

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-2070 of 2015
alongwith
C.P. No.D-5851 of 2019

Muhammad Hashim
Versus
Mst. Anita Kalim and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

Priority

1. For hearing of CMA No.9046/2015.
2. For hearing of main case.

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Dated 30.01.2024

Mr. Sikandar Khan, Advocate for the petitioner.

Mr. Faiz Durani, Advocate for Respondent No.2.

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Muhammad Shafi Siddiqui, J.- A suit for performance was decreed by judgment dated 24.12.2011 and decree dated 04.01.2012 wherein an application under Section-12(2) CPC was filed by the petitioner/ defendant therein which was dismissed by trial Court. It was claimed to be an exparte decree. Against the dismissal of application under Section-12(2) CPC by order dated 15.11.2012, petitioner preferred revision application No.20/2013. During pendency of revision application, an individual Muhammad Farooq son of Haji Muhammad Yousuf intervened that the decree-holder (who's decree was challenged), had entered into an agreement with the applicant/ intervener and hence he ought to have been impleaded as necessary and proper party in the revision application. The said application under Order-I Rule-10 CPC was allowed by order dated 28.02.2015, against which the petitioner has filed above constitution petition No.2070/2015.

2. While C.P. No.D-2070/2015 was pending, the main revision application wherein the above order in respect of an application under Order-I Rule-10 CPC was passed, was also dismissed on merit and against the said order the connected petition bearing C.P. No.D-5851/2019 was filed, both petitions are now clubbed and ripe for a decision.

3. Since common facts are involved, both these petitions are heard and are being disposed of by this common order.

4. Constitution petition No.D-5851/2019 challenged the order of the revisional court dismissing the revision application.

5. The petitioner in the connected petition No.D-5851/2019 has challenged the order passed on application under Section 12(2) CPC challenging the judgment and decree, which was dismissed by the trial court followed by order passed in the revision application. The revision application was heard on the ground that no service was affected upon the defendant/petitioner while the suit was decreed exparte. Not only the trial court but the revisional court as well perused the record. In fact the revisional court perused the signatures appearing on the bailiff's report, vakalatnama, affidavit of application under Section-12(2) CPC as well as verification and titled civil revision and observed that signatures have not been forged as alleged by the applicant/petitioner.

6. Additionally, the application under Section-12(2) CPC was devoid of reasoning as to how he came to know about the impugned judgment and decree if no summons were received by the petitioner and that he did not engage a counsel in the main suit. In consideration of the facts and circumstances, the two courts below observed that it was not a case of fraud and

misrepresentation, in fact the two courts below considered the application under Section-12(2) CPC as being misconceived.

7. The revisional court also observed in the concluding para that the vakalatnama filed on behalf of the applicant/petitioner shows the name of the Advocates with their registration numbers but no efforts were made by the applicant/petitioner to approach the competent authority for the redressal of their grievance who has been alleged to have forged the signatures of the petitioner.

8. We agree with the reasoning provided by the two forums below. This is not the court which can reappraise the facts as concurrently maintained by the two courts below as this is not the court of appeal. The jurisdiction of this court under Article-199 of the Constitution of Islamic Republic of Pakistan in relation to findings of facts is limited. The petitioner has already exhausted their remedies by moving the application under Section-12(2) CPC followed by dismissal of revision application and this court under Article-199 of the Constitution of Islamic Republic of Pakistan cannot sit on the concurrent findings of facts of two courts below. No interference is required as far as the dismissal of the main revision application is concerned.

9. Similarly, in the earlier C.P No.D-2070/2015 there was no justification at all to implead an individual (claiming independent interest in an independent cause), as being party in a suit for performance.

10. In order to understand the controversy of earlier C.P. No.D-2070/2015, we may sum-up that the applicant (respondent No.2 in these petitions), moved an application under Order-I Rule-10 CPC to claim interest on the strength of a "sale agreement" that

was allegedly executed between decree-holder and himself/ applicant. Applicant could not have obtained a decree of performance in the said suit nor his presence was essential under Order-1 Rule-(2) CPC for effectively and completely adjudicate auctions involved in the suit. At the most the applicant arrayed as respondent No.2 in these petitions, could have, at best, invoked the jurisdiction of a civil court seeking the performance of their agreement, had it been permissible under the law, hence the application under Order-I Rule-10 CPC was unlawfully granted. However, since the revision application (where application under Order-I Rule-10 CPC was allowed) was dismissed and has been maintained by this court in the earlier part of this order, we could only observe that there was no such situation, in view of the facts and circumstances of the case, to have impleaded the respondent No.2, as the applicant therein could not have obtained a decree of performance against the decree-holder from whom he purportedly acquired the rights under the agreement, however, since the main revision application was dismissed, earlier petition has otherwise become infructuous and is also dismissed.

11. Both the petitions are dismissed along with pending application(s).

JUDGE

JUDGE

Ayaz Gul