

IN THE HIGH COURT OF SINDH AT KARACHI

Second Appeal No.43 of 2017

(Shagufta Shaheen v. Riazuddin & Another)

Before:

Sana Akram Minhas J

Appellant	Shagufta Shaheen Through, Mr. Choudhary Muhammad Rasheed Advocate
Respondent No.1	Riazuddin None
Respondent No.2	The Sub-Registrar, Saddar Town Through, Mr. Zul Hasnain Shah Bukhari AAG, Sindh
<u>Date of Hearing:</u>	1-9-2026
<u>Date of Decision:</u>	11-9-2026

J U D G M E N T

1. **Sana Akram Minhas, J:** At the outset, it may be noted that learned Counsel for the Appellant had put up an application for urgency for 1.9.2026, apprehending execution of the writ of possession in execution proceedings pending before the learned Executing Court. Counsel was put on notice that the main Appeal itself would be taken up for hearing and final disposal along with the application for interim relief. Learned Counsel consented to such course. Accordingly, the Appeal has been heard finally on merits.
2. Through the present Appeal, preferred under Section 100¹ of the *Code of Civil Procedure, 1908* (“CPC”), the Appellant (who was Plaintiff before the Trial Court) assails the Judgment dated 23.1.2017 and Decree dated 26.1.2017 (“**Impugned Judgment**”) passed by the learned VIIth Additional

¹ The memorandum of Appeal has incorrectly invoked Section 96 CPC. The present Appeal, being a Second Appeal against the Judgment and Decree of the First Appellate Court, is maintainable under Section 100 CPC

District Judge, South (**“First Appellate Court”**), whereby the Respondent No.1’s Civil Appeal No.74/2015 (*Riazuddin v. Shagufta Shaheen & Another*) was allowed. As a result, the learned Trial Court’s Judgment dated 29.4.2015 and Decree dated 6.5.2015 (**“Trial Court’s Judgment”**) were set aside and the Appellant’s Civil Suit No.875/2012 (*Shagufta Shaheen v. Riazuddin & Another*)² (**“Civil Suit”**) – instituted, inter alia, for specific performance of the alleged Agreement of Sale – was dismissed.

Facts

3. The brief facts necessary for determination of the Appeal are that the Appellant (in her capacity as Plaintiff) instituted the Civil Suit asserting that Respondent No.1 had agreed to sell a Ground+3 storey house bearing Plot No.7, Street No.1, NJ Mody, Leprosy Colony, off I.I. Chundrigar Road, Karachi (**“Subject Property”**) to her for a total consideration of Rs.500,000/- (*Rupees Five Lacs*), out of which a sum of Rs.200,000/- (*Rupees Two Lacs*) was allegedly paid as “*token money*”. The alleged Agreement of Sale was dated 28.12.2005 (**“Sale Agreement”**). The Respondent No.1 disputed the execution of the Sale Agreement as well as receipt of the alleged token money.

² Prayer Clauses in the Plaint: It is, therefore, prayed that this Honourable Court be pleased to pass the Judgment & Decree in favour of the Plaintiff and against the Defendants as under:

- 1) To declare that the Plaintiff is the legal and lawful owner of House No.7, Street No.1, N.J. Mody, Liprosi Colony, Off. I.I. Chundrigar Road, Karachi.
- 2) To restrain the Defendants, their men, agents, servants, employees, representatives, successors-in-interest, attorneys, heirs, person or persons working under them or for them from creating third party interest, dispossessing the Plaintiff or transfer the property in question i.e. House No.7, Street No.1, N.J. Mody, Liprosi Colony, Off. I.I. Chundrigar Road, Karachi, in the name of any other person except the Plaintiff.
- 3) To cancel all the documents, if any, executed by the Defendant No.1 in the name of any other person, except the Plaintiff.
- 4) To direct the Defendant No.1 to hand over the original title documents of the property in question to the Plaintiff and also transfer the same in the name of the Plaintiff after receiving the balance amount of Rs. 300,000/-. In case of failure, Nazir of this Honourable Court be directed to transfer the property in question in the name of the Plaintiff on payment of Rs.300,000/-.
- 5) To direct the Defendant No. 1 to hand over the possession of the ground floor of the property in question to the Plaintiff. In case of failure, Nazir of this Honourable Court be directed to take measures for handing over the possession of the ground floor of the property in question to the Plaintiff including break opening the lock.
- 6) Any other relief or relieves, which this Honourable Court deem fit and proper in the circumstances of the case.
- 7) Cost of the suit may also be awarded.

4. The Trial Court framed, inter alia, issues³ as to whether Respondent No.1 had sold the Subject Property to the Appellant pursuant to the Sale Agreement and whether the Appellant had paid a sum of Rs.200,000/- to Respondent No.1 as token money out of the total sale consideration of Rs.500,000/-. Upon recording the evidence of the parties, the Trial Court answered both issues in the affirmative and decreed the Civil Suit to the extent of the relief of specific performance. Significantly, the Trial Court's Judgment and Decree for specific performance were made conditional upon the Appellant depositing the balance sale consideration of Rs.300,000/- (*Rupees Three Lacs*) with the Nazir of the Court. **Admittedly, however, the said balance consideration has, to date, neither been deposited nor paid by the Appellant**, a fact expressly confirmed by learned Counsel for the Appellant⁴ upon a specific query by this Court.
5. The First Appellate Court, however, took a different view. It held that the alleged Sale Agreement had not been proved in accordance with law and that the Trial Court had erred in relying upon the Respondent No.1's alleged reply dated 25.3.2009 to the Appellant's alleged legal notice dated 12.3.2009⁵. According to the First Appellate Court, neither the said legal notice nor reply had been produced or exhibited during the recording of evidence; rather, both were produced only at the stage of final arguments, after the evidence had concluded. Although, by order dated 19.3.2015, the Trial Court afforded the Appellant a further opportunity to appear and produce the said legal notice, with an opportunity for Respondent No.1 to cross-examine her, the Appellant failed to re-enter the witness box. Consequently, her side was closed on 14.4.2015, as expressly recorded in the Trial Court's Judgment. The First Appellate Court, therefore, held that Respondent No.1's alleged reply could not be conclusively treated as an admission. It further observed that neither the executant nor the witnesses to the alleged Sale Agreement had been produced and that there was no independent evidence of payment of Rs.200,000/-.

³ Issues framed by the Trial Court were as follows:

- i) Whether the Defendant No.1 (Respondent No.1 in the present Appeal) sold out the Suit Property to Plaintiff (Appellant in this Appeal) vide Sale Agreement dated 28.12.2005?
- ii) Whether Plaintiff paid Rs.200,000/- to Defendant No.1 as token money, out of total consideration amount of Rs.500,000/-?
- iii) Whether Plaintiff is entitled for the relief claimed?
- iv) What should the decree be?

⁴ Nor does the record and proceedings (R & P) of either the Trial Court or the First Appellate Court contain any material showing that the said balance consideration was ever deposited or paid by the Appellant

⁵ The Trial Court's Judgment incorrectly states the date of the legal notice as 25.3.2009. The Trial Court's record and proceedings (R & P) show that the legal notice is actually dated 12.3.2009, whereas the alleged reply of Respondent No.1 is dated 25.3.2009

Submissions of Appellant

6. Counsel for the Appellant assailed the Impugned Judgment and Decree principally on the ground that the First Appellate Court had failed to appreciate the evidentiary value of the Respondent No.1's reply dated 25.3.2009 to the Appellant's legal notice dated 12.3.2009 and had disregarded the fact that Respondent No.1 had admitted in cross-examination that the reply had been sent by his Advocate. It was contended that the Trial Court had correctly appreciated the evidence and that the reversal by the First Appellate Court was the result of misreading and non-reading of the record.

Questions For Determination

7. The questions that fall for determination are:
 - i) Whether the First Appellate Court misread or failed to properly appreciate the material evidence on record in reversing the Trial Court's findings regarding the alleged Sale Agreement and payment of Rs.200,000/-?
 - ii) Whether the Appellant could sustain or enforce the Trial Court's Decree for specific performance notwithstanding her failure to comply with the express condition thereof requiring deposit of the balance sale consideration of Rs.300,000/- before the Nazir of the Court?

Decision

8. The matter has been heard and the available record perused.

Evidentiary Value Of Alleged Sale Agreement And Alleged Reply To Alleged Legal Notice

9. As regards the first question, there is no dispute that the reply dated 25.3.2009 to the legal notice dated 12.3.2009 was relied upon by the Trial Court as a material circumstance in support of its finding that the transaction between the parties had taken place. The reply contained assertions acknowledging the existence of the Sale Agreement and Respondent No.1's obligation to complete the transaction.

10. The First Appellate Court, however, correctly noticed material deficiencies in the manner in which the said document came on record. The evidence of both parties had already been completed when the Appellant sought permission to produce the original reply. Although the application was allowed, the document had not formed part of the evidence originally recorded. More importantly, Respondent No.1 had expressly denied in his Written Statement (in paragraph 16) having received the alleged legal notice or having engaged the Advocate who purportedly issued the reply. The said Advocate was never produced to establish his authority or explain the circumstances in which the reply was issued.
11. Additionally, this Court has taken note of the fact, as also specifically recorded in the Trial Court's Judgment, that despite the opportunity afforded to her, the Appellant did not re-enter the witness box for production of the legal notice. Consequently, the Appellant did not prove the alleged legal notice or the purported reply, nor otherwise establish the circumstances in which the purported reply was issued.
12. Furthermore, the alleged Sale Agreement itself was specifically denied by Respondent No.1. Its execution was therefore required to be established by the Appellant through legally admissible and satisfactory evidence. As noticed by the First Appellate Court, neither the attesting witnesses nor other direct evidence establishing its execution was produced. Similarly, no independent documentary evidence was produced to establish payment of Rs.200,000/-. The Trial Court expressly recorded in its Judgment that the Appellant had admitted in her cross-examination that she had not produced any proof of such payment before the Trial Court.
13. The Trial Court was entitled to consider the circumstances appearing from the record; however, the alleged admission contained in the reply could not, in the circumstances, relieve the Appellant of her burden to establish the very document upon which the substantive relief of specific performance was founded, particularly when Respondent No.1 had denied its execution and had also disputed the authority of the person who purportedly issued the reply.
14. The First Appellate Court considered these evidentiary deficiencies and concluded that the Appellant had failed to establish the Sale Agreement and the alleged payment in accordance with law. Such conclusion cannot be characterized as one based on no evidence, nor has any material misreading of the evidence been demonstrated as would warrant interference in a Second Appeal merely because another view of the evidence may be possible.

Trial Court's Conditional Decree For Specific Performance And Appellant's Failure To Deposit Balance Sale Consideration

15. There is, however, a further circumstance which independently bears upon the Appellant's entitlement to specific performance.
16. The Trial Court, while recording its finding on Issue No.4, decreed the Suit to the extent of prayer clause 4 and directed: "**Let such decree be prepared subject to deposit of balance sale consideration amount before the Nazir of this Court**". The language of the operative portion makes it clear that deposit of the balance sale consideration was expressly made a condition of the Decree for specific performance. No specific period for making such deposit was, however, stipulated. The absence of a specified period did not render the condition open-ended; rather, it required compliance within a reasonable time⁶.
17. Significantly, the condition imposed by the Trial Court was entirely consistent with the Appellant's own prayer in the Plaint. In prayer clause 4, the Appellant had expressly sought a direction to Respondent No.1 to transfer the Subject Property in her favour "after receiving the balance amount of Rs.300,000/-" and, in the alternative, had sought a further direction to the Nazir to transfer the Property in her name "on payment of Rs.300,000/-". The requirement to pay or deposit the balance sale consideration was, therefore, not an unanticipated condition introduced by the Trial Court, but a condition expressly contemplated by and consistent with the relief sought by the Appellant herself.
18. The Trial Court's Judgment was pronounced on 29.4.2015 and the Decree was drawn up on 6.5.2015. Thereafter, by order dated 1.10.2016, the First Appellate Court suspended the operation of the execution application pending before the Executing Court and subsequently rendered the Impugned Judgment on 23.1.2017. Thus, the Appellant had more than twenty (20) months, from 6.5.2015 to 23.1.2017, within which to deposit the specified balance sale consideration of Rs.300,000/- before the Nazir. Given the definite amount stipulated and the express terms of the Trial Court's Decree, this period was, in the circumstances, more than reasonable.
19. It is an admitted position that the Appellant never deposited the said balance consideration. This fact was expressly confirmed by the Appellant's Counsel when specifically queried by this Court. Nor has any material been shown to

⁶ *Kubra Amjad v. Yasmeen Tariq* (PLD 2019 SC 704)

indicate that the Appellant ever sought extension of time or otherwise took any concrete step towards compliance with the condition before the First Appellate Court decided the matter.

20. The significance of this failure cannot be understated. The Trial Court did not grant an unconditional Decree for specific performance; rather, the grant of such relief was expressly made subject to deposit of the balance sale consideration. Having failed to comply with that condition for more than twenty (20) months, without seeking an extension of time or otherwise demonstrating any attempt to fulfil it, the Appellant could not seek to enforce or sustain the Decree for specific performance in disregard of the condition upon which it had been granted.
21. The failure is also material from the standpoint of readiness and willingness. Specific performance is an equitable and discretionary relief, and a party seeking such relief must demonstrate continuous readiness and willingness to perform her own part of the contract. Such readiness and willingness cannot rest merely upon an assertion in the Plea but must also find support in the party's conduct. The Appellant's failure to deposit the very balance consideration which the Trial Court had expressly required her to deposit, despite having more than twenty (20) months to do so, is wholly inconsistent with such continuing readiness and willingness.
22. The fact that the First Appellate Court ultimately set aside the Trial Court's Judgment and Decree does not alter the material fact that, between 6.5.2015 (date of Trial Court's Decree) and 23.1.2017 (date of First Appellate Court's Impugned Judgment), the conditional Decree remained in existence and the Appellant had ample opportunity to comply with its condition. Her failure to do so, without any explanation or request for extension of time, cannot be treated as a mere technical or procedural lapse. Even if the evidentiary controversy concerning the Respondent No.1's alleged reply dated 25.3.2009 to the Appellant's alleged legal notice dated 12.3.2009 were resolved in the Appellant's favour, her failure to comply with the express condition of the Trial Court's Decree would, independently, constitute a substantial impediment to sustaining or enforcing the relief of specific performance.
23. The Appellant's failure to deposit Rs.300,000/- within a reasonable time, despite the express condition in the Trial Court's Decree and the more than twenty (20) months available for compliance, therefore furnishes a further and independent reason why the Decree for specific performance could not be sustained in her favour. This conclusion follows independently of the

evidentiary controversy surrounding the alleged Sale Agreement and the alleged reply to the alleged legal notice.

Appellant's Conduct In The Subsequent Rent Proceedings

24. There is yet another circumstance arising from the Appellant's conduct which deserves notice. The Rent Controller, by order dated 31.5.2014 (passed in Rent Case No.258/2013), allowed Respondent No.1's ejectment application on account of non-payment of rent by the Appellant, who was admittedly (as stated by the Appellant herself in paragraphs 3, 5 and 19 of her Plaint), inducted in the Subject Property as a tenant. The Appellant's First Rent Appeal No.102/2014 was subsequently dismissed by the Additional District Judge, South, vide order dated 23.1.2017. The Appellant thereafter invoked the constitutional jurisdiction of this Court in CP No.S-31/2019 (*Shagufta Shaheen v. Riazuddin & Others*), in which the interim stay (issued vide order dated 8.2.2019) operating in her favour was vacated by this Court vide order dated 18.5.2026. These proceedings are relevant, not as determining the Appellant's entitlement to specific performance, but as a further circumstance bearing upon her conduct. While seeking to sustain a decree for specific performance, the Appellant had not deposited the balance sale consideration of Rs.300,000/- as expressly required by the Trial Court and had also remained in default of rent, resulting in an order of ejectment.

Conclusion

25. For the foregoing reasons, the questions for determination are answered against the Appellant. The Judgment dated 23.1.2017 and Decree dated 26.1.2017 respectively of the learned First Appellate Court – whereby the Judgment and Decree of the learned Trial Court (dated 29.4.2015 and 6.5.2015 respectively), were set aside and the Appellant's Civil Suit No.875/2012 was dismissed – do not warrant any interference.
26. Consequently, this Second Appeal No.43/2017 is **dismissed**, and the Judgment and Decree of the learned First Appellate Court are maintained. There shall be no order as to costs.

JUDGE