

**JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P.No.S-1363 of 2011**

Mr. Sadaqat Ali & another ..... Petitioners  
Vs.  
Muhammad Zaman & another..... Respondents

M/s Shaikh Javed Mir, Shahryar Ibrahim and Samreen Ehtesham,  
advocate for petitioner  
Syed Hussain Hyder, advocate for respondent No.1.

05.08.2024.

**O R D E R**

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**MUHAMMAD IQBAL KALHORO J:** Respondent No.1 filed a rent application against late Maqsood Ahmed Khan through legal heirs in respect of property No.149, 150 situated in Ali Muhammad Goth having a common wall sector 11-E, North Karachi on the grounds of default in payment of monthly rent and subletting the same without permission and consent of the owner, to petitioners. When petitioners failed to respond to notices and several chances given to them to file written statement, they were declared exparte on 18.04.2006 leading to an exparte judgment dated 18.07.2006 passed by learned 1<sup>st</sup> Senior Civil Judge/Rent Controller, Karachi Central, who accepted the pleas of respondent and allowed the application by directing the respondents to handover vacant and peaceful possession of the demised premises to him. Pursuant to it, execution application was filed by the respondent which was also allowed.

2. The case of petitioners, is that it was only when notices of execution application were served upon them, they came to know of the proceedings and the judgment passed against them exparte. They filed an application u/s 12(2) CPC seeking setting aside of exparte eviction order which as per their claim was obtained through fraud and misrepresentation of facts. This application was dismissed by learned Rent Controller vide order dated 15.05.2010. While dismissing the application learned court observed as under:-

“Heard the learned counsel for both the sides and perused material on record. The main grievance of the advocate for opponents are that judgment dated 18.07.2006 has been obtained by fraud and misrepresentation. Record shows that notices were issued against the opponents by way of Bailiff, Registered Post A/D, TCS and pasting and finally by way of publication dated 11.02.2006 in daily Jasarat, Karachi, Respective reports are placed on record. The service was held good against the opponents on 10.03.2006. The opponents given several chances for filing their written statements but failed to file the same and hence they were debarred from filing written statements and declared exparte

on 18.04.2006. Record shows that several bailiff's reports, TCS receipts, courier receipts as well as publication are on record and sufficient time has already been provided by the Court to the opponents to appear before this Court to contents the matter filed against them and bailiffs of this court have already pasted the notice on the wall as well as gate of the house in question where the opponents are residing, which shows that the opponents had served with the notice of the instant suit but intentionally and deliberately failed to appear before the Court inspite of giving sufficient opportunities.

3. The petitioners, however, not satisfied with the said order dismissing their application u/s 12(2) CPC, filed FRA No.109/2010, which has also been dismissed through impugned judgment dated 24.11.2011.

4. Learned counsel for petitioners has contended that before filing of the instant rent case, applicant had filed a rent case No.106/2003, dismissed in non-prosecution later, in which he in para No.1 has claimed that he was owner of the demised premises, whereas in the present rent case No.541/2005, he has stated that he is the attorney of his wife Mst. Naseem, who is actual owner of the demised premises. At the time of his deposition (available at page 117 of file), he has admitted that he has not filed power of attorney in the case. According to learned counsel for petitioners, this ground is sufficient to non-suit respondent No.1 from maintaining the rent case against the petitioners.

5. On the other hand, learned counsel for respondent has rebutted his arguments and submitted that petitioners had filed a civil suit, subsequently, against respondent seeking declaration to be lawful lessee and occupant of the demised premises which has been dismissed by learned 1<sup>st</sup> Senior Civil Judge, Karachi Central vide judgment dated 16.12.2021. He has placed on record copies of judgment and decree.

6. I have considered submissions of the parties and perused material available on record. Learned trial court while dismissing the application by petitioners against respondent u/s 12(2) CPC has referred to the relevant record, which shows that service upon the petitioners was held good on the basis of cogent reasons and material showing information of the case to them through different modes of service. After exhausting all the modes of service including pasting of notice on their residence, as a last resort, publication in the newspapers was also made to warn the petitioners to appear in the court and contest the matter but they chose to remain absent.

7. The reasons given by learned trial court for holding service good upon the petitioners are valid and need not be interfered with by this court in constitutional jurisdiction in absence of any material reflecting illegality or miscarriage of justice. The challenge to such order by the petitioners in the rent

appeal met with same fate and there also they did not succeed. It is settled that the scope of constitutional jurisdiction is very limited, just because a different opinion is possible on reappraisal of material, would not make a constitutional petition maintainable. Unless some gross illegality or miscarriage of justice is pointed out by the aggrieved party to have been committed by the forum below in adjudicating the matter, the concurrent findings of the courts below would not be set-aside.

8. The controversy raised by the petitioners here that in one rent application, the respondent has claimed to be owner of the demised premises whereas in the second rent application he has claimed to be attorney and husband of owner of the property will not improve their case any better. For the reasons the petitioners have not taken up this ground in 12(2) CPC application before the Rent Controller or before the appellate court first, and second it will not change the status of respondent as tenant of the demised premises sublet to them by the original tenant namely Masood Ahmed Khan. This being the position, I do not find any merit in the instant constitutional petition and dismiss it accordingly alongwith pending application.

Judge

A.K.