

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.D-5929 of 2023

Syed Mithal Shah
Versus
Zareen Rubab & others

Date	Order with signature of Judge
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1. For orders on Misc. No.27677/23
2. For orders on office objection No.19.
3. For orders on Misc. No.27678/23
4. For orders on Misc. No.27679/23
5. For hearing of main case.

Dated: 11.12.2023

Petitioner Syed Mithal Shah present in person.

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Heard petitioner appearing in person and perused record.

In this petition petitioner has impugned the orders passed by the two Courts below in terms whereof his application under section 12(2) CPC was dismissed. The sole ground on the basis of which the petitioner has pleaded his case is that he had no knowledge of the proceedings as the service was effected on wrong address and/or the address on which service was effected is other than the one where he is/was residing and furthermore receipt of notice by one Kaleemullah on the given address claiming to be son of the petitioner is also incorrect as he (petitioner) has no son with such name. On legal front, when the petitioner was put to a question as to how factual aspect of the matter as considered by the two Courts below can be deliberated upon by this Court while exercising constitutional jurisdiction, he had no answer.

Record reveals that the subject matter of the controversy is a tenancy agreement and the address of respondent No.1 throughout the

proceedings is the one mentioned in this document i.e. of Gulistan-e-Jauhar. This document is admitted by the petitioner. The service upon the petitioner was effected on this address hence a fraud or misrepresentation cannot be attributed to the plaintiff/respondent No.1.

It is also very pertinent to mention here that the judgment in the suit was passed on 10.05.2019 and the petitioner has filed the 12(2) CPC application (wrongly typed as “Application under order 12 Rule 2 CPC”) on 06.05.2021 and the address shown in the affidavit is that of Gulistan-e-Jauhar. But the very surprising factor to note is that in this application the petitioner though has denied the facts as narrated by the petitioner vis-à-vis tenancy and the amount but the only plea that, at the best, is relevant for 12(2) application is stated in paragraph 8, which is reproduced below, to make the things crystal clear:

“That the act of the decree holder for giving application for CNIC & Bank Accounts stop is illegal, he has given wrong addresses for service as she is knowing very well that defendant is a Senior Advocate, but plaintiff has not sent any notice through Sindh Bar Council. This Honorable Court stopped Bank accounts/CNIC blocked for the compelling Judgment Debtor to appear in Court.”

Above paragraph is absolutely silent as to the stand that has been taken up today during course of arguments by the petitioner. Petitioner has neither mentioned his correct address in the application and supporting affidavit nor has taken the plea that Kaleemullah who is alleged to have received notice on his behalf is not his son. Even the address shown in the affidavit filed in support of the application is of Gulistan-e-Jauhar. Thus, conduct of the petitioner himself does not call for any indulgence.

Petitioner has also not been able to satisfy the Court as to the limited scope while exercising constitutional jurisdiction. In constitutional jurisdiction when the findings are based on arbitrary,

perverse finding and/or in violation of law or evidence or if the error is so glaring and patent that it may not be acceptable, the High Court can exercise its jurisdiction as a corrective measure. None of these are found and/or pointed out by the petitioner during the course of his arguments.

In view of above, the orders of the two Courts below do not call for any interference. Instant petition as such is dismissed along with listed applications.

Judge

Judge