

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Present:  
Mr. Justice Shamsuddin Abbasi,  
Mr. Justice Muhammad Hasan (Akber).

Constitutional Petition No.D-334 of 2025

Petitioner: Yar Muhammad S/o Muhammad.  
Respondent No.1: Ali Mohammad S/o Allah Dino.  
Official Respondents: The Assistant Commissioner, Khipro and 05 others.

Constitutional Petition No.D-1449 of 2024

Petitioner: Yar Muhammad S/o Muhammad Khaskheli,  
Respondent No.1: Ali Mohammad S/o Allah Dino  
Official Respondents: Assistant Commissioner, Khipro and 05 others.

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Mr. Harish Chander, advocate for the petitioner.  
Mr. Mir Pervaiz Akhtar Talpur, advocate for the respondent No.1.  
Mr. Muhammad Shareef Solangi, Assistant Advocate General, Sindh.

Date of Hearing: 27.10.2025  
Date of Judgment: 10.11.2025

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JUDGMENT

**Muhammad Hasan (Akber) J.:** Through this consolidated Judgment, both the subject petitions are being decided due to the commonality of basic proceedings from which these petitions have emanated, as well as the same subject matter property involved, and the parties in these petitions are also common.

2. In Constitution Petition No. D-1449/2024, the Order dated 04.01.2023 passed by the learned Additional District Judge Khipro in Civil Revision Application No.08/2022 has been assailed, whereby the compromise application and the consent decree were upheld, and the application under section 12(2) CPC. was dismissed. Whereas in the Constitution Petition No. D-334/2025, the Order dated 18.02.2025 passed by the learned Additional District Judge Khipro in Civil Revision Application No.02/2024 has been assailed, whereby the Execution Application

No.3/2023 filed by Respondent No.1 was allowed by the learned Senior Civil Judge Khipro.

3. Mr. Harish Chander learned counsel for the petitioner, argued that for the specific performance of the agreement dated 09.12.2016 between the parties, FC suit No.73/2018 was filed by the petitioner Yar Muhammad, which was disposed of through a compromise application. Per learned counsel, the said compromise was entered through fraud and misrepresentation, hence an application under section 12(2) CPC. was filed by the petitioner, which was allowed by the learned trial court, but such Order was reversed by the learned appellate Court. According to learned counsel, the application under section 12(2) CPC. ought to have been allowed, whereas the execution of the sale deed through the Nazir of the Executing Court may be set aside on the grounds of fraud, misrepresentation and non-compliance of the sale agreement on the part of Respondent No.1.

4. Conversely, Mr. Mir Pervaiz Akhter Talpur, learned counsel for Respondent No.1 drew attention to various documents in the Court File to depict that the compromise application under Order XXIII rule 3 CPC., was validly and consciously entered into between the parties; that the Petitioner is *estopped* from challenging the consent decree, in view of the subsequent act of filing of Execution Application No.01/2022 by the Petitioner himself; that filing of application under section 12(2) CPC. was under ulterior intentions to extort further amounts from Respondent No.1; that the petitioner has throughout acted dishonestly and unfairly, *inter alia* by deliberately not accepting the balance sale consideration, which was repeatedly offered by Respondent No.1, to the extent that finally he had to deposit the same before the learned Executing Court, and based thereon, the sale deed was executed by the Nazir of the Court. Lastly, he prayed for the dismissal of both the petitions.

5. We have heard learned counsel for the parties and perused the record with their able assistance.

6. The record reflects that F.C. Suit No.73/2018 was filed by the petitioner, which was decreed in terms of a Compromise Application under Order XXIII Rule 3 CPC., which was allowed vide Order dated 25.10.2019, whereby the Petitioner was required to execute sale deed in favour of Respondent No.1, while

Respondent No.1 was required to pay the balance sale consideration to the Petitioner. For implementation of one part of the consent decree, the petitioner filed Execution Application No.1/2022 (seeking recovery of balance sale consideration from Respondent No.1). In contrast, for implementation of the other part of the same consent decree, the Respondent No.1 also filed Execution Application No.2/2022 (for registration of sale deed by the Petitioner or through Nazir of the Court).

7. Later, the Petitioner filed an application under section 12(2) CPC. against the consent decree on the ground *inter alia* of fraud. The said application was allowed by the learned trial Court vide Order dated 30.08.2022, and the consent decree was set aside, on the basis whereof, both the Execution applications 1/2022 (by Petitioner) and 2/2022 (by Respondent No.1) were disposed of as being infructuous. The said Order dated 30.08.2022 was challenged by Respondent No.1 in Revision Application No.08/2022, which was allowed vide Order dated 04.01.2023, and the consent decree was restored to its original position. The petitioner has challenged the said Order dated 04.01.2023 in C.P. No.D-1449/2024.

8. On the other hand, upon revival of the consent decree, the Respondent No.1 filed a fresh Execution Application No.3/2023, wherein Respondent No.1 was allowed to deposit in Court the balance sale consideration of Rs.800,000/-; the Nazir of Court executed the sale deed in favour of Respondent No.1; and the execution application was disposed of upon satisfaction of the consent decree. Such Order dated 18.02.2025 has been challenged by the Petitioner in C.P. No.D-334/2025.

9. The first aspect which requires consideration is that the petitioner himself filed the Execution application No.1/2022 for implementation of the consent decree, but later on, he himself challenged the same consent decree under section 12 (2) CPC., as an afterthought. The act of filing of Execution Application No.1/2022 by the petitioner itself amounts to admitting the consent Decree. Such conduct smacks of his intentions to avoid performance of his part of the consent decree. Once he himself sought implementation of the consent decree, he cannot subsequently be allowed to challenge the same Decree in 12(2) CPC proceedings. It is a settled principle that a party cannot be allowed to *approbate* and *reprobate*

and cannot be allowed to blow hot and cold at the same time. The doctrine of *estoppel* is also attracted in the circumstances since by filing the Execution application 01/2022, the petitioner is *estopped* from challenging the same consent Decree by way of application under section 12(2) CPC. Relief under the extraordinary jurisdiction of Article 199 of the Constitution, being discretionary in nature, cannot be extended to a party not approaching the Court with clean hands. No illegality could, therefore, be pointed out by the learned counsel for the petitioner in the Order dated 04.01.2023 passed by the learned appellate Court in Revision application 8/2022.

10. The second aspect to consider is the fact, that the consent decree has already been acted upon, fully and finally on part of the Respondent No.1, for the reason that after Petitioner's refusal, the same amount has already been deposited in Court by the Respondent No.1 (at pages 131 and 133 of the Court File). The record further confirms (at page 135 of the Court File) that in terms of Order dated 02.04.2024 passed in the same Execution Application No.3/2023, the sale deed with respect to the suit property has also been executed by the Nazir of the learned trial court on 20.06.2024; and the Execution Application has been disposed of upon complete satisfaction of the consent Decree. This makes it a case of a past and closed transaction, since the decree has already been acted upon.

11. The third aspect to consider is the apparent avoidance on part of the petitioner to receive the balance sale consideration. Upon his refusal to receive the amount, the same was deposited in the Court. Again, upon avoidance of Petitioner to comply with the consent decree, the executing court ordered the execution of sale deed in favour of Respondent No.1. The conduct of the Petitioner therefore, does not demonstrate any intention to comply with his commitments.

12. Some of the basic principles touching the scope of the provision of section 12(2) CPC., as discussed in the case of '**Messrs. Dadabhoy Cement Industries Ltd. and 6 others V. National Development Finance Corporation, Karachi**' (2002 SCMR 1761) are that:

- a. Where 'allegation of fraud is levelled, the same must be specified, and details thereof should be provided specifically.

b. That mere allegations of fraud, misrepresentation and coercion, in the absence of any material, would not invariably warrant inquiry or investigation in each case.

c. That the Trial Court is not bound to frame issues in each and every case, but it depends upon the facts and circumstances of each case.

d. Where the Court finds that further inquiry is required, it would frame issues and record evidence of the parties, but if it is of the opinion that no inquiry is required, then it can dispense with the same and proceed to decide the application.

Furthermore, in the same Judgment, the application under section 12(2) CPC was dismissed on the principles that:

e. The Parties, with their free will and consent, had entered into a compromise, whereupon the signatures of the parties and their counsel had been verified by the Trial Court, which had decreed the suit in terms thereof.

f. That one of the parties to the compromise had acted upon the consent decree by payment of instalments in terms of the compromise order.

g. That No appeal had been filed against consent decree, which had attained finality.

13. In the case of '**Muhammad Khan and another v. Massan**' and others (1999 SCMR 2464), where the compromise had already been acted upon, even an *ex-parte* decree was not set aside on application under section 12(2) CPC.

14. In '**Qabul Khan v. Shah Nawaz**' (1991 SCMR 1287), it was held that where a compromise had already operated and taken its effect, it could not be set aside if one of the parties tried to go back on what he stated when the compromise was made.

15. Lastly, in '**Muhammad Sajid Amin V. Rizwan Ahmed Bhatti and another**' (2016 YLR 1497), where in pursuance of the compromise between the parties, criminal charges against the petitioner were dropped, the application under section 12(2) CPC was rejected.

16. From the above, it is clear that the Respondent No.1 complied with his part of the consent decree by depositing the balance sale consideration of Rs.800,000/-

with the executing Court; that by execution of the sale deed dated 20.06.2024 through the Nazir of the Court; and that the execution application has already been disposed of upon satisfaction of the consent decree, makes it a **past-and-closed transaction**. Once the decree and the Execution Application stood satisfied, no further cause remains to be agitated. On the contrary, the conduct of the petitioner strongly suggests that not only did he avoid receipt of balance sale consideration in compliance with and satisfaction of the consent Decree, but he also attempted to delay the implementation of the consent Decree by subsequently initiating proceedings under section 12(2) CPC. The same appears to be an afterthought attempt to delay such implementation. As already discussed above, filing of the application under section 12(2) CPC. was self-contradictory to the Execution Application No.1/2022 earlier filed by the petitioner himself, for implementation of the same consent Decree.

17. Hence, applying the principles settled in the above referred cases, once the consent Decree has been fully and finally acted upon, it does not lie in the mouth of the petitioner to say that respondent No.1 had practiced fraud or had misrepresented material facts. Needless to mention that even if the allegations in the application are considered, no fraud upon the court has been alleged to have been committed. The maxim '*Volenti non fit injuria*', a person cannot complain of any act he passively assents to, if fully applicable in the circumstances of the present case.

18. Upshot of the above discussion is that the essential requirements/ingredients necessary to invoke the jurisdiction of the Court under S.12(2), C.P.C, were missing, and the Courts below had not committed any illegality or material irregularity while dismissing the application under section 12(2) CPC. The petitioner has failed to establish that any fraud or misrepresentation has been committed by Respondent No.1, whereas the consent decree has already been acted upon. In view of the above, the Order dated 04.01.2023 passed in C.R.A No.08/2022 is upheld; and Constitutional Petition No.D-1449/2024 is hereby dismissed. As regards the order dated 02.04.2024 passed in Execution Application No.3/2023, the learned Executing Court acted in accordance with law by allowing opportunities to the petitioner to receive the balance sale consideration in compliance and satisfaction of the consent Decree; and upon Petitioner's failure, the learned Court rightly allowed deposit of the said amount in Court by

Respondent No.1. The subsequent execution of Sale Deed dated 20.06.2024 by the Nazir of the Court in favour of Respondent No.1, was also a valid step towards implementation of the consent decree, within the parameters of law. The Execution Application No.3/2023 has already been disposed of after satisfaction of the consent Decree and there is no impediment against the petitioner from receiving the balance sale consideration from the learned Executing Court. No illegality could therefore be pointed out by the Petitioner's side as against the Order dated 02.04.2024 passed by the learned Executing Court. In view of the above, the order dated 18.02.2025 passed in C.R.A No.02/2024 is also upheld; and the Constitutional Petition No.D-334/2025 is also dismissed.

**JUDGE**

**JUDGE**