

Judgment Sheet
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-981 of 2025

[*The Town Municipal Corporation Sadar-South v. M/s. Muslim
Commercial Company and others*]

Petitioner : Through Mr. Fayyaz Ahmed, Advocate

Date of Hg. & order : 25-09-2025.

ARSHAD HUSSAIN KHAN, J.- The petitioner has called in question the order dated 16.08.2025 passed by the learned Vth Additional District Judge, Karachi-South, in Civil Revision No. 109 of 2025, whereby the order dated 27.05.2025 passed by the learned XVth Senior Civil Judge, Karachi-South, dismissing the petitioner's application under Section 12(2), C.P.C. in Civil Suit No. 327 of 2024, was maintained, and the civil revision was dismissed *in limine*.

2. Briefly, the facts giving rise to the present petition are that in March 2024, respondent No. 1 instituted Civil Suit No. 327 of 2024 for recovery of an outstanding amount of Rs.537,208/-, along with damages and defamation of Rs. 1,000,000/- and mesne profits, against the petitioner. After admission of the suit, summons/notices were issued to the petitioner/defendant through bailiff, TCS, pasting and publication. Service was held good vide order dated 29.03.2024, and thereafter the matter was fixed for filing of written statement. However, despite availing sufficient opportunities, the petitioner failed to file the same. Consequently, vide order dated 27.07.2024, the petitioner was debarred from filing the written statement and respondent No. 1 was directed to lead *ex parte* evidence. The respondent accordingly examined his witness and the suit was partly decreed *ex parte* to the prayer clause (a) vide judgment and decree dated 29.07.2024.

3. Thereafter, the petitioner filed an application under Section 12(2), C.P.C. ("the subject application") challenging the aforesaid judgment and decree on the grounds that the same had been obtained through fraud, misrepresentation and concealment of material facts, and that the petitioner had not been duly served. Respondent No.1 contested the said application by filing objections and a counter-affidavit. After

hearing both sides, the learned Senior Civil Judge dismissed the application vide order dated 27.05.2025. The said order was impugned in Civil Revision No. 109 of 2025, which too was dismissed *in limine*. Hence, the present constitutional petition.

4. Learned counsel for the petitioner contends that the impugned orders are contrary to law and facts on record. He argues that both Courts below mis-read and mis-interpreted the provisions of law and the binding precedents of the Superior Courts. It is further submitted that the Courts below failed to exercise proper judicial mind as the plaint itself disclosed no cause of action and was barred under the Contract Act as well as the Qanun-e-Shahadat Order, 1984. According to learned counsel, the Revisional Court also passed its order in a mechanical manner without adverting to the record and material facts.

5. I have heard learned counsel for the petitioner and perused the record with his assistance.

6. For setting aside an *ex parte* judgment and decree, the law provides a specific remedy in the form of an application under Order IX, Rule 13, C.P.C. In addition, an appeal under Section 96(2), C.P.C. is also maintainable. The relevant provisions are reproduced below for ready reference:

“Order IX, Rule 13 C.P.C. – Setting aside decree *ex parte* against defendant.

(1) *In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:*

Provided that no decree passed ex parte shall be set aside merely on the ground of any irregularity in the service of summons, if the Court is satisfied that the defendant had knowledge of the date of hearing in sufficient time to appear on that date and answer the claim.

Section 96 C.P.C. – Appeal from original decree.

(1) *Save where otherwise expressly provided, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from its decisions.*

(2) *An appeal may lie from an original decree passed ex parte.*”

7. Insofar as **Section 12(2), C.P.C.** is concerned, it stipulates that where a person seeks to challenge the validity of a judgment, decree, or order on the grounds of *fraud, misrepresentation, or want of jurisdiction*, he must approach the same Court that passed the impugned judgment or decree. The provision thus confines its scope to instances where the decree is alleged to have been procured through deception or where the Court lacked jurisdiction. To successfully invoke Section 12(2), the applicant must affirmatively establish that the decree is tainted by one or more of the following factors: (i) want of jurisdiction, (ii) fraud, or (iii) misrepresentation.

However, a plain reading of the petitioner’s application under Section 12 (2) CPC and its supporting affidavit reveals that none of these elements are present in the instant case. The petitioner has neither alleged nor demonstrated any factual basis suggesting that the decree was obtained by fraud or misrepresentation, nor that the trial Court lacked jurisdiction to adjudicate the matter.

8. It is clear from the record that the petitioner’s grievance essentially pertains to alleged non-service of summons and want of opportunity to contest the suit. Such grounds fall squarely within the ambit of Order IX, Rule 13, C.P.C., which specifically provides a remedy to a defendant against an *ex parte* decree where he claims that the summons was not duly served or that he was prevented by sufficient cause from appearing before the Court. The petitioner, however, instead of availing the statutory remedy provided under Order IX, Rule 13 or filing an appeal under Section 96(2), C.P.C., has erroneously invoked Section 12(2), C.P.C., without substantiating any allegation of fraud, misrepresentation, or lack of jurisdiction.

9. It is now a well-settled principle of law that where an *ex parte* decree is alleged to have been obtained due to non-service or procedural irregularity, the proper course is to seek its setting aside under Order IX, Rule 13, C.P.C., and not through an application under Section 12(2), which is confined to cases where the decree is tainted by fraud, misrepresentation, or lack of jurisdiction. The distinction

between these provisions has consistently been recognized by the Superior Courts, holding that both operate in separate spheres and cannot be interchanged merely to circumvent the limitation prescribed for Order IX, Rule 13 proceedings.

10. In the present case, the petitioner has neither identified any act of fraud or concealment on the part of the respondent nor demonstrated that the trial Court lacked jurisdiction to pass the decree. His entire plea revolves around alleged improper service and denial of opportunity; however, the record clearly reflects that Mr. Fayyaz Ahmed Memon, Advocate, had appeared on behalf of the petitioner before the trial Court and filed an undertaking dated 26.04.2024, stating that the *vakalatnama* was not yet signed, though no *vakalatnama* was subsequently filed. Despite having due knowledge of the proceedings, the petitioner failed to pursue the matter either personally or through counsel. It was only after the suit was decreed *ex parte* that he invoked Section 12(2), C.P.C., instead of availing the appropriate remedies available under Order IX, Rule 13 or Section 96(2), C.P.C. Such application was, therefore, not maintainable. The learned trial Court rightly dismissed the same, and the Revisional Court committed no illegality or material irregularity in affirming that view.

11. In view of the foregoing discussion, it is manifest that the petitioner, having failed to avail the statutory remedies provided under the law, cannot invoke the extraordinary constitutional jurisdiction of this Court to assail concurrent findings of the Courts below. The powers conferred under Article 199 of the Constitution are discretionary and are to be exercised only to advance the cause of justice, not to reopen matters where the petitioner's own negligence or omission has led to an *ex parte* decree. No case of jurisdictional defect, mala fide, or violation of law has been made out to warrant interference.

Accordingly, this petition, being devoid of merit, is **dismissed in limine**, along with all pending applications.

JUDGE