

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

**C.P. No. D-2054 of 2024**

(Badaruddin v. District Judge, Malir at Karachi & Others)

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**DATE**

**ORDER WITH SIGNATURE OF JUDGES**

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1. For orders on Misc. No. 9336 of 2024
2. For orders on Misc. No. 9337 of 2024
3. For orders on Misc. No. 9338 of 2024
4. For hearing of Main Case

**03-05-2024**

Mr. Imran Hussain, Advocate for the Petitioner

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**Mr. Adnan Iqbal Chaudhry, J:**

1. Urgency granted.
2. Exemption granted subject to all just exceptions.

3&4. The Petitioner is aggrieved of order dated 30.3.2024 passed by the learned District Judge, Malir allowing the Respondent No.2's Civil Revision No.55/2023 and setting aside order dated 13-10-2023 passed by the trial court, whereby the latter had dismissed the Respondent No.2's application under section 12(2), CPC.

The underlying proceedings appear to be as follows. A Suit No.21/2009 was filed by the Petitioner, inter alia, against the Respondent No.3 before the Senior Civil Judge for possession and mesne profits in respect of the suit property, which was decreed *ex-parte*. The Respondent No.3 (Muhammad Khan) moved an application under section 12(2) CPC contending that he was not served with summons and that the suit property vested in his brother (viz. the Respondent No.2). Issues were settled on that application and the Execution Application was put in abeyance in 2014. While no decision was made on the Respondent No.3's application under section 12(2) CPC, the Execution Application was restored at the instance of the Petitioner in the year 2021 and was allowed with a writ of possession. Subsequently, Amanullah i.e. Respondent No.2 (who is the brother of the Respondent No.3

according to the latter), who claimed to be the actual owner of the suit property, emerged with his own application under section 12(2) CPC which was dismissed by the trial court.

By the impugned order passed on the Revision of the Respondent No.2, the learned District Judge has essentially remanded the matter to the trial court to decide afresh the Respondent No.2's application under section 12(2) CPC. Learned Counsel for the Petitioner seeks to demonstrate before us that there was sufficient material before the trial court to dismiss the Respondent No.2's application under section 12(2) CPC. However, in remanding the matter the learned District Judge has taken pain to discuss the circumstances and questions of fact that have not been considered by the trial court and has passed a reasoned order. We are not inclined to interfere with the same in constitutional jurisdiction, lest any observation by us prejudices the case of either party before the trial court. At this juncture, learned counsel submits that the learned District Judge has also ordered the trial court to summon documents that are not relevant. In our view, that is only a tentative observation, and the trial court whilst hearing the parties would be free to summon any document or record from the concerned authority or department that it deems are relevant. With that observation, the petition is dismissed *in limine*.

**JUDGE**

**JUDGE**