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RESEARCH CENTER, HIGH COURT OF BALUCHISTAN



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COURT: HON'BLE MR. JUSTICE MUHAMMAD AAMIR NAWAZ RANA
SUBJECT: CIVIL LAW
DATE: 02ND MAY 2025
BY: RESEARCH OFFICER

Query: Maintainability of an Application under Section 12(2), C.P.C. before the High Court during pendency of an appeal before the Supreme Court.

Section 12(2) of the **Code of Civil Procedure, 1908 (CPC)** provides a remedy to challenge a judgment, decree, or order obtained by fraud, misrepresentation, or want of jurisdiction. The section reads:

*"Where a person challenges the validity of a judgment, decree or order on the ground of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the **final judgment**, decree or order and not by a separate suit."*

Thus, the key question in invoking this section is to determine which **court passed the "final judgment"** for the purpose of such an application and the **doctrine of merger** plays a pivotal role in identifying the court that passed the *final judgment*. The doctrine posits that ***when a judgment is challenged before a superior court through an appeal, revision, or constitutional petition—and that superior court decides the matter on merits—the decision of the lower court merges into the decision of the higher court.*** Consequently, it is the higher court's judgment that becomes the operative and final decision for all legal intents and purposes.

This principle was authoritatively explained in the Supreme Court's judgment in **PLD 2016 Supreme Court 358 (Sahabzadi Maharunisa v. Mst. Ghulam Sughran)**, which extensively discussed the doctrine and its application in the context of Section 12(2), CPC. The Court held in para 5:

"For all legal purposes, it is the final decree/order of the last Court in the series, even if such decree etc. be of affirmation, which has to be executed and should be considered and treated to be the final judgment/decreed/order in terms of Section 12(2), C.P.C. for approaching the forum..."

Appropriate Forum for Filing Application under Section 12(2), CPC

In the given scenario, where a case has been decided by the trial court and the appellate court, followed by a revisional judgment passed by the High Court, and an appeal against that revisional judgment is *pending* before the Supreme Court, the central question is: **Which court is to be considered the "court which passed the final judgment" under Section 12(2) of the Code of Civil Procedure (CPC)?** The answer

hinges on the correct application of the **doctrine of merger**, as authoritatively expounded in **PLD 2016 Supreme Court 358**.

The Supreme Court in that case laid down clear principles to determine which forum has passed the final operative judgment. The Court declared that the decision of a lower court merges into the decision of the superior court, and it is the judgment of the *last deciding court on merits*—whether it affirms, modifies, or reverses the lower court—that constitutes the “final judgment” for the purposes of Section 12(2), CPC.

On such premises, it can be held that where an appeal is filed before the Supreme Court but remains undecided, the doctrine of merger does **not** yet operate. The finality of the High Court’s judgment is not displaced merely because an appeal has been instituted against it. This distinction is vital. The Court in PLD 2016 SC 358 clarified that the final judgment for the purposes of Section 12(2) remains that of the **last forum that has rendered a decision on merits**. Therefore, until the Supreme Court delivers its verdict, the judgment of the High Court stands as the final adjudication of the dispute.

Accordingly, in the present case, although an appeal is pending before the Supreme Court against the revisional judgment of the High Court, **the High Court’s judgment remains the operative and enforceable judgment**, and thus qualifies as the “final judgment” within the meaning of Section 12(2), CPC. Any challenge on grounds of fraud, misrepresentation, or want of jurisdiction must, at this stage, be brought before the **High Court**, as it is the court that passed the last adjudicated judgment.

This view is also supported by the Supreme Court in **2012 SCMR 147**, where it held that an application under Section 12(2), CPC must be filed before the **High Court** when it has modified the trial court’s decree, as the final judgment merges into the High Court’s decision. The Court ruled that since the High Court passed the operative decree after reviewing and altering the lower court’s findings, it alone had jurisdiction to entertain a Section 12(2) application. This reinforces that the forum for such an application is the court which passed the **last adjudicated decision on merits**, unless the Supreme Court later decides the appeal.

Thus, based on the settled law in PLD 2016 SC 358, it is reasoned that **the High Court is currently the competent forum for filing an application under Section 12(2), CPC**, unless and until the Supreme Court adjudicates the appeal on merits and thereby assumes the status of the final forum.

Conclusion:

Therefore, **an application under Section 12(2), CPC**—to challenge the validity of the High Court’s revisional judgment—**is to be filed before the High Court itself**, so long as the **Supreme Court has not passed a judgment** on the pending appeal. Once the Supreme Court issues a decision, the doctrine of merger will apply, and any such application would then lie before the Supreme Court as the court that passed the “final judgment.”