

# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Constitutional Petition No.D-2272 of 2019

Before:

Mr. Justice Khadim Hussain Tunio

Mr. Justice Jan Ali Junejo

Petitioner: Liaquat Ali son of Mahi Khan Mari through  
Mr. Mumtaz Ali Soomro, advocate.

Date of hearing: 27-08-2025

Date of Judgment: 27-08-2025

## JUDGMENT

**Jan Ali Junejo, J.** – This Constitutional Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, represents the Petitioner Liaquat Ali's final attempt to assail a chain of judicial determinations that have culminated in a final decree against him. The litigation originates from F.C. Suit No. 61 of 2016 (*Imdad Ali v. Liaquat Ali and others*), a suit for Specific Performance of Contract and Permanent Injunction, instituted by Respondent No. 1 in respect of House No. 108, situated in Star Cooperative Housing Society, Daur. The said suit was decreed ex parte against the Petitioner by the learned 1st Senior Civil Judge, Nawabshah (hereinafter referred to as the "*Trial Court*") through judgment and decree dated 28.08.2017. The Petitioner thereafter moved an application under Order IX Rule 13 read with Section 12(2) of the Code of Civil Procedure, 1908 ("CPC"), which was dismissed by the Trial Court vide order dated 11.09.2018. Aggrieved, the Petitioner filed Civil Revision Application No. 41 of 2018 before the learned District Judge, Shaheed Benazirabad, which was heard and dismissed by the learned 4th Additional District Judge (hereinafter referred to as the "*Revisional Court*") vide order dated 02.08.2019 (hereinafter referred to as the "*Impugned Order*"), affirming the findings of the Trial Court. Having exhausted his statutory remedies, the Petitioner has now invoked the

extraordinary constitutional jurisdiction of this Court, seeking to challenge both the Revisional Court's order dated 02.08.2019 and the Trial Court's order dated 11.09.2018.

2. The genesis of this litigation lies in a suit for Specific Performance of Contract and Permanent Injunction (F.C. Suit No. 61/2016) filed by Respondent No. 1, Imdad Ali, against the Petitioner and the official respondents (Nos. 2-4). The subject matter of the suit was House No. 108, situated in Star Cooperative Housing Society, Daur. The plaint averred that the Petitioner had executed a sale agreement dated 16.01.2016 in favour of Respondent No. 1 for a total consideration of Rs. 1,200,000/-. An earnest money of Rs. 1,000,000/- was allegedly paid at the time of the agreement, with possession of the property being handed over to the respondent-plaintiff. The remaining amount of Rs. 200,000/- was to be paid upon the execution of the final registered sale deed. The trial court issued summons to the defendants. After numerous hearings, the court, satisfied that the Petitioner was evading service, ordered substituted service through publication in the daily newspaper "Ibrat" in accordance with Order V Rule 20 CPC. The publication was effected, and consequently, the Petitioner was proceeded against ex parte on 23.01.2017.

3. The plaintiff (Respondent No. 1) then led his ex parte evidence, which remained uncontroverted. Vide a detailed judgment dated 28.08.2017, the learned trial court decreed the suit in favour of Respondent No. 1. The decree was made contingent upon the plaintiff depositing the remaining sale consideration of Rs. 200,000/- with the Nazir of the court. Subsequently, the Petitioner filed an application under Order IX Rule 13 read with Section 12(2) CPC, seeking to set aside the ex parte decree. The primary grounds were alleged non-service of summons and the obtaining of the decree through fraud. This application was vehemently contested by Respondent No. 1. The learned

trial court, in its order dated 11.09.2018, dismissed the application. The court's finding was pivotal: it concluded, based on evidence from a parallel criminal complaint filed by the Petitioner himself, that the Petitioner had full knowledge of the civil suit's pendency but had deliberately and willfully abstained from appearing. The court found the allegations of fraud to be bald, unsubstantiated, and an afterthought.

4. Aggrieved, the Petitioner preferred a Civil Revision before the learned District Judge. The revisional court (4th Additional District Judge), in a well-reasoned order dated 02.08.2019, conducted a thorough examination of the record and concurred with the findings of the trial court. The revision was dismissed, affirming that the Petitioner's default was intentional and that no fraud upon the court was established. Having exhausted his ordinary statutory remedies, the Petitioner has now invoked the extraordinary constitutional jurisdiction of this Court.

5. The learned counsel for the Petitioner strenuously argued that the entire proceedings culminating in the ex parte decree were fundamentally void due to the non-service of summons, which deprived his client of the fundamental right to a fair hearing and defense. He contended that the respondent No. 1 had obtained the decree through fraud, misrepresentation, and "underhand methods," asserting that the purported sale agreement was a forged document and possession of the suit property was never lawfully delivered. He further implored the Court to prioritize substantive justice over procedural technicalities, arguing that a grave miscarriage of justice had occurred which warranted the exercise of this Court's extraordinary constitutional jurisdiction to set aside the impugned orders and allow the case to be decided on its true merits.

6. We have considered the arguments advanced by the learned counsel for the Petitioner and have perused the material on record with utmost care. Before embarking on a merits-based analysis, it is imperative to delineate the well-settled confines of this Court's extraordinary constitutional jurisdiction. The jurisdiction under Article 199, of the Constitution of Islamic Republic of Pakistan, 1973 is supervisory and equitable in nature. It is not an appellate jurisdiction to reassess evidence or supplant the factual conclusions of competent fora. This Court, upon a meticulous examination of the record, finds itself in complete and unequivocal agreement with the concurrent factual conclusions reached by the courts below. The finding that the Petitioner had full knowledge of the pendency of F.C. Suit No.61/2016 and willfully abstained from appearing is not a mere inference but is conclusively proven by an unassailable chain of evidence, which fundamentally dismantles the Petitioner's core assertion of ignorance and non-service. The evidence establishing this knowledge is threefold and incontrovertible. **Firstly**, the Petitioner's own initiation of a criminal complaint under the Illegal Dispossession Act, 2005, concerning the very same property, demonstrates his acute awareness and active engagement in litigation pertaining to its title and possession. This action alone signifies a level of vigilance that completely belies his subsequent claim of being unaware of related legal proceedings. **Secondly**, and most decisively, during the pendency of this criminal complaint, an application was moved by the accused under Section 265-K of the Code of Criminal Procedure, 1898, seeking his discharge. A certified copy of this application, forming part of the record, explicitly and unambiguously referenced the pending civil suit (F.C. Suit No. 61/2016) by its correct number and forum. The very purpose of such an application is to bring material facts to the court's attention, and its contents must be presumed to have been read and acknowledged by the complainant, i.e., the Petitioner. **Thirdly**, the learned trial court, in its order dismissing the

application under Order IX Rule 13 CPC, specifically noted that during his cross-examination in the criminal case, the Petitioner was directly confronted with this fact, the existence of the pending civil suit, and yet he conspicuously and inexplicably failed to take any steps to appear or defend himself in that suit. This triad of evidence paints a clear and compelling picture of a litigant who was not only aware of the suit but made a conscious, strategic, and deliberate choice not to participate. His conduct amounts to a willful and intentional turning away from the judicial process. Consequently, his plea of “non-service” is not a bona fide claim but a manifest fabrication and a calculated attempt to mislead this Court. In the face of such overwhelming evidence, this Court finds absolutely no perversity, illegality, or jurisdictional error in the well-reasoned, evidence-based concurrent findings of the learned courts below. These findings are based on a correct appreciation of evidence and the application of sound legal principles, and thus, they are entitled to great weight and must be upheld.

7. The Petitioner’s alternative plea under Section 12(2) CPC is equally meritless and must fail. The provision of Section 12(2) CPC is an exception to the general rule and has a very narrow scope. It can only be invoked when a decree is shown to have been obtained by practicing fraud *upon the court itself*, not merely fraud between the parties. The burden of proof is exceptionally heavy and lies squarely on the person alleging it. The fraud must be specifically pleaded with particularity and then proven through cogent and compelling evidence. Vague, bald, and general allegations are insufficient. In the instant case, the Petitioner’s affidavit and application are replete with sweeping denials and self-serving assertions but are completely barren of any specific particulars or prima facie evidence of fraud that vitiated the court's process. The allegation that the agreement was forged is a matter of evidence on the merits, which he forfeited the right to adduce by his willful default. He

has miserably failed to discharge the Herculean burden required to invoke Section 12(2) CPC. The courts below were therefore perfectly justified in rejecting this plea. It is a settled principle that for determining allegations of fraud, misrepresentation, or want of jurisdiction raised in an application under Section 12(2), C.P.C., the Court is not bound in every case to mandatorily frame issues and strictly adhere to the procedure prescribed for trial of a regular suit. The structuring of proceedings rests upon the discretion of the Court, which, after examining the nature of allegations, may decide whether framing of issues and recording of evidence is warranted. In the absence of such material, the allegations cannot be substantiated. Reliance in this regard is placed upon the dictum laid down by the Honourable Supreme Court of Pakistan in Case of *Hafiz Malik Kamran Akbar and others v. Muhammad Shafi (deceased) through L.Rs. and others (PLD 2024 Supreme Court 262)*, wherein it was observed that: *“For determining the grounds of alleged fraud, misrepresentation or want of jurisdiction, if any, raised in the application moved under section 12(2), C.P.C., the Court is not obligated in each and every case to frame issues mandatorily in order to record the evidence of parties and exactly stick to the procedure prescribed for decision in the suit but it always rests upon the satisfaction of the Court to structure its proceedings and obviously, after analyzing the nature of allegations of fraud or misrepresentation, the Court may decide whether the case is fit for framing of issues and recording of evidence, without which the allegations leveled in the application filed under Section 12(2), C.P.C. cannot be decided”*.

8. A scrupulous examination of the record reveals that the proceedings before the courts below were conducted in strict conformity with the law. Service was duly effected through publication, a mode explicitly sanctioned by Order V Rule 20 CPC for precisely such situations where a defendant avoids service. The trial court recorded ex parte evidence, which substantiated the plaintiff's claim. The revisional court applied the correct legal principles

governing revisions and findings of fact. The Petitioner has failed to pinpoint, much less prove, any violation of his fundamental rights or any jurisdictional error that would warrant this Court's extraordinary intervention.

9. It is a trite and well-settled principle of constitutional jurisprudence that the extraordinary jurisdiction conferred upon this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is supervisory and equitable in nature. It is not intended to function as a regular appellate forum to reassess evidence or supplant the factual findings arrived at by competent courts below. The constitutional scheme mandates a profound respect for the hierarchy of courts and the finality of their decisions on questions of fact. This Court's power to intervene is circumscribed and is not enlivened merely because another view of the evidence is possible. Intervention is warranted only in exceptional circumstances, such as a demonstrable case where the findings of fact are perverse, based on no evidence whatsoever, or are the product of a manifest misreading or non-reading of the evidence on record, leading to a gross miscarriage of justice. In the present matter, the Petitioner has conspicuously failed to discharge the heavy burden of demonstrating that the impeccable concurrent findings of the Courts below suffer from any illegality, material irregularity, jurisdictional error, misreading of material evidence, or non-reading of crucial evidence that would vitiate the entire judicial process. The learned courts below meticulously analyzed the evidence, including the critical fact of the petitioner's knowledge of the suit proceedings evidenced by his own prior litigation, and arrived at a concurrent conclusion that is amply supported by the record. In the absence of any such glaring illegality or perversity that vitiates the very foundation of the impugned orders, this Court finds no justification to exercise its discretionary constitutional power to interfere with the well-reasoned, evidence-based concurrent findings of fact. To do so would be to transgress the well-defined limits of this Court's

jurisdiction and undermine the settled jurisprudential ethos that governs Article 199, of the Constitution. In a similar context, in the case of *Muhammad Aslam (deceased) through L.Rs. and another v. Molvi Muhammad Ishaq (deceased) through L.Rs. and others (2024 SCMR 1390)*, the Honourable Supreme Court of Pakistan was pleased to hold that: “*We are mindful of the fact that usually concurrent findings of the lower Courts are not to be disturbed and interfered with but in cases where such findings are found to be erroneous and perverse, they are liable to be struck down if based on misreading or non-reading of the material available on the record or the evidence and are a result of miscarriage of justice*”.

10. For the multifaceted reasons elaborated above, this Court is of the considered and unequivocal view that the Petitioner has failed to make out any case whatsoever for the exercise of this Court's extraordinary constitutional jurisdiction under Article 199 of the Constitution. The impugned orders passed by the courts below are legally sound, based on a correct appreciation of evidence and law, and do not suffer from any illegality, irregularity, or jurisdictional error. Accordingly, this Constitutional Petition is dismissed *in limine* alongwith pending applications. There shall be no order as to costs. The office is directed to send a copy of this judgment to the learned Courts below for their information and necessary record. These are the reasons of our Short Order dated: 27-08-2025.

**JUDGE**

**JUDGE**