

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 159 of 2022 (Disposed of)

(Ghaffar Ahmed alias Javed Ghaffar v. Mst. Anam Rehan & others)

Application in disposed of case

1. For hearing of CMA No.234/2023 [Stay]
2. For hearing of CMA No.235/2023 [12(2) CPC]

Date of hearing : **25.11.2024**

Date of decision : **25.11.2024**

Mr. Shafqat Rahim Rajput, Advocate for petitioner.
Mr. Farman Ali Rajput, Advocate for applicant.
Mr. Muhammad Aslam Roshan, Advocate for respondents.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – The application (CMA No.235/2023) under Section 12(2), CPC, has been filed by the applicant, challenging the order dated 01.12.2022, passed by this Court in instant Constitutional Petition, whereby the petition was dismissed, on the ground that it was obtained by way of fraud and misrepresentation.

2. Briefly, opponent No.1 filed Rent Application No.24 of 2020 before learned Rent Controller-I, Sukkur. In her application, opponent No.1 claimed that she is the co-owner of a shop bearing C.S. No. B-2813, measuring 40-8 square yards, situated at Sarafa Bazar, Sukkur. The shop was allegedly let out to opponent No.2 (father of the applicant and opponent No.1) through a tenancy agreement executed on 22.01.2019, at a monthly rent of Rs.25,000/-, with an advance payment of Rs.1,00,000/-. The tenancy continued till November 2020. However, opponent No.2 was then served with a legal notice on 23.11.2020 for vacation of the subject premises, which was duly received on 24.12.2020. Despite the notice, neither reply was given, nor the rent for December 2020 was paid. As a result, opponent No.1 filed the aforesaid rent application, asserting that opponent No.2 defaulted in payment of rent, and the shop was required for her husband's use.

3. In response, opponent No.2 denied the existence of any valid tenancy agreement contending that he had purchased the property from the previous owner, Mst. Najma Bandhani, and transferred the ownership to both the applicant and opponent No.1 (his son and daughter), declaring the opponent No.1 as a *benamidar*. He further denied the execution of the rent agreement and rejected the claim that he was a tenant of opponent No.1. He also denied paying rent and disputed the landlord-tenant relationship.

4. After hearing both the parties, learned Rent Controller passed a detailed judgment dated 22.04.2022, allowing the rent application filed by opponent No.1, and directed opponent No.2 and/or any other person in possession of the shop to vacate fifty percent of the property within one month from the date of the judgment. This decision was then challenged by opponent No.2 in Rent Appeal No.05 of 2022 before learned District Judge, Sukkur. The appeal was dismissed vide order dated 21.09.2022, and learned District Judge upheld the decision of learned Rent Controller, directing opponent No.2 to vacate the premises and hand over possession to opponent No.1.

5. Subsequently, opponent No.2 filed instant Constitutional Petition before this Court, challenging both the decisions of learned Rent Controller and learned District Judge. This Court, through its order dated 01.12.2022, dismissed the petition filed by opponent No.2. The petitioner (opponent No.2) then approached the Hon'ble Supreme Court in CPLA No.4276 of 2022, but the same was dismissed for non-prosecution on 24.01.2023.

6. The applicant, through application under Section 12(2), CPC, has now challenged the order dated 01.12.2022 passed by this Court, claiming that he was defrauded by the opponents, and the proceedings have been conducted in collusion. In support, he has relied on the Extract from the Property Register Card (Entry dated 14.07.2011), which reflects that he is co-owner of the shop in question. He has also referred to the FBR Return for the year 2022 for establishing existence of his business: Goldsmith in

the subject shop. The applicant has alleged that he has been defrauded due to family disputes and conflicts with his father (opponent No.2) and opponent No.1, which led to a collusive effort between them to deprive him of his lawful rights. Furthermore, the applicant claims that he was unaware of the proceedings as he was not made a necessary party.

7. I have heard the submissions of the learned Counsel for the parties and have carefully reviewed the materials available on record with their assistance.

8. Upon careful consideration of the facts, it is evident that the applicant's claims are based on allegations that have no solid foundation. The ownership of the shop, to the extent of 50% share, has not been disputed by the applicant or opponent No.1. The Extract from the Property Register Card (Entry dated 14.07.2011), submitted by the applicant along with the application in hand, clearly establishes that both the applicant and opponent No.1 hold equal ownership in the shop. Therefore, the argument that opponent No.1's tenancy agreement to the extent of her 50% share is fraudulent lacks merit.

9. Although the applicant has referred to the FBR Return for the year 2022 to establish his business of goldsmith in the subject shop duly registered with the FBR, but the return do not reflect the subject shop as part of his assets. This omission raises questions about the business operations in the shop, as no reference is made to it in the return. However, the return shows that the applicant has listed other assets worth Rs.26,00,000/-, which too without any details.

10. Furthermore, the FBR return reveals the applicant's address as H. No. D-520/7, Waritar Road, which is also the residence of opponent No.2 (the applicant's father). This clearly indicates that the applicant is living with opponent No.2 and was fully aware of the ongoing proceedings. The applicant's claim in the application that he was defrauded by the opponents in collusion with one another, citing family disputes and quarrels, suggests a personal grievance against opponent No.1. On one hand, the applicant asserts that he has no concern with the opponents,

yet, on the other hand, he acknowledges holding possession of a shop that is co-owned by opponent No.1. This contradiction raises serious questions about the applicant's position and the nature of his involvement. The applicant's claim that he was unaware of the litigation is, thus, not credible.

11. On the surface, it appears that from 2020, when the rent application was filed, until 2023, when the CPLA filed before the Hon'ble Supreme Court was dismissed for non-prosecution, the father (opponent No.2) attempted to dispossess opponent No.1 and take over her rights. When his efforts failed, his son, the applicant, sought to restart the litigation, seemingly with the intent to deprive his sister of her legal rights and ownership.

12. The judgments / orders of the Courts below as well as this Court's order dated 01.12.2022 have been passed after due consideration of the legal and factual points. Furthermore, Execution Application No.7 of 2022 was granted, and a writ of possession was issued on 06.01.2023 to the Bailiffs of the Court of learned Rent Controller-I, Sukkur. A letter was also sent to the Mukhtiarkar / City Survey Officer, Sukkur City, for the execution of the writ of possession concerning the subject shop, specifically regarding the 50% share. The proceedings were carried out to the extent of opponent No.1's 50% share in the shop, and the allegations of fraud and misrepresentation made by the applicant are baseless.

13. Sub-Section (2) of Section 12 of the Civil Procedure Code (CPC) is a specific and exceptional provision, applicable only in limited and clearly defined circumstances. This provision permits a challenge to an order, judgment, or decree passed by a Court solely on two grounds: (a) if it was obtained by misrepresentation or fraud, or (b) if the Court lacked jurisdiction to issue the order or decree. The scope of this provision is explicitly restricted to these two grounds, as set out in its text. In the present application, the applicant's request does not fall within the permissible scope of this provision. Moreover, the application fails to fulfill the statutory requirement of disclosing instances of misrepresentation or

fraud, as it does not provide the requisite details or particulars as mandated by law.

14. It is well-established that just making allegations without any solid evidence or supporting material doesn't automatically justify an inquiry or investigation in every case. In other words, for an application under Section 12(2), CPC to be valid, there must be specific and clear allegations backed by real evidence. Without that, the application simply can't stand. This principle was made clear in the cases of Messrs Dadabhoy Cement Industries Limited and others v. Messrs National Development Finance Corporation (2002 CLC 166) and Messrs Dadabhoy Cement Industries Limited and 6 others v. Messrs National Development Finance Corporation, Karachi (PLD 2002 Supreme Court 500).

15. In view of the above discussion, the application under Section 12(2), CPC, is hereby **dismissed** along with listed application at serial No.1. The applicant is directed to pay a cost of Rs.25,000/- to the Library Fund of the High Court for the delay and misuse of legal process. However, the Executing Court is directed to act in accordance with law.

Above are the reasons of my short order dated 25.11.2024.

J U D G E

Abdul Basit