

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No.75 of 2020
Mubarik Masih
Versus
Asif Masih

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.02.2020	M/s Tabassum Rashid Siddiqui and Zubair Khan, Advocates for the petitioner.

Through the instant civil revision petition, the petitioner, Mubarik Masih, impugns the order dated 21.11.2019 passed by the Court of the learned Civil Judge, Islamabad, whereby his application under Section 12(2) C.P.C. was dismissed. Through the said application, the petitioner had sought the setting aside of the judgment and decree dated 10.02.2017, whereby the respondent's suit for recovery of Rs.4.5 million for malicious prosecution was partially decreed to the extent of Rs.1,50,000/-.

2. Learned counsel for the petitioner submitted that the learned Civil Court erred by not setting aside the judgment and decree dated 10.02.2017, which was obtained by the respondent by committing fraud and misrepresentation with the Court; that the agreement on the basis of which the said decree was obtained is a forgery and was exhibited as Mark-A; and that the original agreement was never produced in the proceedings before the learned Civil Court. Learned counsel for the petitioner prayed for the civil revision petition to be allowed in terms of the relief sought therein.

3. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

4. The petitioner chose not to file an appeal against the judgment and decree dated 10.02.2017 passed by the learned Civil Court. The application under Section 12(2) C.P.C. had been filed by the petitioner almost two and a half years after the said judgment and decree. The petitioner, in his application under Section 12(2) C.P.C., had agitated a point which he had taken in the written statement filed by him before the learned Civil Court. The learned Civil Court has correctly held that an application under Section 12(2) C.P.C. is not a substitute to an appeal before a higher forum. The petitioner's plea of fraud and misrepresentation has already been decided against him in the proceedings which culminated in the judgment and decree dated 10.02.2017. This plea cannot be re-agitated in the proceedings under Section 12(2) C.P.C. Learned counsel for the petitioner could not point out any fraud that the respondent had played on the Court in order to obtain a judgment and decree in his favour.

5. In view of above, I do not find any merit in this petition, which is accordingly dismissed in limine with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*