

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 78 of 2018

Before : **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

Ahmar Raza NaqviAppellant

Versus

Muhammad Asif Mali and others.....Respondents

Date of short order: **04.09.2019**

Appellant Ahmar Raza Naqvi through Mr. Shahzad Afzal, advocate.
 Respondent Nos.1 and 2 Muhammad Asif Malik and Abdul Rehman Malik
 respectively through Mr. Kashif Nazeer, advocate.

Respondent No.3 is represented by Mr. Abdul Latif, Asst. Manager
 (Legal), UBL.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- This High Court Appeal is directed against the order dated 30 January 2017 passed by the learned Single Judge of this Court in Civil Suit # 851/2013 (Muhammad Asif Malik and another v/s Ahmer Raza Naqvi and others). Through the impugned order, the Nazir of this Court was appointed as Receiver in respect of the suit property viz. House No. 98/1, 8th Lane, Phase-VII, DHA, Karachi and a compliance report was sought within 7 days.

2. Respondent No. 1 and 2 filed a civil suit (Suit No. 851/2013) for specific performance and other allied and consequential reliefs regarding the suit property mentioned above, which was owned by the appellant and mortgaged with respondent No. 3. In terms of an agreement dated 09-05-2013, the total sale proceeds was agreed as Rs.2,32,00,000/-, while the respondents have paid an amount of Rs.85,00,000/- to the appellant and he was required to clear the mortgage and furnished 'Clearance Certificate' from the respondent No. 3 (UBL) within seven days. The balance amount of Rs.1,47,00,000/- was to be paid to the appellant at the time of completion of sale formalities under the

scheme of paragraph-4 of the agreement. It subsequently reveals that the appellant has paid an amount of Rs.77,93,777.51 from the Rs. 85,00,000/- to bank in two instalments but neither the appellant provided ' Clearance Certificate' to the respondents nor he made any effort to perform his part of the contract. After chasing appellant for some time, the respondents filed the aforementioned suit, and they also deposited the remaining amount i.e. Rs.1,47,00,000/- with the Nazir of this Court. When observing the conduct of the appellant and considering that he is a wilful defaulter in performance of his part of the contract, the learned Single Judge of this Court passed the impugned order.

3. Teaming number of grounds were taken by the appellant for non-appointment of Receiver in his arguments and equally submissions to the contrary were made by the learned counsel for the respondents.

4. Briefly, the grounds taken by the appellant in his arguments are that the suit was filed without giving a prior notice for non-transferring the property and it was filed at a pre-mature stage. The impugned order was passed behind the back of the appellant as on that date the court work was suspended and board was discharged and the previous advocate was not present at that time. The agreement dated 09-05-2013 is the second agreement, which is denied being fake. The Clearance Certificate was delayed because the respondents paid the amount of Rs. 85,00,000/- through post-dated cheques. According to him, the second agreement is false and fabricated and nothing of the sort was happened. He submits that the suit was filed at pre-mature stage, as there is still the time for the performance of the part of appellant. At the time of the subsequent agreement, the post-dated cheques were given, as such Clearance Certificate could not be arranged within seven days. He submits that there is no need for appointment of a Receiver and taking possession of the property by the said Receiver; as the appellant is in possession and in case of a decree in favour of the respondent No. 1, he may get the same executed easily.

5. Conversely, the gist of arguments of the learned counsel for the respondents No.1 and 2 is that the learned Single Judge has passed the impugned order after considering all the material facts and keeping in mind the behaviour of the appellant in the entire scenario. A few months prior to entering into agreement with the respondents, the appellant made an agreement with a lady but he did not disclose it to the respondents.

The appellant subsequently disclosed about charge and took an amount of Rs. Rs. 85,00,000/- for clearance of mortgage. The second agreement was made in the changed circumstances but after receiving such amount; he avoided to produce Clearance Certificate. The banker informed the respondents about the earlier agreement with a lady namely Mst. Fariah with whom the appellant later on compromised in a lawsuit.

6. We have heard the submissions and contra-submission and perused the record. We have observed that not only the second agreement but also receiving of Rs. 85,00,000/- is very much admitted by the appellant, as such plea of fakery of second agreement appears to be unacceptable. It is a fact that the appellant has not only admitted the second agreement but also admitted receiving of Rs. 85,00,000/-; as such ground taken by the learned counsel for the appellant is astonishing and reflects adversely regarding the appellant. Similarly, it is also contrary to record that the impugned order was passed behind the back of the appellant, as the order sheet reflects that the learned counsel for the appellant was very much available in the Court and nothing on the record could be produced to substantiate this ground. It is worth noting that the conduct of the appellant from the very beginning is unbecoming. Initially, he entered into an agreement with the respondents without disclosing that there is a charge over the property and that he had already made an agreement with someone else. Nevertheless, the terms and conditions of the second agreement were not complied with and even requisite Clearance Certificate was not furnished timely as per clause-3 of the said agreement. We are of the view that the learned Single Judge has passed the impugned order after observing all these facts, which warrant such order; as considering the past conduct of the appellant, the apprehension of damage to the suit property is not unfounded. In these circumstances, we are of considered opinion that the instant appeal devoid of merits, hence the same was dismissed alongwith the listed application through a short order dated 04.09.2019 and these are the reasons for the same.

JUDGE

JUDGE

Dated:_____