

Form No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Civil Revision No.184/2019

Asia Saeed

Versus

Haji Imam Din

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	23-07-2020	Ms Sana Javed, Advocate for petitioner. Mr Muhammad Sohail Khan, Advocate for respondent.

The petitioner has assailed order, dated 17-04-2019, passed by the learned Civil Judge 1st Class, Islamabad.

2. The facts, in brief, are that the petitioner had instituted a suit in March, 2008. The suit was decreed vide judgment and decree, dated 01-02-2017. The respondent was defendant in the said suit. The latter had also submitted written statement and had contested the suit which was ultimately decreed against him. The petitioner filed execution petition and thereafter an application was filed by the respondent under section 12(2) of the

Code of Civil Procedure, 1908 (*hereinafter referred to as the 'CPC'*). The learned trial court framed issues vide the impugned order, dated 07-04-2019.

3. It is the case of the learned counsel for the petitioner that the suit was filed in 2008 and that the application filed by respondent was merely to delay the execution proceedings. She has further stated that no ground was disclosed in the application in order to justify framing of the issues. The learned counsel for the petitioner has further stated that it is obvious from the record that the suit at Dera Ismail Khan was dismissed for non-prosecution vide order, dated 08-10-2015. The learned counsel for the petitioner has stated that no ground exists on the basis of the divergent pleadings to justify framing of the issues. She has stressed that by framing of the issues, the execution of the judgment and decree would unnecessarily be delayed.

4. The learned counsel for the respondent on the other hand referred to paragraph 2 of the application which is reproduced below.-

"That during the pendency of suit, the parties entered into an agreement/settlement, whereby it was agreed that till the decision of another suit pending at D.I.Khan, the instant suit will remain pending. On the statement of parties, the instant suit was adjourned sine die till the decision of suit pending at D.I. Khan."

5. The learned counsels have been heard and the record perused with their able assistance.

6. The learned counsel for the respondent could not point out any valid ground mentioned in the application for entertaining the same under section 12(2) of CPC. A plain reading of the above paragraph clearly shows that it was asserted by the respondent that he had entered into an agreement/settlement with the petitioner during pendency of the suit. It is an admitted fact that respondent was one of the defendants in the suit and, therefore, could not take the plea of being unaware of the proceedings nor that his rights were in any manner prejudiced. He could have brought on record the agreement/settlement.

7. For the above reasons, this Court is satisfied that the factors highlighted by the learned counsel for the petitioner were relevant and not taken into consideration by the learned trial court while passing the impugned order, dated 17-04-2019. In the facts and circumstances of the case, particularly in the light of assertions made in the application filed under section 12(2) of CPC, framing of issues was not warranted. The impugned order, dated 17-04-2019, definitely suffers from misreading and non-reading and is, therefore, set aside. The application filed by the respondent shall be treated as pending before the learned trial court. The learned trial court after hearing the parties is expected to decide the application at the earliest, preferably within 30 days from the date of receiving certified copy of this order.

(CHIEF JUSTICE)

Lugman Khan.