

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 983 of 2020

Afzal Hussain
Vs
Additional District Judge, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01. 25-03-2020. Raja Israr Ahmed Abbasi, Advocate for the
petitioner.

The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assailing order, dated 28.02.2020, passed by the learned Additional District Judge-X, Islamabad West, whereby application filed under section 12(2) of Civil Procedure Code, 1908 (hereinafter referred to as "**CPC**") was dismissed.

2. The facts, in brief, are that the petitioner is an adult of sound mind. A suit was filed under Order XXXVII of CPC in the name of respondent no. 2 i.e. Syed Inayat Hussain son of Altaf Hussain (hereinafter referred to as the "**Respondent**"). It appears from the record that the petitioner appeared before the learned

trial court on 13.02.2019 and pursuant to his statement, the suit was decreed vide judgment and decree, dated 13.02.2019. The petitioner did not challenge the said judgment and decree and on 26.02.2020 i.e. after more than one year, he filed a petition under section 12(2) of CPC. Paragraph 7, 8 and 9 of the petition filed under section 12(2) of CPC unambiguously shows that the petitioner admits having appeared before the learned trial court and recording his statement on 13.02.2019. The suit was decreed in favour of the Respondent in the light of the statement made by the petitioner. However, it is the case of the petitioner that he was coerced and was allegedly abducted a day before the date of hearing.

3. The learned counsel for the petitioner has been heard at length. He has argued that the suit was filed by an incompetent person and that the petitioner was abducted and forced to give a statement before the learned trial court.

4. The learned counsel has been heard and the record perused with his able assistance.

5. It is an admitted position that passing of judgment and decree, dated 13.02.2019 was in the knowledge of the petitioner because he had appeared before the learned trial court on

13.02.2019 and had recorded his consent. The petitioner neither challenged the judgment and decree, dated 13.02.2019 nor had promptly informed a competent person or forum regarding his alleged abduction. He filed a petition under section 12(2) of CPC on 26.02.2020, wherein he acknowledged recording his statement before the learned trial court. The learned counsel for the petitioner, despite his able assistance, was not able to persuade this Court that the impugned order, dated 28.02.2020 suffers from any legal infirmity let alone misreading or non reading requiring interference by this Court while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

6. For the above reasons, this petition is without merit and, therefore, accordingly dismissed.

CHIEF JUSTICE

Saeed.