

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No. 18 of 2012

[*Abdul Aziz Khan v. Province of Sindh and others*]

Appellant : Not present

Respondents : Through Syed Farhan Ali Shah,
Assistant Advocate General

Date of Hearing : 11.08.2026
Date of Announcement : 29.09.2026

J U D G M E N T

SAMAN RAFAT IMTIAZ, J.- This appeal has been filed by the Appellant seeking setting aside of Order dated 07.2.2012 (“**Impugned Order**”) passed by the learned IInd Additional District Judge, Thatta allowing the Review application filed by the Respondents against Order dated 23.02.2011 dismissing the civil Revision application filed by them against Order dated 08.12.2010 passed by the learned Senior Civil Judge, Thatta dismissing their application under Section 12(2), CPC against the Judgment and Decree dated 24.09.2008 and 27.09.2008 passed by the learned Senior Civil Judge, Thatta, whereby the Suit filed by the Appellant was decreed.

2. Brief facts of the case, as per the memo of petition, are that after verifying the revenue record the Appellant [Abdul Aziz Khan] purchased 100 acres of un-surveyed Kabuli land in Deh Gharo, Taluka Mirpur Sakro through registered Sale Deed No.721 dated 30.09.2004 from Lakhoo s/o Haji Ali Khan Jokhio. His ownership was mutated in the revenue record and the land was subsequently demarcated and assigned Survey Nos.1352 to 1387 measuring 102-29 acres. The revenue authorities later initiated *suo motu* review proceedings under Section 164 of the Sindh Land Revenue Act, 1967 and cancelled the Appellant’s mutation Entry No.46/13 dated 08.10.2004 through order dated 15.03.2008. The Appellant challenged the order through F.C. Suit No.63 of 2008 filed against the Respondents [Province of Sindh through Secretary Revenue, Executive District Officer (Revenue) Thatta, District Officer (Revenue), Thatta, Deputy District Officer, (Revenue), Mirpur Sakro at Gharo and Mukhtiarkar (Revenue), Mirpur Sakro] which was decreed ex-parte by the Senior Civil Judge, Thatta vide judgment and decree dated 24.09.2008 and 27.09.2008. Thereafter, on 17.05.2010 the Respondents filed an application under Section 12(2) CPC which was dismissed on 08.12.2010. Their Civil Revision No. [-73] of 2011

was also dismissed by the II Additional District Judge, Thatta on 23.02.2011. However, their subsequent Review Application No. 08 of 2011 was allowed through the impugned order dated 07.02.2012, hence the instant appeal.

3. On 19.05.2026 the learned counsel for the Appellant filed their written arguments, however, the Court required his assistance through oral submissions for which he was not prepared as such the matter was adjourned to come up after vacation. On 04.08.2026 none was present for the Appellant, whereas the learned AAG sought time to assist the Court which was allowed while making it clear that in case the learned counsel for the Appellant will not be present on the next date, cost will be imposed for non-compliance of the Court orders while the matter shall be decided on the basis of the arguments presented by the counsel present and material available on record. On the next date i.e. 11.08.2026 none appeared for the Appellant yet once again. The written synopsis filed by the Appellant is a regurgitation of the contents of the Memo of Appeal and does not shed light on any material legal aspect which arises in the matter and which has been decided by way of the instant judgment herein below. In view of the foregoing non-compliance which has resulted in waste of precious time of the Court, cost of Rs. 10,000/- is being imposed upon the learned counsel for the Appellant to be deposited with the Nazir of this Court within 30 days from the date of this order and such amount shall be donated to Edhi Centre with compliance report to be filed for perusal in Chamber.

4. The learned AAG while explaining the background of the matter submitted that the record which was destroyed during the riots that erupted following the assassination of late Mohtarma Benazir Bhutto in the year 2007 was reconstructed which led to the discovery that entry and mutation in favour of the Appellant was fraudulent and liable to be cancelled, hence the cancellation vide Order No. 339 dated 15.03.2008 passed by the Respondent No.2. The Appellant filed the Suit No. 63 of 2008 for declaration and permanent injunction against the Respondents seeking declaration that the Appellant is the owner and in possession of the suit land bearing Survey No. 1352 to 1387, admeasuring 102.29 acres, Deh Gharo Kohistan, Taluka Mirpur Sakro, District Thatta; cancellation of Order No. 339 dated 15.03.2008 passed by Respondent No.2 in exercise of powers under Section 164(4) of the Land Revenue Act, 1967; and permanent injunction restraining the Respondents from dispossessing the Appellant from the suit land. The suit was decreed as prayed for vide Judgment and Decree dated 24.09.2008. Thereafter, the Respondents filed an application under Section 12(2) CPC claiming that the judgment and decree dated 24.09.2008 were

obtained by the Appellant by way of fraud and misrepresentation, which was dismissed vide order dated 08.12.2010. Against such order the Respondents filed Revision, which too was dismissed vide order dated 23.02.2011. Against such order Review application was filed, which has been decided in favour of the Respondents vide the impugned order dated 07.02.2012, which according to the learned AAG does not warrant interference by this Court.

5. I have heard the learned AAG and have perused the record including the written synopsis filed by the Appellant and the case law submitted by the AAG.

Ex-Parte Judgment dated 24-09-2008

6. The Judgment dated 24.09.2008 passed by the learned Trial Court decreeing the suit of the Appellant records that the processes were ordered to be issued through bailiff, registered post AD, and courier service on 21-5-2008. Service was held good against all Respondents. On 16.07.2008 and 30.07.2008, the Appellant and his counsel were present while Respondents were called absent without any intimation, as such suit was proceeded against the Respondents ex-parte on 10.09.2008. Thereafter, affidavit-in-ex-parte proof was filed on 24.09.2008 and original/ attested copies of the title documents were produced by the Appellant. The learned Trial Court heard the Appellant's counsel and examined the Appellant. The contents of the Plaint being on oath were deemed to be true and since there was no rebuttal from the Respondents' side the Appellant's suit was decreed as prayed for.

Respondent No. 5's application under Section 12(2), CPC

7. On 17.05.2010, the Respondent No. 5 [Mukhtiarkar (Revenue), Mirpur Sakro] filed an application under Section 12(2) read with Section 151, CPC praying on behalf of the Respondents No. 2 to 5 for setting aside of the Judgment dated 24.09.2008 alleging that it has been obtained by the Appellant by way of fraud and misrepresentation of facts. The supporting affidavit states that in fact the suit land was never *qabooli* land and that it is the government *naqabooli* land as the alleged vendor, Lakhoo son of Haji Alloo Jokhio was not owner of the suit land nor it is clarified in the plaint of suit that from where, this alleged Lakhoo acquired the ownership of the alleged suit land; the documents and deh forms VII as well as the sales certificate were forged, managed and manipulated by the Appellant in collusion and connivance of above said Lakhoo and others; and that the Applicant thereafter forged and managed execution of the fraudulent sale

deed merely to usurp state land. It was stated the Respondent No. 4 [Deputy District Officer (Revenue) Mirpur Sakro at Gharo] and the Respondent No. 5 verified the alleged documents of the Appellant and the revenue record and pointed out that entry No.46/13 dated 8.10.2004 has been inserted showing no previous entry and not available in the record and recommended cancellation of the same and also for the land to revert to the government by taking the action under the provisions of Section 164 of Land Revenue Act 1967. The Respondent No. 2 [Executive District Officer (Revenue) Thatta] after receiving such reports, issued the *suo-moto* show cause notice to the Appellant, who submitted his reply but did not adduce any plausible justification for such mutation entry nor furnished the previous history of this land. The Respondent No. 2 passed order on 15.3.2008 and cancelled the mutation entry in the record. It was therefore submitted by the Respondent No. 5 that it is clear that fraud was committed by forging and inserting the mutation entry in the revenue record and on the basis of such fraudulent documents, the Appellant filed the suit in Court. It was further stated the Appellant has not exhausted the remedies available to him under the Land Revenue Act, 1967 as the order passed by the Respondent No. 2 is appealable in the Board of Revenue Sindh Hyderabad.

8. The learned Senior Civil Judge, Thatta upon hearing the Respondent No. 5's 12(2) Application reviewed the report dated 26.07.2008 of the bailiff of the 1st Senior Civil Judge, Hyderabad and report dated 08.07.2008 of the bailiff of the Court of Senior Civil Judge, Thatta and found that the reports clearly reflect that the Respondents received summons and endorsed their official stamps. The order specifically notes that it was nowhere denied that the bailiff did not reach the address of the Respondents yet no reason was given why they did not turn up when they were extended the opportunity to contest the suit. The order also observes that the Respondent No. 5 is not authorized to present the application under Section 12(2), CPC without permission from the competent authority. Moreover, it was noted that the Appellant filed objections in response to application under Section 12(2) CPC denying the averments made therein to which no rejoinder was filed by the Respondent No. 5, which the learned Trial Court held signifies that the objections were accepted. The order further notes that the Deputy District Attorney ("**DDA**") appeared on 30.07.2010 as well and on 13.08.2008, 27.08.2008 and 10.09.2008 yet the Respondents failed to file written statement or to rebut the averments of the plaint. It was also noted that the Respondent No. 5 failed to disclose in the 12(2) application the date on which they came to know about passing of the judgment and decree in view of which the 12(2) application was found to be time barred.

9. Section 12(2), CPC provides that where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit. The provision applies to *any* person aggrieved by the decree or order even if not a party to the suit. Thus, a judgment and decree passed without impleading a necessary and proper party can be challenged by invoking Section 12(2), CPC to show that it was obtained through deliberate deception, suppression of material facts, fabricating documents and misleading the court¹. In such case, the fraud would be suppression of necessary party. In case, 12(2) is allowed and the applicant is impleaded as a party, it has the opportunity to contest the matter by bringing all relevant facts before the Court.

10. But where a party has been impleaded as defendant and service has been duly made, the defendant is afforded an opportunity to deny the facts alleged by the plaintiff before the Court. If the defendant fails to enter appearance or appears but fails to lay before the Court all the relevant facts which were in his knowledge about fraud and misrepresentation, it cannot invoke the provision of Section 12(2)² by citing instances of alleged fraud and misrepresentation that were not in connection with the proceedings but prior to the institution³ as such facts do not amount to fraud within the meaning of Section 12(2). It has been consistently held that the provision of Section 12(2) is not attracted when the alleged fraud or misrepresentation did not occur during course of proceedings⁴.

11. Perusal of the application filed by the Respondent No. 5 under 12(2), CPC reveals that all the allegations of fraud and misrepresentation pertain to proceedings and events prior to the institution of the suit. In such circumstances, the Trial Court rightly found vide Order dated 8-12-2010 that the basic ingredients of fraud and misrepresentation were lacking and as such dismissed the same.

12. The learned AAG relied upon the case of *Muhammad Aslam and others v. Kundan Mai and others*, 2004 SCMR 843 to submit that it is not necessary that fraud under Section 12(2) is played upon the Court which passed the decree but if a decree is obtained through fraud between the parties *inter se* by concealment of true facts, the same could also be set aside. There is no cavil to the proposition that 12(2) encompasses fraud between the parties however such fraud must be during proceedings. The

¹ *M/s Mobiserve Pakistan (Pvt.) Ltd. v. M/s V-Tech and others*, 2025 SCMR 1936

² *Abdul Qadir v. Province of Sindh*, 2025 CLC 312

³ *Dadabhoy Cement Industries Ltd. v. NDFC*, 2002 CLC 166 and

⁴ *Pak Land Corporation Pvt. Ltd. v. KASB Bank Ltd.*, 2020 CLD 310

application under Section 12(2) filed in *Muhammad Aslam (Supra)* was against a consent decree, meaning thereby that consent of the parties was obtained *during* proceedings through fraud and misrepresentation by concealment, which is not the case in the instant matter.

Civil Revision filed by the Respondent No. 5

13. Nevertheless, Civil Revision No. [-73] of 2011 was filed under Section 115, CPC before the Court of District Judge, Thatta in the name of all the Respondents as Applicants but signed only by the Respondent No. 5. The same ground was taken that the suit land was never *qabooli* land and that no one can be condemned unheard. The revision was dismissed vide Order dated 23-02-2011 as no illegality was pointed out by observing *inter alia* that the Respondents should have filed an application under Order IX, Rule 13, CPC for setting aside of ex-parte order instead of an application under Section 12(2).

Review Application filed by the Respondent No. 5

14. Thereafter, Review Application No. 08 of 2011 was filed under Section 114 read with Order 47, Rule 1, CPC in the name of all the Respondents but with supporting affidavit of only the Respondent No. 5 for the first time claiming that the Respondent No. 1 was not duly served through proper person i.e. Secretary to the Government of Sindh, Revenue Department/Senior Member Board of Revenue as the Secretary to Board of Revenue, Hyderabad and the Secretary to Government Sindh are two different posts/offices; that the bailiff reports says that he served the clerk of the District Officer Revenue while the endorsement shows that notice was given to the clerk of the EDO (Revenue) hence the Respondent No. 3 was not served at all; that oath was not taken of the concerned Bailiffs; that DDA statement is not competent as the DDA is not the government.

15. The ground of non-service was raised for the first time by the Respondent No. 5 in his application seeking review of Order dated 23-2-2011. The reasons given in the Impugned Order allowing such application indicate that the learned IIInd Additional District Judge, Thatta failed to appreciate that the order of which review was sought arose out of an application under Section 12(2), CPC in which non-service was not taken as a ground.

12(2), CPC and Order IX, Rule 13, CPC

16. As a matter of fact, an ex-parte decree obtained by fraud and misrepresentation committed in relation to service can be set aside under

Order IX, Rule 13, CPC. Reference may be made to *Ali Akbar v. Khatoon Nessa*, 1974 SCMR 331; *Ayub Khan v. Fazal Haq* PLD 1976 SC 422; and *Muhammad Aslam v. Additional District Judge, Rawalpindi*, 1979 SCMR 85 in which applications were filed under Order IX, Rule 13, CPC to challenge ex-parte decrees allegedly obtained through fraudulent service. The provision of Section 12(2) was inserted in the CPC by Code of Civil Procedure (Amendment) Ordinance (X of 1980). However, thereafter, the Supreme Court in *Ghulam Sarwar v. Muhammad Hussain*, 1987 SCMR 1440 clarified that Section 12(2) is not intended to be a duplication for proceedings provided for under Order IX, Rule 13, CPC. This is evident from *Muhammad Hussain v. Additional District Judge, Lahore*, 1993 CLC 795, in which applications under Order IX, Rule 13, CPC was made on account of alleged fraudulent service even after insertion of Section 12(2), CPC and in fact the Lahore High Court in *Orient Occident Pvt. Ltd. v. UPAZA Commercial Enterprises, Grain Market Hafizabad*, 2000 YLR 212 by relying upon *Javaid Akhtar v. III-Additional District Judge, Karachi South*, 1996 CLC 1300 passed by this Court, specifically held that Section 12(2) and Order IX, Rule 13, CPC are to be read independently particularly for the reason that limitation period of both these provisions is different and that the point of service cannot be agitated by filing an application under Section 12(2), CPC under the garb of fraud when there is a specific provision of law to agitate that point.

17. Most recently, in the case of *M/s Mobiserve Pakistan (Pvt.) Ltd. v. M/s V-Tech and others*, 2025 SCMR 1936 while painstakingly describing the circumstances in which an application under 12(2) lies and where an application under Order IX, Rule 13, CPC would lie the Supreme Court clarified that Order IX, Rule 13, CPC deals with fraud and misrepresentation relating to service or non-appearance. The relevant excerpt is reproduced as follows:

“5. Apart from the above, in the present case, **a question arose as to whether, in the circumstances as in the instant case, the application under Section 12(2), Code of Civil Procedure, 1908 (hereinafter C.P.C.) or under Order IX Rule 13, C.P.C. would arise;** therefore, we would like to extend our hands in elaborating the legal question that as to when an application under Section 12(2) of the C.P.C. lies and when an application under Order IX Rule 13, C.P.C. lies, with illustrative instances to clarify their respective scopes. Subsection (2) of Section 12 C.P.C. reads:

'Where a person challenges the validity of a judgment, decree or order on the plea of fraud, mis-representation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.'

This provision of law provides a remedy to challenge a judgment, decree, or order obtained by: i). fraud, ii). misrepresentation, or iii). want of jurisdiction. However, mere used of these terms is not

sufficient, rather specific particulars must be provided as required by Rule 4 of Order VI, C.P.C. It allows any person affected by such a decree or order to apply to the court that passed it, seeking to set it aside. This provision is not limited to parties to the suit but extends to any person aggrieved by the decree or order. It means an application under Section 12(2) C.P.C. is maintainable when the decree or order was obtained by deliberate deception or suppression of material facts from the Court. However, the judgment supports a broader reading that includes fraud between the parties affecting the decree. For instance, if a plaintiff fabricates documents or misleads the court to secure a favourable judgment, the affected party can invoke Section 12(2) C.P.C.; when the decree results from unintentional but material misstatement of facts by a party, leading the court to pass an erroneous order. For example, if a party misrepresents the ownership of property in a suit, the aggrieved party may apply under this section; and when the court lacked inherent jurisdiction to pass the decree or order. For instance, if a court passes a decree in a matter outside its territorial or pecuniary jurisdiction, an application under Section 12(2) can be filed. Additionally, a person not a party to the suit but affected by the decree e.g., a third party whose property is wrongly included in a decree, may apply under this section.

The application must be filed in the same court that passed the decree or order. The applicant must prove fraud, misrepresentation, or lack of jurisdiction with cogent evidence. The scope of application under Section 12(2) C.P.C. is broader than Order IX Rule 13, C.P.C., as it is not limited to ex-parte decrees and can be invoked by non-parties.

6. ...

This provision of law provides a remedy to set aside an ex-parte decree passed against a defendant who was unable to appear when the suit was called for hearing. It applies only to defendants and is limited to ex-parte decrees. An application under Order IX Rule 13, C.P.C. is maintainable when: the defendant(s) was not duly served with the summons, or the service was defective, preventing their appearance; the defendant(s) was prevented from appearing due to sufficient cause, such as illness, accident, or other unavoidable circumstances; the decree was passed ex parte, i.e., in the absence of the defendant, without hearing their defense. The application must be filed by the defendant in the court that passed the ex-parte decree. The defendant must demonstrate that they were not served or had sufficient cause for non-appearance. The court may set aside the decree in terms (e.g., costs) and allow the defendant to contest the suit. **Unlike Section 12(2) C.P.C., this provision-Order IX, Rule 13, C.P.C. is limited to ex-parte decrees and does not cover fraud or jurisdiction issues unless they relate to service or non-appearance.** Key Distinctions between the applications under section 12(2) and IX(13), C.P.C. are that Section 12(2), C.P.C. addresses fraud, misrepresentation or lack of jurisdiction and applies to any decree or order, while **Order IX Rule 13, C.P.C. is restricted to ex-parte decrees**; Section 12(2), C.P.C. can be invoked by any aggrieved person, including non-parties, while Order IX Rule 13, C.P.C. is available only to defendants; **Section 12(2) C.P.C. focuses on substantive defects (fraud, misrepresentation, jurisdiction), while Order IX Rule 13, C.P.C. addresses procedural issues (non-service, sufficient cause)**; Section 12(2) C.P.C. seeks to set aside the decree or order entirely, while Order IX Rule 13, C.P.C. seeks to restore the suit for hearing on merits. In light of the above, an application under Section 12(2) C.P.C. lies when a decree or order is tainted by fraud, misrepresentation, or lack of jurisdiction, as seen in cases like fabrication of documents or jurisdictional overreach. Conversely, an application under Order IX Rule 13, C.P.C. lies when an ex-parte decree is passed due to non-service of summons or sufficient cause for the defendant's non-appearance, such as illness or defective service. The court must assess the facts and evidence to determine the appropriate remedy under each provision". [Emphasis added].

18. Therefore, the grounds raised by the Respondents in its review application regarding service ought to have been raised vide an application under Order IX, Rule 13, CPC whereunder if the defendant satisfies the Court that the summons were not duly served or that he was prevented by sufficient cause from appearing when the suit was called an ex-parte judgment can be set aside. The Revisional Court had indeed made such an observation in its Order dated 23-2-2011.

19. It is noteworthy that in *Mobiserve Pakistan (Pvt.) Limited (Supra)* the Supreme Court accepted the application under 12(2) by treating it as an application under Order IX, Rule 13, CPC. However, limitation does not appear to have been at issue. On the other hand, in the instant case the Respondent No. 5's 12(2) Application cannot be treated as an application under Order IX, Rule 13, CPC because no ground regarding service was taken in such application. Nor can the Review Application be treated as such as an application under Order IX, Rule 13, CPC is to be filed within 30 days of the date of decree or where the summons was not duly served when the applicant has knowledge of the decree whereas in the instant case the judgment and decree was passed on 24.09.2008 but date of knowledge of the decree has not been disclosed anywhere. In such circumstances, date of knowledge of the judgment dated 24.09.2008 passed by the learned Trial Court would at least be the date of filing of the 12(2) application i.e. 17-05-2010 according to which even if the review application, in which the Respondent No. 5 for the first time alleged fraudulent service, were to be treated as an application under Order IX, Rule 13, CPC the same would be barred by time under Article 164 of the Limitation Act.

20. The learned AAG relied upon the case of *Province of Sindh through Secretary and two others vs. Rahim Bux and others*, reported as 2022 CLC 2063, whereby it was held that the Court is never robbed of its *suo moto* jurisdiction for the reason that the revision application is filed beyond the limitation period. This is wholly inapplicable in the facts and circumstances of the case. Here the issue is not of filing the civil revision beyond time. The power of to entertain a civil revision beyond the limitation period cannot be extended to convert the review application against the revisional order into an application under Order IX, Rule 13, CPC beyond the limitation period applicable upon an application under Order IX, Rule 13, CPC.

21. Without prejudice to the foregoing, the Impugned Order whereby the review application has been allowed does not even address any of the aspects pertaining to service. The Impugned Order neither considers whether the earlier Orders whereby service was held good were erroneous and liable to be set aside nor has any finding been given regarding the

grounds raised by the Respondent No. 5 in the review application as to why service was not validly made upon the Respondent No. 1 and 3 or whether Respondent No. 5 was authorized to challenge the orders on account of the alleged defective service upon Respondent No. 1 and 3 when such Respondents had not challenged the orders themselves particularly when there was no dispute regarding service on the Respondent No. 5.

Scope of Review

22. In fact, the Impugned Order allows the review application of the Respondent No. 5 without mentioning a word about the grounds raised by the Respondent No. 5 for review. The Impugned Order simply holds that there is a material/substantial question requiring adjudication on merits that should be decided after notice to both the parties. However, a review is not a rehearing merely on the ground that one party or the other conceived himself to be dissatisfied with the decision of the Court⁵.

Order XXVII, CPC

23. To the extent that service was not made upon the Respondent No. 1 for failure to effect it through the relevant department is concerned and whether the DDA was authorized to enter appearance on behalf of the Respondent No. 1 is concerned, the learned AAG failed to satisfy this Court that the Respondent No. 5 was authorized to institute the review application on behalf of the Respondent No. 1. Interestingly, enough the Respondent No. 5 has not denied service upon himself yet no explanation was given for his failure to contest the suit. The Respondent No. 5 being Mukhtiarkar does not constitute the Provincial Government⁶. Order XXVII, Rule 1, CPC provides that in any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case. The Respondent No. 5 was not appointed by the Respondent No. 1 to file the 12(2) application or the revision or review applications on its behalf⁷. He was therefore not competent to allege defective service on behalf of Respondent No. 1 or 3.

24. This brings me to the ground raised by the Respondent No. 5 that Respondent No. 1 was not duly served through proper person i.e. Secretary, Government of Sindh, Revenue Department/Senior Member

⁵ *Dr. Masroor Ahmed Zai v. Province of Sindh*, 2016 CLC 1861

⁶ *I.G. Punjab Lahore and another v. Muhammad Iqbal*, 2007 SCMR 1864

⁷ *Government of Sindh v Noor Muhammad*, 1996 CLC 412

Board of Revenue as Secretary to Board of Revenue, Hyderabad and the Secretary to Government of Sindh are two different posts/offices. Order XXVII, Rule 3, CPC provides that in suits by or against the Government it will be sufficient to insert the name as provided in Section 79. Section 79(b) provides that in a suit by or against the Provincial Government the authority to be named as plaintiff or defendant, as the case may be, shall be the Province. The requirement was evidently met in the instant case by the Appellant instituting the suit against the Province of Sindh⁸.

25. The fact that the Province has been sued through Secretary Revenue, Shehbaz Building, Hyderabad has to do with Section 80 or Order XXVII, Rule 4, CPC. No allegation of non-compliance with Section 80 has been raised. It is an undisputed fact that the DDA entered appearance despite which the Respondents failed to file written statement due to which they were proceeded against ex-parte. There is no merit in the ground raised by the Respondent No. 5 in review that DDA statement is not competent as DDA is not government. Rule 4 of Order XXVII, CPC provides that the Government pleader in any court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court. In *Zulfiqar Ali Babar v. Province of Punjab*, PLD 2000 Lahore 70 it was held that Rule 2 of Order XXVII, CPC provides that persons who are ex-officio authorized to act for the Government are deemed to be recognized agents of the Government. Therefore, where the Government does not appoint Special Pleader and decides to contest the case through the District Attorney/Deputy district Attorney they in their ex-officio capacity can act on behalf of the Government and can perform all such acts which are required to be performed by the Government in judicial proceedings. Similarly, the Lahore High Court in *Province of Punjab v. M/s Usman & Sons*, 2002 MLD 414 also held that according to the provisions of Order XXVII, Rule 4, CPC, where a Government is a defendant/respondent in litigation, notice can only be served upon the Government through Secretary of the concerned department or through the District Attorney/Government Pleader. That notice to the Provincial Government can be through Government Pleader has also been recognized by the Supreme Court in *Tribal Friends Co. v. Province of Baluchistan*, 2002 SCMR 1903. This Court in *E.D.O. (now Superintending Engineer) Road District Kashmore @ Kandhkot v. Abdul Hafeez Chachar*, 2023 CLC 1383 also took a similar view where the DDA had entered appearance on behalf of the Respondent No. 1.

⁸ *E.D.O. (now Superintending Engineer) Road District Kashmore @ Kandhkot v. Abdul Hafeez Chachar*, 2023 CLC 1383

26. To sum it up, I find that no fraud or misrepresentation within the meaning of Section 12(2), CPC was raised in the application filed under the said provision of law. Insofar as the alleged fraudulent service upon Respondents 1 and 3 is concerned the Respondent No. 5 was not competent to have alleged the same on their behalf who failed to avail the remedy provided under Order IX, Rule 13, CPC within the limitation period and even otherwise, there is no merit in the allegation that the Respondent No. 1 was not duly served given that it has not been denied that the DDA entered appearance before the Trial Court. In such circumstances, the review application filed by the Respondent No. 5 was liable to be dismissed as no grounds for review of Order dated 23.02.2011 dismissing the Revision application against Order 08.12.2010 for dismissal of the Respondent No. 5's 12(2) application against the Judgment and Decree dated 24.09.2008 were made out.

27. In view of the foregoing, the instant appeal is allowed and the impugned order dated 07.2.2012 is hereby set aside, resultantly the Respondent No. 5's review application stands dismissed.

**[SAMAN RAFAT IMTIAZ]
JUDGE**

Announced in open Court on 29th September, 2026.

JUDGE

Imran