

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

Civil Revision No. 34/2020  
Rehmat Ullah  
Versus  
Shabbir Ahmed etc

Petitioner by: Mr. Nabeel Tahir Mirza, Advocate,  
Respondents by: Mr. Nadeem Mukhtar Ch., Advocate,  
Date of Hearing: 29.07.2020.

**FIAZ AHMED ANJUM JANDRAN, J.-** Through the instant civil revision petition, petitioner impugns the order dated 09.03.2019, passed by the learned Civil Judge 1<sup>st</sup> Class, Islamabad-East, whereby his application under Section 12(2) CPC was dismissed.

2. Precisely, facts relevant for the disposal of instant civil revision petition are that petitioner asserted that he entered into an agreement to sell with the respondent No.2 on 21.02.2018 regarding land measuring 15 Kanal 18 Marla, Khasra No.2344, situated in Mouza Tumair, Tehsil and District Islamabad ('suit land'); that he constructed a house over some portion of suit land contained in Khasra No.2344 while the rest is also in his possession; that on 26.02.2019, he filed a suit for specific performance on the basis of said agreement to sell; that during the pendency of said suit, pursuant to reconciliation proceedings, respondent No.2 handed over copy of the judgment and decree dated 15.02.2017 regarding the suit property; that according to the agreement to sell the respondent No.2 transferred land measuring 5 Kanal 6 Marla in the name of petitioner; that respondent No.2 also executed an agreement with his wife Rafia Khatoon in presence of her real brother-respondent No.2; that her wife also filed a suit for specific performance which was decreed *ex-parte* on 30.06.2014; that when fact regarding *ex-parte* judgment and decree dated 15.02.2017 came into the knowledge,

petitioner filed an application under Section 12(2) of CPC which was dismissed by the learned Civil Judge 1<sup>st</sup> Class, Islamabad-East, vide order dated 09.03.2019, being assailed through the instant civil revision petition.

3. Learned counsel for the petitioner contends that application under Section 12(2) of CPC is competent where fraud and misrepresentation has been alleged; that respondent No.2 by concealing the fact of *ex-parte* judgment and decree, entered into an agreement to sell with the petitioner, who had no knowledge of the said *ex-parte* judgment and decree at the relevant time; that soon after knowing about it, petitioner filed application under section 12(2) of CPC; that the allegation of fraud can be agitated at any time; that respondent No.2 attempted to deprive the petitioner from his valuable rights, therefore, petitioner should be given an opportunity to advance his case and cannot be knocked out on the basis of technicalities as law favours adjudication on merits instead of technical knockout. The learned counsel placed reliance on case laws reported as PLD 2005 SC 153, PLD 2002 SC 630, PLD 2002 SC 84, 2009 CLC 299 and 1995 MLD 1175.

4. On the other hand, learned counsel for respondent No.2 contends that the *ex-parte* judgment and decree, sought to be set aside, had been passed much earlier to agreement to sell with the petitioner; that essentials to file an application under Section 12(2) of CPC are entirely missing in this case and that the instant civil revision petition is time barred, therefore, liable to be dismissed. Learned counsel placed reliance upon case laws reported as 1992 SCMR 424, 1992 SCMR 917, 1998 SCMR 2296, 1999 SCMR 1892, PLD 1983 SC 385, 1993 MLD 36, PLD 1971 Lahore 332, 2008 YLR 33, 1986 CLC 233, 2000 YLR 2159, 1986 CLC 768 and 2017 MLD 507.

5. Heard the learned counsels for the parties and perused the record with their able assistance.

6. Perusal of record reveals that the agreement to sell between the petitioner and respondent No.2 regarding the suit property was executed on 21.02.2018, while ex-parte judgment and decree was passed in favour of respondent No.1 and against the respondent No.2 on 15.02.2017 i.e. about one year before the stated agreement which, *prima facie*, establishes that the fraud if any, was not committed during the court proceedings and thus, is not covered within the purview of Section 12(2) of CPC.

7. At the time, when the petitioner entered into the stated agreement with the respondent No.2, ex-parte judgment and decree was in the field, therefore, under the principle of *caveat emptor*, it was incumbent upon the petitioner to verify and check the status of the property and any encumbrance thereupon.

8. The law on the subject is specific which provides that an application under Section 12(2) of CPC is maintainable only when a fraud has been committed during the proceedings of the Court. Reliance is placed upon "Lal Din V. Muhammad Ibrahim" (1993 SCMR 710), wherein it is held that:-

*"Every representation made to a Court which is deliberately false amounts to a fraud and would vitiate a decree subject to the exception that a mere falsity of a claim to the knowledge of the person putting forward the claim would not be ground for setting aside the decree on the ground of fraud Where a claim is false there is a false representation made to the Court but this cannot by itself be a ground for setting aside a decree.*

*Question to be determined in the present case was whether the use of forged document in Court proceedings for obtaining and in fact obtaining a judgment on its basis amounts to fraud or not. Such a question can be answered simply. Suppose a forged copy of the Court's judgment is used to bar the suit. The suit is held barred on its basis. The defendant had all the opportunity to file a correct/true copy of the*

*judgment. He did not file it in the proceedings. He could challenge the correctness of the copy of the judgment filed in the proceedings. He did not do it. Will these factors preclude him from agitating against the forged judgment by recourse to section 12(2), C.P.C. or earlier to it by a separate suit. If the falsity of the document was known to the party during the proceedings, then on account of inter parties contest, the party having the knowledge may be precluded from involving that provision, or earlier to it of instituting a first suit.*

*Every representation made to a Court which is deliberately false amounts to a fraud and would vitiate a decree subject to the exception that a mere falsity of a claim to the knowledge of the person putting forward the claim would not be ground for setting aside the decree on the ground of fraud. Even where a claim is false there is a false representation made to a Court but this cannot by itself be a ground for setting aside a decree because if such ground was accepted there would be no end to litigation for every decree which does not proceed on some legal ground alone would be liable to be challenged on the ground that the party has deliberately put forward an untrue case. If it was untrue it would be untrue, at least in most cases, to the knowledge of the party."*

9. In "Muhammad Younas and another V. Venue Guard Advani and another" (2015 YLR 276 (Sindh), same principle was reiterated in following terms:-

*"Fraud or misrepresentation should be specifically alleged with all relevant and material particulars in order to invoke the provisions of S. 12(2), C.P.C. and same should be in connection with the proceedings of the court and not prior to its initiation or after decision of the court---In the present case, no fraud was committed on the dates when impugned orders were passed, provisions of S.12(2), C.P.C., therefore, could not be invoked by the applicants---No allegation of fraud had been alleged against the contesting defendants of the suit---Limitation for filing an application under S.12(2), C.P.C. was three years and present application was time-barred---No application for condonation of delay had been filed to justify the delay of each and every day---Application under S.12(2), C.P.C. was dismissed in circumstances."*

10. The other aspect of the matter is that at the time when respondent No.1 filed suit against the respondent No.2, the petitioner figured nowhere, otherwise, he could have been made defendant by the respondent in his suit.

The element of fraud at the hands of respondent No.1 to the petitioner as alleged, is not borne out of record.

11. As far as role of respondent No.2 is concerned, there is an ex-parte decree against the said respondent, in favour of respondent No.1, while the petitioner entered into the stated agreement with the respondent No.2, against whom he has already filed a suit for specific performance, where he can raise all his submissions/ grievances.

12. It is also a matter of record that the instant civil revision petition was filed on 13.11.2019. The impugned order was passed on 09.03.2019, copy applied on 11.03.2019, it was prepared and delivered on the same day. The time limit for filing of a revision petition is ninety days, therefore, there is an inordinate delay of about five months in filing the revision petition. No sufficient cause has been shown to condone the delay in application seeking condonation of delay. Mere assertion without any details is not sufficient to condone such a long standing and inordinate delay.

13. The case law relied upon by the learned counsel do not extend any help to the petitioner due to having distinct facts and circumstances.

14. For what has been discussed above, the instant civil revision petition is devoid of merits and time barred. It is thus, accordingly dismissed along with CMA No.3/2020.

**(FIAZ AHMED ANJUM JANDRAN)**  
**JUDGE**

Imran

Announced in open Court on 01-09-2020.

**JUDGE**