

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Revision Application No.94 of 1992

Date	Order with Signature(s) of Judge(s)
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D/o matter:

1. For order on CMA No.578/2017.
2. For hearing of CMA No.579/2017.
3. For hearing of CMA No.580/2017.

25.08.2026

Mr. Muhammad Umer Jakhro, Advocate for applicant.

1. Exemption application is granted subject to all just exception.
2. By means of listed application, filed under Section 12, Rule 2, read with Section 151 CPC, the present applicant Abdullah S/o Muhammad Siddique seeks setting aside the order dated 16.08.2016, whereby this Court allowed the instant Civil Revision Application (R.A.) only to the extent that the appellate judgment dated 23.12.1991 shall not be binding on the applicant of the R. A. and the suit against the said applicant stood dismissed.

Learned counsel for the present applicant states that the present applicant is the son of respondent No.1 in the R.A., who died in the year 2009 during its pendency; that the applicant of the R.A. intentionally and deliberately did not join the present applicant, being legal representative of the respondent No.1, as party in the suit; as such, he committed fraud with this Court and obtained impugned order behind the back of the present applicant by misrepresentation of facts; that the present applicant was unaware of pendency and disposal of the R.A., who came to know about the impugned order in the fourth week of December, 2016 on enquiry. Hence, the impugned order is liable to be set aside.

Heard and record perused.

It reveals from perusal of the record that the respondents, including respondent No.1, were being represented in the R.A. through Mr. Ali Gohar Soomro Advocate, who made his appearance on 17.09.1996. Thereafter he chose to remain absent and on number of times notices were issued to him as well as to the respondents, whereupon Mr. Soomro made his appearance on 12.04.2004 when on his request matter was adjourned. Then, again on subsequent dates he remained absent and made his appearance on 04.12.2007 and informed the Court that respondent No.2(f)(i) Mst. Zohra, had expired and he sought time for filing proper application for substitution of her legal heirs. Then, he again failed to make his appearance on behalf of respondent No.1 and other respondents on subsequent dates of hearing despite issuance of notices for their appearance. Consequently, on 16.08.2016 the Court passed the impugned order.

The Court is permitted under Order XXII, Rule 4, CPC to proceed with the matter notwithstanding the death of the respondent, in the same manner as if he was alive. Such power; however, is circumscribed by the condition that in case, application for bringing legal heirs on record is not moved within the time prescribed by law under Article 177 of the Limitation Act, 1908. However, where no intimation is given under Order XXII, Rule 4(i) CPC, the Court may proceed with the suit and any order made or judgment pronounced in such suit/appeal shall, notwithstanding the death of defendant/respondent have the same force and effect as if it had been pronounced before the death took place.

It is the primary duty of the counsel of the party to inform the Court that the party has died and for such purpose the opposite party cannot be burdened. Under such circumstances, contesting party cannot resort to provision of Section 12(2), CPC as an alternative or

substitute for remedy available to him under law, which he failed to avail or if availed, but gave up later on. Remedy of Section 12(2), CPC would be available to a person, who was either not a party to the proceeding or if was a party, but was not duly served with summon or notice and ex-parte decision had been given against him. Further, as regards the arguments of the learned counsel for the present applicant with regard to non-joining of the legal heirs of respondent No.1, it may be observed that nothing was available on record and no allegation was leveled in the affidavit of the present applicant to show that the applicant of the R.A. was aware of death of respondent No.1; however, failed to implead his legal heirs as party at the relevant time. The applicant of the R.A., in the circumstances cannot be said to have deliberately failed or avoided to implead the present applicant as a legal heir of respondent No.1 in the R.A. and was not guilty of the fraud and misrepresentation. In absence of prima facie proof of alleged fraud and misrepresentation in obtaining the impugned order, provision of Section 12(2), CPC are not attracted.

For the forgoing facts and reasons the instant application being devoid of merit is dismissed.

3. In view of order passed on CMA listed at No.2, this CMA has become infructuous; hence, the same is dismissed.

CHIEF JUSTICE