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Judgment Sheet

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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WRIT PETITION NO.1234 of 2023

Mst. MISBAH IFTIKHAR and another

Versus

Mst. ALEESA and 3 others

JUDGMENT

Date of hearing:	26.09.2024
Petitioners by:	Agha Muhammad Ali Khan, Advocate.
Respondent No.1 by:	Mirza Muhammad Nazakat Baig, Advocate.
Respondents No.2 & 3 by:	Ex-parte.

MIRZA VIQAS RAUF, J. This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as "Constitution") stems from the judgment dated 16th February, 2023 handed down by the learned Additional District Judge, Hassan Abdal (Attock), whereby he proceeded to dismiss the application of the petitioners moved under Section 12(2) of the Code of Civil Procedure (V of 1908) (hereinafter referred to as "C.P.C.").

2. Factual backdrop of this petition is that respondent No.1 (hereinafter referred to as "respondent") instituted a suit for recovery of dower, maintenance and dowry articles against respondents No.2 & 3. Suit was ultimately partly decreed by way of judgment dated 4th February, 2020 whereunder "respondent" was held entitled to recover a house as part of dower alongwith other reliefs claimed.

Being aggrieved respondents No.2 & 3 preferred an appeal before the learned Additional District Judge, Hassan Abdal (Attock) but it was partly allowed vide judgment and decree dated 18th December, 2020 maintaining the decree qua house as part of dower. After passing of decree in her favour, "respondent" filed an execution petition wherein as per claim of the petitioners, property owned by them was made subject to satisfaction of decree, which prompted them to move an application under Section 12(2) of the "C.P.C." before the learned Additional District Judge, Hassan Abdal (Attock). The application was, however, dismissed through impugned judgment.

3. On presentation of this petition a query was put to learned counsel for the petitioners on 7th April, 2023 with regard to competency of this constitutional petition, who in return sought time for the purpose of assistance. On the next date i.e. 14th April, 2023 in the light of contentions of learned counsel for the petitioners, this petition was admitted for regular hearing with the observation that question of maintainability shall be decided at final stage.

4. Record reveals that despite service, respondents No.2 & 3 did not appear and as such they were proceeded against ex-parte vide order dated 10th September, 2024.

5. Agha Muhammad Ali Khan, Advocate representing the petitioners submitted that Family Court is defined in Sections 2(b) read with Section 3 of the Family Courts Act, 1964. He added that learned Additional District Judge since acted in the capacity of appellate court so cannot be termed as Family Court and as such writ petition is maintainable. Learned counsel contended that petitioners as well as "respondent" are daughters-in-law of respondent No.3, who at the time of their marriages given the property and house subject matter of suit as dower to them but on filing of suit by "respondent", this material fact was not brought on record fraudulently, which resulted into passing of impugned judgment and decree. It is further contended by learned counsel that on attaining knowledge, the petitioners moved an application under Section 12(2) of the "C.P.C." which has been dismissed in a summary manner,

while holding that such an application is not maintainable in view of Section 17 of the Family Courts Act, 1964. It is emphatically argued that application of the petitioners was also dismissed being bereft of any merits. Learned counsel submitted that impugned judgment is tainted with illegalities and not tenable. In support of his contentions, learned counsel placed reliance on *MUHAMMAD ARSHAD ANJUM versus Mst. KHURSHID BEGUM and others* **(2021 SCMR 1145)** and *MUHAMMAD AKRAM MALIK versus Dr. GHULAM RABBANI and others* **(PLD 2006 Supreme Court 773).**

6. Conversely, learned counsel for "respondent" though seriously resisted this petition but did not question its maintainability. Learned counsel submitted that application under Section 12(2) of the "C.P.C." was rightly turned down by learned Additional District Judge. He added that provisions of the "C.P.C." are *stricto sensu* not applicable before the Family Court. Learned counsel contended with vehemence that impugned judgment is unexceptionable and calls for no interference.

7. Heard. Record perused.

8. Suit was instituted by "respondent" while invoking the provisions of the Family Courts Act, 1964 (hereinafter referred to as "Act, 1964"). As per preamble of the "Act, 1964", it was enacted to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith. Section 2 deals with the definitions clause and it defined "Family Court" as under :-

> **"(b)** *"Family Court"* means a Court constitute under this Act**"**

Section 3 of the "Act, 1964" mandates the Government of Punjab to establish Family Courts, which reads as under :-

> **"S. 3.** ***Establishment of Family Courts*****.–** (1) Government shall establish one or more Family Courts in each District or at such other place or places as it may deem necessary and appoint a Judge for each of such Court:
>
> Provided that at least one Family Court in each District, shall be presided over by a woman Judge to be appointed within a period of six months or within such period as

> the Federal Government may, on the request of Provincial Government, extend;
>
> (2) A woman Judge may be appointed for more than one District and in such cases the woman Judge may sit for the disposal of cases at such place or places in either District, as the Provincial Government may specify.
>
> (3) Government shall, in consultation with the High Court, appoint as many woman Judges as may be necessary for the purposes of sub-section 1.**"**

9. It would not be out of context to mention here that a Family Court is a Civil Court in every aspect despite the exclusion of the provisions of the "C.P.C." with exception to Sections 10 & 11 and the Qanun-e-Shahadat Order, 1984 by virtue of Section 17 of the "Act, 1964". Though in terms of Rule 3 of the Family Courts Rules, 1965, the courts of the District Judge, the Additional District Judge are also designated as Family Courts alongwith the Civil Judge but ordinarily functions of Family Courts are assigned to the Civil Judge and the District Judge and the Additional District Judge acts as appellate court as is evident from the bare reading of Section 14 of the "Act, 1964". For ready reference and convenience Section 14 is reproduced below :-

> **"S. 14. Appeals.–** (1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable–
>
> (*a*) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge; and
>
> (*b*) to the District Court, in any other case.
>
> (2) No appeal shall lie from a decree passed by Family Court–
>
> (*a*) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (*d*) of item (*viii*) of section 2 of the Dissolution of Muslim Marriages Act, 1939;
>
> (*b*) for dower or dowry not exceeding rupees thirty thousand;
>
> (*c*) for maintenance of rupees one thousand or less per month.
>
> (3) No appeal or revision shall lie against an interim order passed by a Family Court.
>
> (4) The appellate Court referred to in sub-section (1) shall dispose of the appeal within a period of four months.**"**

It is thus evident that learned Additional District Judge, Hassan Abdal (Attock) who decided the application of petitioners under Section 12(2) of the "C.P.C." was officiating as appellate court, thus this writ petition is maintainable and the query is answered accordingly.

10. Now adverting to the moot point as to whether an application under Section 12(2) of the "C.P.C." is maintainable before a Family Court established under the "Act, 1964" in view of exclusion of provisions of the Code *ibid* in the light of Section 17 of the "Act, 1964"; suffice to observe that provisions of the "C.P.C." are generally ousted to the Family Courts to frustrate the technicalities to hamper the proceedings before the Family Courts, as the "Act, 1964" stresses upon speedy settlement of family disputes. The exclusion of provisions of the "C.P.C.", however, does not mean that it cannot be pressed into service at all by the Family Courts. Where there is no provision in the "Act, 1964" to deal with a subject, provisions of "C.P.C." can be invoked for the advancement of ends of justice. Needless to reiterate that the provisions of the "C.P.C." are though *stricto sensu* not applicable in family matters but the Family Court is always competent to mold the relief keeping in view the circumstances of each case to foster justice.

11. Needless to mention that subsection (2) of Section 12 of the "C.P.C." was initially not the part of Code even. It was added through Ordinance 10 of 1980. Prior to insertion of subsection (2) in section 12 of the "C.P.C." one has to institute a suit for setting aside of a judgment, decree or order obtained by practicing fraud upon the court but with the introduction of subsection (2), fresh suit was barred.

12. By virtue of subsection (2) of Section 12 of the "C.P.C." any person can challenge the validity of judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction by filing an application to the court which passed the final judgment, decree or order. The term "person" used in subsection (2) has wider import and cannot be narrowly interpreted, so as to restrict it to refer to only a judgment debtor or his successors but it should be read to include any person adversely effected even though not a party to the proceedings wherein such decree, judgment or order is passed. The scope of Section 12(2) of "C.P.C." is not narrow but wider enough. It is not restricted to the judgment, decree or order obtained while playing fraud with the court but it also extends to the cases where a

judgment, decree or order has been obtained by the parties through fraud interse by concealment of true facts.

13. In the case of *MUHAMMAD ARSHAD ANJUM versus Mst. KHURSHID BEGUM and others* **(2021 SCMR 1145)** while dealing with a similar proposition, Supreme Court of Pakistan ruled as under :-

> **"**4. Petitioner's recourse to defend his title in the disputed land, decreed in respondent's favour as her dower, before the Family Court and latter before the Additional District Judge, though somewhat haphazard, nonetheless, was the only option available to him. The Family Court decreed the suit, without a full dress trial merely upon failure of respondent's husband to take special oath, a circumstance that too prevailed with the learned Appellate Court. Ostensible contest remained restricted between the spouses without slightest breach in the nuptial bond, to the exclusion of rest of the world. Failure of petitioner's Constitution petition in the High Court also turned out a far cry. Throughout the contest, respondent relied upon technical barricades, thus, the questions that call for our consideration are whether exclusion of the provisions of the Code of Civil Procedure, 1908 barring sections 10 and 11 thereof, stood in impediment to petitioner's approach to the Family Court for re-examination of the judgment within the contemplation of section 12(2) of the Code or that he should have asserted his claim of being a bona fide purchaser with consideration through an intervener in civil plenary jurisdiction?
>
> The Family Court Act 1964 (W.P. Act XXXV of 1964) (the Act) was enacted for *"..... expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith";* provisions of the Qanun-e-Shahadat Order, 1984 (P.O. No.10 of 1984) and those of the Code except sections 10 and 11 have been excluded to achieve the legislative intent. The exclusion of normal rules of procedure and proof, applicable in civil plenary jurisdiction for adjudication of disputes in proceedings before a Family Court, is essentially designed to circumvent delays in disposal of sustenance claims by the vulnerable; this does not derogate its status as a Court nor takes away its inherent jurisdiction to protect its orders and decrees from the taints of fraud and misrepresentation as such powers must vest in every tribunal to ensure that stream of justice runs pure and clean; such intendment is important yet for another reason, as at times, adjudications by a Family Court may involve decisions with far reaching implications/consequences for a spouse or a sibling and, thus, there must exist a mechanism to recall or rectify outcome of any sinister or oblique manipulation, therefore, we find no clog on the authority of a Family Court to re-examine its earlier decision with a view to secure the ends of justice and prevent abuse of its jurisdiction and for the said purpose, in the absence of any express prohibition in the Act, it can borrow the procedure from available avenues, chartered by law.
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> Question of non-applicability of the Code barring sections 10 and 11 thereof came up before the Court in the case of *Muhammad Tabish Naeem Khan v. Additional District Judge*

Lahore and others (2014 SCMR 1365), in the said case, plea of ouster of procedure was repelled as under:

> *"We are not persuaded to hold, that the ex parte decree dated 4.7.2008 was void, for the reason that there is no provision in the West Pakistan Family Courts Act, 1964 to strike off the defence of the petitioner, when he failed to file the written statement, thus, it (decree) should be ignored; suffice it to say that the Family Court is the quasi judicial forum, which can draw and follow its own procedure provided such procedure should not be against the principles of fair hearing and trial,……".*

In the case of *Haji Muhammad Nawaz v. Samina Kanwal and others (2017 SCMR 321)* it was reiterated that:

> *"Family Court, whether as a trial court or an executing court, are governed by the general principles of equity, justice and fair play".*

Impact of fraud practiced upon tribunals exercising plenary or limited jurisdictions, respectively, cannot be procedurally classified as in all jurisdictions it unredeemedly vitiates the very solemnity of adjudication, a wrong that cannot be countenanced and must be remedied through dynamic application of equitable principles of law and such approach has been approved by this Court in a good number of cases arising out of erstwhile rent laws that too excluded wholesale application of the Code. See *PLD 1975 SC 331 The Chief Settlement Commissioner, Lahore v. Raja Mohammad Fazil Khan and others, 1992 SCMR 917 Tanveer Jamshed and another v. Raja Ghulam Haider, 1992 SCMR 1908 Mst. Fehmida Begum v. Muhammad Khalid and another, 1993 SCMR 226 Fazal Elahi Malis through legal heirs v. Miss Abida Reasat Rizvi, 1997 SCMR 1986 Haji Khudai Nazar and another v. Haji Abdul Bari, 2000 SCMR 540 Masjid Intizamia Committee and others v. Anjuman-e-Falah-o-Bahbood and others, 2001 SCMR 577 Hanif and others v. Malik Armed Shah and another, 2005 SCMR 882 Suhail Printing Press v. Syed Aley Eba Zaidi, 2007 SCMR 818 Muhammad Tariq Khan v. Khawaja Muhammad Jawad Asami and others, 2007 SCMR 1434 Ammanullah Khan Leghari v. Abid Shaikh Ahmed, 2014 SCMR 1694 Sheikh Saleem v. Mrs. Shamim Attaullah Khan and others and 1984 CLC 2855 Abdul Salam v. Mrs. Tahira Zaidi*.

5. Recourse to plenary jurisdiction as suggested by the learned counsel for the respondent would be a journey into a blind alley as in the face of a final decree by the Family Court, holding the field, the proposed course would inevitably lead to a chaotic collusion, if at all the petitioner ever succeed. Therefore, in the circumstances, reconsideration/re-examination of the impugned judgment and decree by the learned Family Court is the only expedient option, conducive to the interest of the contestants. The petition is converted into appeal and allowed with no order as to costs. Impugned judgment dated 04.03.2019 is set aside, as a consequence thereof, appellant's claim in the property as mentioned in his application be attended by the learned Additional District Judge Multan before whom his application under section 12(2) of the Code shall be deemed as pending. Since this matter is pending for considerable time, the learned Court seized of the matter, in the fullness of time, shall decide it with all convenient dispatch sooner rather than later.**"**

14. In a recent judgment in the case of *FOZIA MAZHAR versus ADDITIONAL DISTRICT JUDGE, JHANG and others* **(PLD 2024 Supreme Court 771)** Supreme Court of Pakistan reiterated the same principles. The relevant extract from the same is reproduced below :-

> **"Issue No. I**
> **Application of Section 12(2) of C.P.C. in proceedings before Family Courts**
> 8. Section 17 of the Act clearly provides that:
> **"17.(1) Save as otherwise expressly provided by or under this Act, the provisions of the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984), and the Code of Civil Procedure, 1908, except sections 10 and 11 shall not apply to proceeding before any Family Court in respect of Part I of Schedule.**
> **(2) Sections 8 to 11 of the Oaths Act, 1872, shall apply to all proceedings before the Family Courts."**
> The letter of the above stated law is but clear, vesting the Family Court not to be shackled by rigors of intricate procedural rules provided under C.P.C., and granting the Family Court, the authority to proceed swiftly to resolve the dispute between the estranged spouses. A glance through the jurisprudence regarding the applicability of the provisions or for that matter, the general principles enunciated in C.P.C. that have developed over time by this Court would be beneficial for addressing the present issue before us. Some of the pertinent discourse on the subject rendered by this Court is contained in the following decisions:
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> *Sayed Abbas Taqi Mehdi v. Mst. Sayeda Sabahat Batool* (2010 SCMR 1840)
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> The issue in this case involved a challenge made to an ex-parte order passed by the Family Court in suits for possession of dowry articles and maintenance. The Court held that the Family Court had correctly dismissed the application for setting aside *ex-parte* decree on merits as well as being time barred, and observed that though the provisions of C.P.C. and law of evidence are not applicable *qua* the proceedings before the Family Court in terms of Section 17 of the Act yet the Family Court has to regulate its own proceedings in accordance with the provisions of the Act, and thus, the Family Court is not barred to follow the principles of C.P.C.
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> *Muhammad Tabish Naeem Khan v. Additional District Judge, Lahore* (2014 SCMR 1365)
>
> The challenge made to an ex-parte order maintaining the decisions of the Family Court, District Court, and the High Court allowing the maintenance allowance to a spouse and granting her the dowry decree was repelled by this Court, since the challenging petitioner neither filed for seeking the setting aside of the ex-parte decree passed against him nor did he file any appeal against the same. This Court further opined that, if a defendant of a family matter, who is duly served; and especially the one who appears and disappears and also does not file his written statement within the time allowed to him by the Court, the Court shall have the inherent power to proceed to

> strike-off his defence, and to pass an ex -parte decree in line with the principles, as are enunciated by C.P.C. In any case, it was held that striking-off defence of a party by the Family Court cannot be considered to be void.
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> *Muhammad Arshad Anjum v. Mst. Khurshid Begum* (2021 SCMR 1145)
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> In this case, the petitioner purchased land unaware that it was under attachment due to a decree of the Family Court in favor of the respondent. The question before the Court was in essence, whether the exclusion of certain provisions of C.P.C. provided under Section 17 of the Act barred the petitioner from approaching the Family Court for a re-examination of the judgment within the contemplation of Section 12(2) of C.P.C. or that he should have asserted his claim of being a bona fide purchaser with consideration as an intervener in civil plenary jurisdiction. The Court ruled that the Family Court had the authority to re-examine its earlier decision to ensure justice and prevent abuse of its jurisdiction and for the said purpose, in the absence of any express prohibition in the Act, it could borrow the procedure from other legal avenues. The petition for leave to appeal was allowed, overturning the impugned judgment, and allowing the application of the petitioner under Section 12(2) of C.P.C. to proceed.
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> 9. Given the above clear view of this Court on the issue, we have no manner of doubt that the Family Court may apply the general principles enshrined in C.P.C. in proceeding with not only the trial but also exercise jurisdiction in entertaining an application of an aggrieved party, challenging the validity of a judgment, decree or order on the plea of fraud or misrepresentation, as was done by the respondent in the present case, and rightly maintained so by the three Courts below.**"**

15. In the case of *FOZIA MAZHAR versus ADDITIONAL DISTRICT JUDGE and 2 others* **(2021 CLC 270)** in somewhat similar facts and circumstances this Court held as under :-

> **"**6. In view of the above, If for the sake of arguments this Court considers that application section 12(2) of the Code of Civil Procedure, 1908 was not maintainable due to non-applicability of C.P.C., even then the learned Judge Family Court in a case where as decree or order has been obtained through fraud, deceits, misrepresentation or on any of such grounds, the learned Judge Family Court can competently entertain such an application under the inherent jurisdiction, which is presumed and considered to be vesting in all Courts, Tribunals or authority of even limited jurisdiction, because it is a settled principle of law that fraud vitiates the most solemn proceedings even and the decrees, orders or the judgments obtained in pursuit of these intentions or actions are to be reviewed, reversed, recalled or upset. This rule is based on the principle that an authority if can do act or pass an order, judgment or decree, it can undo it also but with some exceptions also, if the authority has been defrauded in

> the passing of that act, order or judgment.
>
> In addition to the above, the general rule that power of review does not exist unless it is expressly conferred by law, has got two well-established exceptions i.e. (i) a court has inherent jurisdiction to set aside judgment or order which it had delivered without jurisdiction; (ii) a court or authority has the power to review an order or judgment obtained by fraud. Reliance is placed on *The Chief Settlment Commissioner, Lahore v. Raja Muhammad Fazil Khan and others (PLD 1975 SC 331)*. In this view of the matter, when facts of this case are considered and read, it appears that the order dated 27.04.2015 has been obtained by the petitioner through misrepresentation, because in the entire file of the suit proceedings, Wakalatnama of Mr. Muhammad Asif Mughal Advocate, allegedly representing the respondent No.3 through his special attorney, is not available, which shows that he neither represented the respondent during the proceedings of suit nor he appeared as counsel till the decision of the suit on 04.04.2015; thus, there is nothing on record to suggest that the respondent No.3 was duly represented and even the first order which is in the handwriting of the learned Judge Family Court shows the presence of only Fozia Mazhar, the petitioner and margin of order sheet bears her signatures and thumb impression and only her statement is available on file and no statement of special power of attorney of the respondent No.3. When the position remained as such, the learned trial Court was vested with jurisdiction to undo the order dated 27.04.2015 obtained by the petitioner through misrepresentation.
>
> 7. Pursuant to the above discussion, it can safely be held that there appears no jurisdictional error, legal infirmity and illegality in the impugned order and judgment passed by the learned Courts below, rather vested jurisdiction has judiciously and aptly been exercised. The impugned order and judgment are upto the dexterity and do not call for any interference by this Court in exercise of extraordinary constitutional jurisdiction. Resultantly, while placing reliance on the judgments supra, the constitutional petition in hand being without any force and substance stands dismissed. No order as to the costs.**"**

After having an overview of the principles laid down in the above cited judgments no cavil left to hold that despite an embargo in terms of Section 17 of the "Act, 1964" there is no legal impediment in the way of an aggrieved person moving an application under Section 12(2) of the "C.P.C." before the Family Court.

16. Next comes the propriety of impugned judgment to the extent of deciding the application of the petitioners in a summary manner; suffice to observe that though it is not a principle of universal application that in each and every case, the court is bound to frame the issues before deciding the fate of an application under Section 12(2) of the "C.P.C." but where misrepresentation and fraud have

been alleged and prima facie a case is made out, in such an eventuality said application should have not been dismissed summarily. In somewhat similar circumstances Supreme Court of Pakistan in the case reported as *MUHAMMAD AKRAM MALIK versus Dr. GHULAM RABBANI and others* **(PLD 2006 Supreme Court 773)** held as under :-

> **"**4. We have examined the above-mentioned contentions in the light of relevant provisions of law and record of the case. We have minutely perused the judgment impugned whereby the revision petition preferred on behalf of respondent has been accepted. There is no cavil with the proposition that an application preferred under section 12(2), C.P.C. could have been summarily dismissed if it is without any substance but generally where misrepresentation and fraud have been alleged and prima facie a case is made out, in such an eventuality such application should have not been dismissed summarily and without recording the evidence. It is worth mentioning that primarily it is the satisfaction of the Court concerned either to frame issues, record evidence or decide such application as may be deemed fit and proper after considering the merits of each case. No yardstick can be fixed for rejection of such applications. A similar proposition was discussed in case Ghulam Muhammad v. Ahmed Khan 1993 SCMR 662 wherein it was observed as follows:--
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> > "It is correct that the determination of allegations of fraud and misrepresentation, usually involved investigation into the questions of fact but it is not in every case that the Court would be under obligations to frame issues, record evidence of the parties and follow the procedure prescribed for decision of the suit. If it were so, the purpose of providing the new remedy would be defeated. In our view, the matter is left, to the satisfaction of the Court which has to regulate its proceeding and keeping in view the nature of the allegations in the application, may adopt such mode for its disposal, as in consonance with justice, the circumstances of the case may require. It is within the competence of the Court to frame formal issues and record evidence if the facts of a particular so demand.
> >
> > 5. It is well-entrenched legal proposition that the framing of issues depends on the circumstances of each case, nature of alleged fraud and the decree so obtained. Framing of issues in every case to examine the merits of the application would certainly frustrate object of section 12(2), C.P.C. which is to avoid, protracted and the time consuming litigation and to save the genuine decree-holder from grave hardships, ordeal of further litigation, extra burden on their exchequer and simultaneously to reduce unnecessary burden on the Courts below which are already overburdened."
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> 5. The petition in question has also been adjudged on the touchstone of the criterion as mentioned herein above. We are of the considered view that misrepresentation and fraud have been alleged in the application preferred under section 12(2), C.P.C. as is indicative from para. 6 of the application which has been reproduced in the order impugned. In fact the learned

> trial Court has not appreciated the contents of application in the light of provisions as contained in section 12(2), C.P.C. and dismissed the same in a casual and cursory manner. In view of the circumstances of the case and allegations levelled in the application under section 12(2), C.P.C. it should have not been dismissed summarily. The learned High Court has exercised its discretion judiciously and the order impugned being well based does not warrant interference as no prejudice whatsoever has been caused to the petitioner who would have ample opportunities to canvass his point of view and substantiate his claim and rebut the allegation of misrepresentation and fraud before the Courts concerned.**"**

Keeping in mind the facts and circumstances of the case in the light of above noted principles an inference can easily be derived that the allegations levelled by the petitioners in their application are having due force to compel the court to frame issues instead of dismissing the application in a cursory and slipshod manner. Even otherwise it seems quite strange that on the one hand, the learned Additional District Judge held the application under Section 12(2) of "C.P.C." not maintainable and on the other dilated upon its merits. Needless to reiterate that after forming negative opinion about the maintainability of application the learned Additional District Judge should have simply dismissed the same on said score instead of delving into its other merits.

17. The nutshell of above noted threadbare discussion is that the learned Additional District Judge while dismissing the application under Section 12(2) of "C.P.C." filed by the petitioners has erred in law. This petition is thus **allowed,** impugned judgment dated 16th February, 2023 is set aside being illegal and unlawful. As a consequence, application moved by the petitioners under Section 12(2) of "C.P.C." shall be deemed to be pending before the learned Additional District Judge, Hassan Abdal (Attock), who shall decide the same afresh after framing of necessary issues arising therefrom with all swiftness. No order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE

Shahbaz Ali*