

Order Sheet
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR
Judicial Department

W.P. No.7920-2018/BWP

Muhammad Younis.

Vs.

Addl. District Judge, etc.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
	17.09.2018.	Mr. Abdul Ghaffar Khan Chughtai, Advocate for the petitioner.

The petitioner challenges the order dated 09.07.2018, whereby the Addl. District Judge, Haroonabad, dismissed the revision petition filed by the petitioner against the order dated 27.10.2017 passed by Civil Judge, Haroonabad, through which application filed by the petitioner under Section 12(2) of the C.P.C was dismissed and the court refused to set-aside the judgment and decree dated 23.01.2014, whereby the suit of the respondent for recovery of Rs.87,000/-was decreed against the petitioner as prayed for. The petitioner through the afore-referred application under section 12(2) C.P.C challenges the impugned ex-parte judgment and decree dated 23.01.2014 as according to him respectables of locality got effected a compromise between the parties and had restrained him to contest the said suit. Furthermore, it is argued that the original cheque had not produced in the court in support of the

claim of the respondent, therefore, the suit should not have been decreed.

2. Heard. Record perused.

3. The respondent has obtained a decree for recovery of Rs.87,000/-against the petitioner, which the petitioner assails on the ground of fraud and misrepresentation. In order to succeed in his claim filed through application under section 12(2) of the C.P.C, the petitioner was required to show some fraud or misrepresentation committed in the court proceedings culminating in the impugned judgment and decree dated 23.01.2014 and establish the said plea through cogent material whereby the said application could be allowed. Reliance in this behalf is placed on a Division Bench judgment of Lahore High Court in Ms. Shazia Ashraf vs. Municipal Committee, Sahiwal through administrator and another (2006 CLC 1018) wherein it is provided that provisions of Section 12(2) CPC can only be pressed into service where fraud was played or misrepresentation was made during the proceedings of the suit in the court and not if done outside the court.

4. The ground raised by the counsel for the petitioner is that he was prevented to appear in the court and contest the suit but the record shows that several opportunities were provided to him to produce evidence before closing his right. Besides nothing is available on the record to show that the petitioner was prevented from appearing in the court and contesting the claim of the respondent. Even if the petitioner claims that the matter had been settled outside the court for which purpose he was prevented by the respectables from appearing in the court to defend the case, suffice it to say that the petitioner had the knowledge of pendency of the case and could appear in the court to inform about the settlement of the matter outside the court, which was not done. It was also the duty of the petitioner to keep himself informed of the status of court proceedings until the case culminated into a final decision but the petitioner instead absented himself and is now raising the plea that he had been prevented from appearing in the court. In somewhat similar situation, in **2011 MLD 1956 [Peshawar]** (*Syed AMEER HUSSAIN SHAH versus Syed DILBAR HUSSAIN SHAH and 3 others*) it has been held as under:-

“8. It was also the bounden duty of the petitioner to inform the Court about the alleged compromise. If at all it was not admitted or acknowledged by the respondent No.1, then the remedy was available under Order XXIII Rule 3, C.P.C. to seek the attestation of such compromise by filing the same in the Court, and in case it has not been admitted by the other side, then the petitioner was at liberty to prove the terms and conditions of the alleged compromise but instead of availing the proper remedy, on the same facts and circumstances, he has filed the instant application which is apparently not maintainable.

*9. It is also not appealing because even after filing the suit for redressal of his grievance, the petitioner did not attend the court in order to get himself informed about the status of proceedings and also about the proceedings being carried out in the suit filed by the petitioner and sufficient to dislodge his claim. Even if the promise made by the respondent No.1 was false, even then it does not fall within the provision contained in section 12 (2), C.P.C. as merely falsity of claim to the knowledge of the person putting forward the claim would not be the ground for setting aside the decree on the ground of fraud. When the fraud has not been committed in Court proceedings for obtaining a judgment, it cannot be termed that the fraud has been committed within the purview of above section of law. In this respect, reference can be made to a case titled *Lal Din and another v. Muhammad Ibrahim* (1993 SCMR 710). Provision of Section 12(2), C.P.C can only be pressed into service where fraud was played or misrepresentation was made during the proceedings of the suit in Court and not if done outside the Court. Reference may be made to 2006 CLC 1018.*

*10. The learned counsel for the petitioner argued that neither issues has been framed nor evidence recorded, therefore, prejudice has been caused to the rights of the petitioner. The learned Courts below, after going through the record of the case, arrived at a conclusion that the matter can be decided on the face of it and there is no need to frame issues and record the evidence. Whenever the Court does not think it proper that the proceedings should be carried on in accordance with provision of C.P.C., it has the power to refuse the framing of issues and recording of evidence. Similar question was raised in case titled *Mrs. Amina Bibi through General Attorney. V. Nasrullah and others* (2000 SCMR 296) and it was resolved that:-*

“Be that as it may, while dealing with the allegations under section 12 (2) C.P.C it is not incumbent upon the Court that it must, in all circumstances, frame issues, record evidence and follow the procedure prescribed for decision of the suit.””

5. In the present case, the petitioner not only absented himself from appearing in the court but also did not keep himself abreast of the status of court proceedings resultantly the decree was passed against him. The plea of compromise outside the court has also not been established through any cogent material available on the record. Even otherwise after recording of evidence of the respondent at least twelve opportunities were provided to the petitioner to lead evidence but the same were not availed, consequently right to produce evidence was closed. The plea that respectables prevented the petitioner from appearing in the court is not tantamount to a fraud committed inside the court proceedings, besides the same is not established on record and appears to be an afterthought and is consequently turned down.

6. The plea of non-production of original cheque in evidence before the trial court relates to matter of procedure and merits of the case and not to fraud or misrepresentation committed

during the court proceedings, therefore, the plea raised by the petitioner is without any substance and, consequently, the decree could not have been challenged through application under Section 12 (2) of the C.P.C rather the petitioner should have availed some other legal remedy to challenge the same. The petitioner claims that the respondent had returned back the original cheque to him and had received the payment for the same outside the court and had falsely raised the claim on the basis of returned cheque by concealing the said fact but this aspect of the matter has also not been established on the record either by producing the original cheque or any material to support the said claim. Had the cheque been returned to the petitioner, he could have easily produced the same before the court to establish his claim but the same had not been done. Even otherwise, falsity of claim to the knowledge of a person putting forward the claim is not a ground for setting-aside the decree on the ground of fraud. Reliance in this regard is placed on *Lal Din and another vs. Muhammad Ibrahim* (1997 SCMR 710). Consequently, the petitioner has failed to establish any fraud or misrepresentation committed in the court

proceedings to obtain the judgment and decree dated 23.01.2014, therefore, the said decree cannot be set aside in proceedings under section 12(2) CPC.

7. No illegality or erroneous exercise of jurisdiction has been pointed out, whereby application under Section 12 (2) of the C.P.C filed by the petitioner can be allowed, and the learned trial court was justified in dismissing the same. Consequently, no ground to interfere in the impugned orders/judgment is made out.

8. For what has been discussed above, this petition being devoid of any merits is **dismissed**.

(Muzamil Akhtar Shabir)
Judge

Approved for reporting