

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Civil Revision No.97/2024

[Waseem Ahmed vs.Saleem Shehzad and others]

Applicants:	Through Mr. Falak Sher Khan, Advocate
Respondents 1-4	Through Mr. Muhammad Tamaz Khan, Advocate.
Respondent No.5	Through M/s. Aaley Maqbool Rizvi & Ahmed Khan Kaskheli, AAGs Sindh.

Date of Hg & Order **03.11.2025**

ARSHAD HUSSAIN KHAN, J. The Applicants, through the instant Civil Revision have assailed the order dated **28.02.2024**, passed by the learned IX-Additional District Judge, Karachi (West) in Civil Appeal No. 172 of 2023, which was dismissed by maintaining the order dated **30.08.2023**, passed by the VIth Sr. Civil Judge, Karachi (West) on the application under Section 12(2) CPC, filed by the present applicants for setting aside the order dated **30.09.2022**, whereby civil suit No.1973 of 2020, filed by the respondent Nos. 1 & 2, herein, was decreed. The applicants have prayed for setting aside the concurrent findings of the two courts below passed through the aforesaid impugned orders.

2. Briefly stated, the respondent/plaintiff instituted a civil suit for declaration, cancellation of documents and permanent injunction before the trial court. After recording evidence, the learned trial court decreed the suit in favour of the plaintiff. Thereafter, the defendant filed an application under Section 12(2), C.P.C., before the trial court alleging that the judgment and decree had been obtained through fraud and misrepresentation, and sought its recall. The trial court, upon examining the record and hearing the parties, dismissed the application. The defendant then preferred an appeal before the appellate court, which upheld the order of the trial court and dismissed the appeal. Aggrieved by the concurrent findings of both the courts below, the applicants/defendants have filed the present Civil Revision.

3. Learned counsel for the applicants contends that both the courts below misread or ignored important evidence, resulting in a

miscarriage of justice. He argues that the judgment and decree in the civil suit were obtained by the respondents through fraud, misrepresentation, and concealment of material facts. According to the applicants, the respondents deliberately withheld documents and presented a false narrative, which misled the trial court into passing the decree. Learned counsel also submits that the applicants placed substantial documentary evidence before the court under Section 12(2) CPC to demonstrate that the decree was obtained through fraudulent means; however, both courts have failed to give proper consideration to such evidence. He further argues that Section 12(2) CPC empowers a court to recall a judgment obtained by fraud, and therefore, the concurrent findings of the lower courts be set aside and the matter be reconsidered.

4. Learned counsel for Respondents has contended that the trial court rightly dismissed the application filed under Section 12(2) CPC. It is submitted that the applicants had failed to substantiate any allegation of fraud, misrepresentation, or concealment of facts by the respondents in obtaining the judgment and preliminary decree. Respondent No.1, in support of his case, produced affidavit-in-evidence, verification of the lease deed, and photocopies of the lease deed, the originals of which were in the custody of the respondents. Learned counsel emphasized that the applicants have approached the court with unclean hands, deliberately concealing material facts, and had not produced any evidence to support their claim of misrepresentation. Reliance has been placed on settled legal principles that mere assertion of fraud or misrepresentation, without cogent proof, is insufficient to set aside a judgment or decree. Consequently, learned counsel for respondents prayed that the instant civil appeal be dismissed in its entirety.

5. Heard learned counsel for the parties and perused the material available on the record.

This Court, while exercising revisional jurisdiction under Section 115 CPC, has examined the legality and propriety of the impugned orders. The learned trial court, while adjudicating Civil Suit No.1973/2020, after considering the evidence produced by

Respondent No.1, including his affidavit-in-evidence and verification of the lease deed, and noting the absence of any evidence on the part of the applicants recorded its findings and passed judgment and preliminary decree on 30.09.2022. The trial court also dismissed the application under Section 12(2) CPC through its order dated 30.08.2023, observing that no fraud, misrepresentation, or concealment of facts was established by the applicants.

The appellate court, in its order dated 28.02.2024, after a thorough review of the trial court's record, affirmed these findings, noting that Respondent No.1 had produced sufficient evidence while the applicants failed to substantiate their plea of fraud or misrepresentation. The appellate court further observed that the application under Section 12(2) CPC was not maintainable in the absence of specific pleadings or proof of fraud, and that the applicants had stayed away from proceedings without reasonable cause.

6. The submissions of the learned counsel for the applicants, alleging perversity or illegality in the findings of the courts below, are misconceived and devoid of merit as the trial court, after recording the evidence of Respondent No.1, found that the applicants failed to adduce any credible material in support of their pleas. The appellate court, exercising revisional jurisdiction under Section 115 CPC, examined the legality and propriety of the impugned orders and found no instance of fraud, misrepresentation, or denial of opportunity. Mere allegations of misreading or non-application of law, unsupported by the record, cannot be countenanced.

7. It is observed that the jurisdiction under Section 12(2), C.P.C. is to be exercised sparingly and only in exceptional circumstances where the applicant is able to clearly establish that the order, judgment, or decree was procured through fraud, misrepresentation, or that the court lacked jurisdiction. In the case of *Lahore Development Authority v. Firdous Steel Mills (Pvt.) Ltd.* [2010 SCMR 1097], the Supreme Court clarified that mere assertions or general allegations are insufficient to invoke Section 12(2). In the case of *Allah Wasaya v. Irshad Ahmad* [1992 SCMR 2184], the Supreme Court emphasized that the burden to establish fraud lies heavily upon the applicant. In

the present case, the applicant has produced no cogent or convincing material showing fraud, misrepresentation, or collusion.

8. Furthermore, in the case of *Sheikh Muhammad Iftikhar Ahmad and others v. Faiz Ahmad and others* [2023 SCMR 2158], the Supreme Court held that *no case under Section 12(2) of the C.P.C. can be made out unless fraud is directed on the court itself. If there is any fraud, at best, it is inter se the parties, which does not attract the provisions of section 12(2) of the C.P.C. Section 12(2) of the C.P.C. requires that fraud or misrepresentation be played on the court and that consequently the order obtained is through fraud or misrepresentation.* In view of this principle, it is also manifest that the applicants have failed to demonstrate any fraud on the Court. Allegations confined to disputes between the parties cannot invoke the extraordinary jurisdiction under Section 12(2) of the C.P.C. and are wholly inadequate to disturb the well-reasoned findings of the courts below.

9. It is further emphasized that Section 12(2) CPC is an extraordinary remedy and cannot be invoked to re-examine the merits of a decree or to re-argue issues which have been duly considered and adjudicated by the courts. The jurisdiction is limited to cases where fraud, misrepresentation, or lack of jurisdiction is clearly established, and cannot be treated as a second appeal or a device to revisit concurrent factual findings. In the present case, the applicants have sought to re-agitate matters already considered by the trial and appellate courts without placing any material showing exceptional circumstances.

10. Besides, in the instant matter, the decree in question had already attained finality, and the applicants did not challenge it within the prescribed period for appeal or revision. Neither before the trial court nor before the appellate court did they produce any credible material to show that it was obtained by deception or that they remained unaware of the proceedings. The available service reports further negate any claim of non-service. Consequently, no illegality, material irregularity, or jurisdictional defect arises to warrant interference. Both the courts below have concurrently found that no

fraud, misrepresentation, or lack of jurisdiction was established, following a proper appreciation of the evidence. It is a settled principle that in exercise of its revisional jurisdiction, this Court cannot substitute its own view merely because another conclusion might have been possible where the findings of fact recorded by the courts below are lawful and supported by evidence.

11. Accordingly, after considering the record, the concurrent findings of the courts below, and the relevant case law, this Court finds no justification to disturb the decrees under Section 12(2). The applicants have failed to discharge the heavy burden of proving fraud, misrepresentation, or concealment of material facts and have produced no material warranting a review of the lower courts' findings. No illegality, perversity, or jurisdictional defect is made out. The civil revision is, therefore, dismissed.

JUDGE

Jamil*