HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-322 of 2026
[Ahmed Ali Talpur vs. Nawaz Noor Ahmed Talpur and others]

Petitioner:	Through M/s Syed Mureed Ali Shah and Asif Ali Abro advocates
Respondent No.1:	Through Mr. Maisum Hussain Sahar advocate
Respondents 2to4:	Through Mr. Allah Bachayo Soomro Additional A.G Sindh
Date of hearing	29.10.2026
Date of Decision	29.10.2026

O R D E R
***

ADNAN-UL-KARIM MEMON J:- The petitioner/plaintiff, Ahmed Ali Talpur, has challenged Order dated 22.04.2026, whereby his application under Section 12(2) CPC preferred in Revision Application No.111 of 2025 against the Order dated 17.01.2026 passed in said revision application, has been dismissed by the Revisional Court/Model Civil Appelalte Court-II Hyderabad.

2. The learned counsel for the petitioner contends that the petitioner has challenged the ex-parte order dated 17.01.2026 passed in Civil Revision Application No.111 of 2025, as well as the subsequent order dated 22.04.2026 passed by the learned VI-Additional District Judge, Hyderabad, whereby his application under Section 12(2), C.P.C. was dismissed. It is submitted that the petitioner had initially instituted F.C. Suit No.327 of 2023 challenging the cancellation order dated 09.01.2023 and the lease deed dated 06.02.2023. After rejection of the plaint and dismissal of the appeals, the Hon'ble Supreme Court, vide judgment dated 24.12.2024 in CPLA No.290-K of 2024, remanded the matter to the trial Court. Subsequently, the petitioner's application for amendment of plaint was dismissed; however, his application under Order XXIII Rule 1(2), C.P.C. for withdrawal of the suit with permission to institute a fresh suit was allowed on 31.05.2025. Accordingly, the petitioner instituted F.C. Suit No.873 of 2025, which was admitted, notices were issued, and status quo was granted on 10.10.2025. It is further contended that Respondent No.1, despite participating in the proceedings of the fresh suit through counsel, concealed the pendency of Civil Revision Application No.111 of 2025, filed against the order dated 31.05.2025, and obtained the ex-parte order dated 17.01.2026 without lawful service upon the petitioner or his counsel. The petitioner asserts that he acquired knowledge of the said order only on 06.02.2026, when a copy thereof was produced by Respondent No.1 in the fresh suit, and promptly filed an application under Section 12(2), C.P.C. on 09.02.2026.

Learned counsel further argues that the substituted service through publication and pasting was effected without exhausting the ordinary modes of service prescribed under Order V, C.P.C. It is also contended that the Court diary of the revision proceedings reflects serious irregularities, as several important dates and proceedings were neither authenticated by the Presiding Officer nor shown to have been fixed in open Court. Reliance is placed upon PLD 1990 SC 713 and 1983 SCMR 1092. It is further pointed out that the order dismissing the application under Section 12(2), C.P.C. did not initially mention the names of the petitioner's counsel, which were subsequently inserted in red ink. According to the learned counsel, the learned Revisional Court failed to examine these material objections, defective service, concealment of facts, and violation of natural justice, and dismissed the application without proper appreciation of the record. The impugned orders are, therefore, assailed as illegal, arbitrary and unsustainable, with a prayer to set aside the order dated 22.04.2026 and recall the ex-parte order dated 17.01.2026.

3. Learned counsel for Respondent No.1 submits that the instant Constitutional Petition is misconceived, devoid of merit and has been filed with the ulterior motive of prolonging the litigation and harassing the answering respondent. He contends that Respondent No.1 had filed Civil Revision No.111 of 2025 challenging the order dated 31.05.2025 passed by the learned Senior Civil Judge-IV, Hyderabad, whereby the petitioner was permitted to withdraw his suit with permission to institute a fresh one. Despite repeated efforts to serve the petitioner through notices, pasting and publication in accordance with Order V, C.P.C., the petitioner deliberately failed to appear before the Revisional Court, which ultimately allowed the revision vide order dated 17.01.2026. Learned counsel further submits that instead of availing the appropriate remedy under Order IX Rule 13, C.P.C., the petitioner subsequently invoked Section 12(2), C.P.C., alleging fraud and non-service of notice, without producing any cogent evidence to substantiate such allegations. Learned counsel further contends that the petitioner himself furnished the same address in the earlier suit at which notices were issued in the Civil Revision, and his assertion of having no knowledge of the proceedings is therefore untenable. He also refers to the statement dated 06.12.2025 submitted before the Revisional Court, disclosing the pendency of the subsequent suit, and submits that the Court afforded further opportunities to the petitioner to appear, but he failed to do so. It is argued that the petitioner has failed to establish any fraud, procedural illegality or violation of the principles of natural justice, whereas all requirements of Order V, C.P.C., were duly complied with. He further submits that, following the order dated 17.01.2026, the original suit was restored, compelling Respondent No.1 to contest two suits arising out of the same cause of action. Accordingly, learned counsel prays for dismissal of the instant Constitutional Petition and maintenance of the impugned orders, with costs.

4. However, after arguing the matter at some length both the parties agreed for disposal of this petition in the terms of expeditious disposal of the fresh suit filed by the petitioner/plaintiff in accordance with law.

5. I have heard the learned counsel for the parties and perused the record with their assitence.

6. The controversy primarily relates to the legality of the ex-parte order dated 17.01.2026 passed in Civil Revision Application No.111 of 2025 and the subsequent dismissal of the petitioner's application under Section 12(2), C.P.C., vide order dated 22.04.2026. Although learned counsel for Respondent No.1 has contended that the petitioner was duly served through ordinary and substituted modes of service and deliberately failed to appear before the Revisional Court, such contention, by itself, does not sufficiently address the petitioner's specific grievance regarding non-service, alleged concealment of the pending revision and the manner in which substituted service was effected. Similarly, the objection that the petitioner ought to have invoked Order IX Rule 13, C.P.C., instead of Section 12(2), C.P.C., cannot be considered in isolation without examining the nature of the allegations of fraud and the material placed on record. The petitioner's assertion that he acquired knowledge of the impugned order on 06.02.2026 and approached the Court through an application dated 09.02.2026 also requires consideration in the context of the record.

7. However, keeping in view that the substantive dispute between the parties concerns their respective civil rights, and that the proceedings have already remained pending for a considerable period, this Court is of the considered view that the ends of justice would be better served by providing both parties an effective opportunity to establish their respective claims through evidence rather than allowing the controversy to remain entangled in procedural litigation as discussed supra. The objections raised by Respondent No.1 regarding service, maintainability and alleged misuse of process can be appropriately examined by the competent Court if brought into the knowledge of the Court. Since the fresh civil proceedings have been initiated and all proceedings in earlier litigation are no more alive due to change of scenario as discussed in the preceding paragraph.

8. In view of the forgoing with the consent of the parties, the instant petition is disposed of thererby the Order dated 17.01.2026 passed by the Revisional Court/Model Civil Appelalte Court-II Hyderabad in Revision Application No.111 of 2025 and subsequent Order dated 22.04.2026 passed on application preferred by the present petition udner Section 12(2) CPC in aforesaid revision application are set aside.

9. Consequently the learned trial Court is directed to decide the fres Suit bearing No.873 of 2025 on its merits, after recording evidence of both parties, within a period of three months, on a day-to-day basis, without granting unnecessary adjournments. It is clarified that the learned trial Court shall independently assess the pleadings, evidence and legal objections of the parties, uninfluenced by any observations made herein.

J U D G E

A. Waheed J.