed unconditional leave to defend to defend the suit, he filed written statement and from the pleadings of the parties issues were framed on 26.07.2021. Thereafter, plaintiff’s evidence was record on 16.07.2022 but Counsel for defendant was not present, no adjournment application was moved, therefore, no cross examination was made and the Learned Counsel for plaintiff closed the evidence side. Thereafter, matter came up for final argument on 18.07.2020 but defendant and his Counsel were not present, therefore, hearing the argument of Counsel for the plaintiff side the matter was fixed for Judgment on 25.07.2022. On 25.07.2022, again the defendant and his Counsel were not present and the judgment was announced.*

*5. After almost three months of Judgment and Decree dated 25.07.2022 and one month after filling of the execution application, defendant through his Counsel moved present application under S.12(2) CPC. The ground mentioned in supporting affidavit of the defendant under S.12(2) CPC are that on 06.07.2022 Counsel for defendant was present and the Reader of the Court gave him date viz. 25.07.2022 but later on the Reader of the Court fixed the date viz. 16.07.2022 without information to the defendant side. It is mentioned in paragraph No.04 of the affidavit that on 16.07.2022 the evidence of plaintiff was recorded in absence of defendant and thereby matter was fixed on 19.07.2022. Thereafter, again on 19.07.2022 defendant did not appear to pursue the suit for the reason that on 06.07.2022, he was given next date as 25.07.2022. Thereafter, on 25.07.2022, when the work was suspended and both the parties were absent, the Court pronounced Judgment In early hours and such Decree was also prepared when the work was suspended.*

*6. The scope of proceedings under S.12(2) CPC is confined to fraud practiced upon Court Itself and obtaining an order or decree through misrepresentation. Here in this case, the allegation of fraud is leveled against the Court. The defendant has based his application under S.12(2) CPC by leveling allegations against the Court and the Reader of the Court in respect of dates of hearing. The dates given, written on file confirms that all the dates of hearing were given by me with my hand writing. The*

*application under S.12(2) CPC and the grounds mentioned in the accompanied affidavit are improper and malafidely made in order to protract the proceedings of the execution application, therefore, application under S.12(2) CPC in hand rejected in limine. No order as to cost.”*

The only argument articulated is that the applicant was not heard before passing this order.

Heard and perused. The impugned order speaks for itself and the narration contained therein has not been disputed by the counsel. The court has observed that the ingredients requisite for grant of an application under section 12(2) C.P.C were not made out and it could not be demonstrated that the finding could not have been rested on the rationale relied upon.

The trial court appears to have exercised its jurisdiction and no infirmity in such regard is manifest. It is trite law<sup>1</sup> that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity.

In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine* along with listed applications.

Judge

Ali Haider

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<sup>1</sup> Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.