

IN THE HIGH COURT OF SINDH AT KARACHI**Suit No. 299 of 2012****Mrs. Zarina Khan ----- Plaintiff****Versus****Mrs. Farzana Shoaib ----- Defendants****Date of hearing: 28.02.2018.****Date of judgment 28.02.2018.****Plaintiff: through Mr. Moen Azhar Siddiqui along with Mr. Ali Ahmed Turabi and Faisal Rauf Qusuri Advocates.****Defendants: Nemo for the Defendant.****J U D G M E N T**

Muhammad Junaid Ghaffar, J. This is a Suit for Cancellation of Document, Possession and Compensation wherein, the Plaintiff has sought the following reliefs:-

- a) That it be declared that the Defendant is not entitled for Specific Performance of Contract as she has committed a breach of contract for not fulfilling the contractual obligations within the time specified in the Agreement dated 11th January 2011.
- b) That the Defendant may be directed not to create any third party interest or obtain any kind of loan facility on the House No. 8, 34th Sreet, Off Khayaban-e-Mohafiz, Phase VI, Karachi admeasuring 672 square yards or thereabout.
- c) That it be declared that the Plaintiff is entitled for the peaceful vacant possession on the House No. 8, 34th Sreet, Off Khayaban-e-Mohafiz, Phase VI, Karachi admeasuring 672 square yards or thereabout consisting of Ground plus First Floor and as mentioned in the Plaint.

- d) To grant compensation amounting to Rs. 3,000,000/- Three million for the period of April 2011 till date and a further compensation of Rs. 5,00,000/- per month till disposal of the case.
- e) To grant mesne profit for Rs. 1,00,000/- per month from April 2011 till filing of this Suit amounting to Rs. 12,00,000/- and a further amount of Rs. 1,00,000/- till disposal of the Suit.
- f) To grant permanent injunction restraining the Defendant their agents, and all other persons claiming through or under her and on her behalf from selling, transferring the possession or part possession, encumbering and alienating the said property in any manner or creating a third party interest in the above said property.
- g) Any other relief(s) deemed fit and proper by this Honourable Curt and in favour of the Plaintiff under the circumstances of the case.
- h) Cost of the proceedings.”

At the very outset, Learned Counsel for the Plaintiff submits that the Plaintiff will not press prayer clause “d” & “e”.

Precisely, the facts as appeared to be that Plaintiff and Defendant entered into an Agreement dated 11.1.2011 as well as a Tenancy Agreement of the same date. Through this Suit the Plaintiff seeks Cancellation of such Agreement.

Learned Counsel for the Plaintiff submits that the Defendant had also filed a Suit for Specific Performance bearing No. 546/2015 which stands through order dated 27.1.2017 as the Defendant failed to deposit balance sale consideration. He further submits that in respect of the Tenancy Agreement certain orders were passed by the Rent Controller as well as this Court and finally the matter went before the Hon'ble Supreme Court and through Order dated 24.11.2016 in Civil Petition No. 270-K/2016 the Order of the High Court was set aside and the Rent Controller's order was restored. He submits that pursuant to that order ejectment has been carried out and possession has been handed over.

I have heard the learned Counsel and perused the record. On perusal of the evidence led by the Defendants, it appears that the entire case as set up was on the premise that a Suit for Specific Performance has been filed by them and therefore, no cancellation can be allowed. However, the Suit for Specific Performance of the Defendant stands dismissed for nonpayment of the balance sale consideration which clearly shows that the Defendant was not interested in the performance of the Contract of which the cancellation is being sought. It further appears that the Defendant while being cross-examined was given an option to pay the balance sale consideration within certain period and Suit would be withdrawn, to that a clear and specific answer in "NO" was given.

In view of hereinabove facts and circumstances of this case, it appears that Plaintiff has made out a case for grant of relief being sought. Accordingly, the Suit stands decreed to the extent of prayer clauses "a, b and c"

Office to prepare decree accordingly.

ARSHAD/

J U D G E