

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 112 of 2024

M/s Aqsa Tower Builder & Developers & another

v. Naveed Ahmed Shaikh & others

Civil Revision No. S – 131 of 2024

Murli v. M/s Aqsa Tower Builder & Developers & others

Date of hearing : **07.10.2024**

Date of decision : **07.10.2024**

Mr. Mukesh Kumar G. Karara, Advocate for applicants in Civil Revision No. S-112 of 2024 and for respondent No.1 in Civil Revision No. S-131 of 2024.

Mr. Muhammad Asim Malik, Advocate for applicant in Civil Revision No. S-131 of 2024 and for respondent No.2 in Civil Revision No. S-112 of 2024.

Mr. Farman Ali Rajput, Advocate for respondent No.1 in Civil Revision No. S-112 of 2024.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – By this single judgment, I intend to decide both the captioned civil revisions filed by the applicants. These revisions challenge the common judgment and decree dated 01.04.2024, passed by learned Additional District Judge-V, Sukkur, through which Civil Appeals No.109 & 110 of 2023 have been dismissed. In these appeals, the applicants (appellants therein) impugned the judgment and decree dated 10.10.2023, passed by learned Senior Civil Judge-III, Sukkur in F.C. Suit No.34 of 2014, whereby the suit, filed by the respondent Naveed Ahmed, was decreed in his favour.

2. Respondent (plaintiff) Naveed Ahmed filed a suit for specific performance of contract, declaration, possession and permanent injunction, claiming that the applicants (defendants) in Civil Revision No. S-112 of 2024 had initiated the “M/s Aqsa Tower, Mission Road, Sukkur” project, offering apartments for sale on a 99-year sub-lease basis. The plaintiff

entered into an agreement dated 28.02.2007 to purchase an apartment / flat i.e. Unit No.402, measuring 1800 square feet on the 4th floor, with payment in 36 installments. The payment schedule states that the total price will be Rs.30,60,000/-, which includes the expected HBFC / Bank loan of Rs.10,00,000/-. This loan will be obtained by the allottee with the assistance of the company, as specified in the agreement. The plaintiff paid Rs.14,25,000/-, which included Rs.5,00,000/- as booking charges. The plaintiff claimed that in August 2012, he approached the defendants with the remaining Rs.6,35,000/- but was met with reluctance and a demand for an inflated sum of Rs.10,00,000/- as a bank loan. Despite no efforts being made by the defendants to obtain any loan or provide the agreed facilities to the plaintiff, they had pressured him, threatening to cancel the allotment unless he paid Rs.16,35,000/-. The plaintiff complained to the SBCA and then filed the suit, as the defendants had failed to fulfill their contractual obligations.

3. The plaintiff amended his plaint, stating that after filing an application under Order VII Rule 11, CPC, and responding through counter-affidavit against his injunction application by the defendants, he learnt for the first time that the defendants had cancelled his allotment of the flat on 30.09.2013. He claimed the cancellation was made without notice to him. Regarding the cancellation notices, including notice dated 27.12.2012, the plaintiff stated that those were sent to the address of the allotted flat, which he had never taken possession of, and thus could not be considered valid notices. He also challenged the registered sale deed dated 24.10.2014 between defendants Danish and Murli for flat No.402-A, calling it fraudulent and seeking its cancellation. The plaintiff further alleged that the defendants (applicants in Civil Revision No. S-112 of 2024) are shareholders in various companies, including M/s United Mobiles. He claimed that the property (Survey No. 256), where the subject plaza is built, was mortgaged by the defendants, along with other

properties, to Habib Metropolitan Bank Ltd. to secure a loan of Rs.2650 million. However, the defendants have not provided the agreed-upon loan facilities to the plaintiff.

4. For convenience, Naveed Ahmed (respondent in both Civil Revisions) is referred to as the **'first purchaser'**, Murli (applicant in Civil Revision No. S-131 of 2024) as the **'subsequent purchaser'**, and M/s Aqsa Tower Builder & Developers and Danish (applicants in Civil Revision No. S-112 of 2024) as the **'builders'**.

5. The builders filed their written statement, admitting the purchase by the first purchaser but denying the remaining claims. They stated that due to intentional delays by the first purchaser in making the agreed payments, the allotment of the flat was cancelled through a letter dated 30.09.2013, following several notices for the outstanding payments. They referenced the dishonouring of the first purchaser's cheques as per the memos issued by the bank. After the cancellation, the builders sold out the flat to the subsequent purchaser. The subsequent purchaser also filed his written statement, denying the assertions of the first purchaser and asserting that he is a bona fide purchaser.

6. The trial Court, based on the pleadings of the parties, framed the following issues:

1. *Whether the suit of plaintiff is not maintainable under the law?*
2. *Whether plaintiff entered in agreement to sale with defendants No.1 to 3 vide agreement to sale dated 28.2.2007, in respect of suit property viz. Unit No.402 measuring 1800 Sq. feet 4th floor type 'A' comprising of five rooms super executive situated at Mission road Sukkur in total consideration amount of Rs.20,60,000/- out of which plaintiff has paid amount of Rs.14,25,000/- on different occasions/installments and Rs.6,35,000/- only remaining against plaintiff?*
3. *Whether defendants 1 to 3 have obtained loan Rs.10,000/- (Actually amount is Rs.10,00,000/-) from HBFC or other bank as*

loan in the name of plaintiff which loan payable by the plaintiff to the defendants and plaintiff becomes defaulter in payment of loan? If yes what is its effect?

4. *Whether defendants No.1 to 3 are bound to transfer suit property in name of plaintiff and hand over possession to plaintiff? If yes what is its effect?*
5. *Whether defendants No.1 to 3 fraudulently cancelled the agreement to sale of plaintiff in respect of suit property without service of notice upon plaintiff and fraudulently sold out suit property to defendant No.10? If yes what is its effect?*
6. *Whether the plaintiff is entitled for the relief claimed?*
7. *What should the decree be?*

7. To substantiate the claims, the attorney of first purchaser (plaintiff) examined himself and produced special power-of-attorney, agreement, thirty five (35) installment receipts, an application dated 06.02.2014 and the sale deed. In his support, witness Fareed Ahmed Shaikh was examined. On behalf of the builders (defendants), their attorney, Muhammad Jameel Memon, was examined, who produced special power-of-attorney, agreement of terms and conditions of booking flat along with payment schedule, thirty six (36) payment receipts and notices. Evidence of subsequent purchaser (defendant) was also recorded.

8. The trial Court, after hearing the parties, dismissed the suit vide judgment and decree dated 10.09.2021, which decision was challenged by the first purchaser through Civil Appeal No.131 of 2021. Learned District Judge, Sukkur, by judgment and decree dated 07.04.2022 and 11.04.2022, respectively, allowed the appeal, remanding the suit to the trial Court with directions to afford the appellant (first purchaser) an opportunity of hearing regarding his readiness and willingness to perform his part of the contract. Learned District Judge further observed that the trial Court, in its discretion, may issue appropriate directions for the compliance of the contract within the stipulated time. In case of failure on

the part of the appellant (first purchaser), the trial Court was to proceed to decide the suit forthwith. The builders and the subsequent purchaser filed Civil Revision No. S-80 of 2022 before this Court, challenging the judgment and decree of the appellate Court; however, during pendency of the Civil Revision, the trial Court decreed the suit, and the Civil Revision, having become infructuous, was dismissed as not pressed through order dated 26.02.2024.

9. Regarding the directions issued by learned District Judge, Sukkur, concerning the deposit of the remaining sale consideration amount, the builders and subsequent purchaser filed an application under Section 151, CPC, before the trial Court, seeking directions against the plaintiff (first purchaser). A counter-affidavit was filed by the plaintiff in response. Subsequently, the trial Court decided the application through order dated 16.08.2022, directing the plaintiff (first purchaser) to deposit Rs.16,35,000/- with the Nazir of trial Court within 15 days, while cautioning that failure to do so would result in the dismissal of the suit. The builders and subsequent purchaser challenged this order in Civil Revision No. S-53 of 2022, which was dismissed by learned Additional District Judge-V, Sukkur, through order dated 25.11.2022. The decisions were then impugned before this Court in C. P. No. D-1535 of 2022, which is currently pending adjudication.

10. In the second round, the trial Court decreed the suit through its judgment and decree dated 10.10.2023. The appellate Court dismissed the appeals filed against that decision via its common judgment and decree dated 01.04.2024. Consequently, both these civil revisions have been preferred by the builders as well as the subsequent purchaser.

11. Heard learned Counsel for the parties and perused the material available on record with their assistance. Learned Counsel for the builders has relied upon the cases of Hamood Mehmood v. Mst. Shaban Ishaque and others (2017 SCMR 2022), Messrs Kuwait National Real Estate

Company (Pvt.) Ltd. and others v. Messrs Educational Excellence Ltd. and another (2020 SCMR 171) and Mst. Samina Riffat and others v. Rohail Asghar and others (2021 SCMR 7). Additionally, learned Counsel for the subsequent purchaser has placed reliance upon the case of Jamil Akhtar and others v. Las Baba and others (PLD 2003 Supreme Court 494).

12. In defence, learned Counsel for the first purchaser, who also filed a statement in Civil Revision No. S-112 of 2024, along with certified true copies of injunction application dated 15.02.2024, counter-affidavit dated 05.03.2014 in response to that application, and attested copy of three (03) Extracts from Property Registered Cards, has relied upon the cases of Flight Lt. Anwarul Hasan Siddiqui v. Family Judge, Court No. III, Karachi and 2 others (PLD 1980 Karachi 477), Allah Warayo v. Government of Sind and 2 others (1984 CLC 2100), Mian Muhammad Ismail v. Manzoor Ahmad and others (1990 CLC 1112), Ahmed Bhesania v. Pakistan Defence Officers Housing Authority (1991 CLC Note 21), Messrs Aman Enterprises, Sialkot v. Messrs Rahim Industries Pakistan Ltd., Sialkot and another (PLD 1993 Supreme Court 292), Aftab Shahban Mirani v. President of Pakistan and others (1998 SCMR 1863), Nazir Ahmed and 8 others v. Fazal Hussain and 12 others (2002 YLR 559), Mst. Gul Shahnaz v. Abdul Qayyum Soomro and another (PLD 2002 Karachi 333), Abdul Hafeez Abbasi and others v. Managing Director, Pakistan International Airlines Corporation, Karachi and others (2002 SCMR 1034), Amanullah v. Sher Afzal (2003 MLD 1142), Hazara (Hill Tract) Improvement Trust through Chairman and others v. Mst. Qaisra Elahi and others (2005 SCMR 678), Riaz Ahmed and others v. Iftikhar Ahmad (2007 MLD 492), Hakim-ud-Din through L.Rs. and others v. Faiz Bakhsh and others (2007 SCMR 870), Brigadier (R) Rashid Ahmad v. Dafedar Rashid Ahmad and others (2008 SCMR 362), Mst. Umatul Mobeen v. Muhammad Aziz (2010 YLR 1216) and Mehmood Ahmad and 8 others v. Malik Abdul Ghafoor

(PLD 2011 Lahore 522). He has also placed reliance upon Section 51 of the Specific Relief Act, 1877.

13. The case centers around an agreement dated 28.02.2007 between the first purchaser and the builders for the purchase of a flat, with a total sale price of Rs.30,60,000/- and an agreed payment schedule. The first purchaser paid Rs.14,25,000/- in installments. However, the remaining amount of Rs.6,35,000/- was offered via a cheque, but the builders refused to accept it, claiming that the contract had been canceled on 30.09.2013 due to non-payment. The first purchaser, however, claims that he was not properly notified of the cancellation, as the notices were sent to the wrong address — the allotted apartment / flat, which was never handed over to him. Despite the fact that the builders had the correct address (Quarter No. GB-2, Barrage Colony, Sukkur), as stated in the agreement, they fraudulently issued the notices to the incorrect address to keep the first purchaser unaware of the cancellation. Furthermore, the builders failed to assist the first purchaser in obtaining the loan, as stipulated in the agreement. This breach of contract by the builders entitles the first purchaser to the property in question.

14. The dishonoured cheques dated 15.04.2012 and 15.05.2012, which were duly stamped by the bank with dates 17.04.2012 and 17.05.2012 respectively, for Rs.30,000/- each, and produced by the builders' attorney in his evidence, show that the first purchaser made an attempt to make payments as per the terms of the agreement. However, these cheques were returned due to insufficient funds. While this may suggest temporary financial difficulties on the part of first purchaser, it does not demonstrate a deliberate intention to default on the contract. The dishonouring of the cheques does not necessarily constitute a breach of the agreement, as it is possible that the first purchaser faced short-term issues with available monetary resources.

15. It is worth noting that the attorney of the builders, while deposing, presented the aforesaid two cheques as Ex.42/4 and Ex.42/5. However, it is more than astonishing to note that he quoted the amount as **Rs.3,00,000/- (Rupees three lac)**, whereas, upon perusal, the amount on the cheques was clearly stated as Rs.30,000/- (Rupees thirty thousand), both in figures and words. Another point of concern is that the cheques were numbered as 6337318 and 6337319, but both memos showed the same cheque number, 6337319. Furthermore, in one of the memos, the date was shown as 25.04.2012, while in the other, no date was mentioned at all. Despite these discrepancies, the trial Court allowed the production of these cheques without raising any questions regarding the difference in the quoted amount. However, during cross-examination, the witness admitted that, after the dishonouring of these two cheques, the builders received the amount corresponding to these cheques from the first purchaser. These irregularities in the cheques and the evidence presented raise doubts about the integrity of the builders' claims regarding the dishonoured cheques.

16. Furthermore, the receipt dated 23.07.2012, which was produced by both the first purchaser and the builders (Ex.39/C-35 and Ex.42/36), is a critical piece of evidence. This receipt shows that the builders continued to receive payments from the first purchaser after the dishonouring of the cheques. This suggests that the builders did not consider the non-payment of the cheques as a reason to cancel the agreement, as they were still accepting installments. The fact that both parties acknowledged the receipt of payments after the dishonoured cheques significantly supports the first purchaser's position, as it implies the builders' acceptance of continued payments, despite the earlier payment issues. This strengthens the assertion that the first purchaser was actively seeking to fulfill the terms of the agreement.

17. In the initial round of litigation, the suit filed by the first purchaser (plaintiff) was dismissed on the basis that the plaintiff had not paid the remaining dues as per the terms of the agreement. However, following an appeal, the appellate Court allowed the appeal and remanded the case back to the trial Court. The appellate Court's decision emphasized the importance of providing the first purchaser with an opportunity to rectify the payment default and fulfill his obligations under the agreement.

18. After the remand, and in compliance with the trial Court's order dated 16.08.2022, the first purchaser took the necessary steps to settle the outstanding dues. Specifically, he deposited a total of Rs.16,35,000/- with the Nazir of the concerned Court. This sum included the remaining balance due under the agreement, which also accounted for Rs.10,00,000/- that had been intended to be covered by a bank loan. By making this deposit, the first purchaser effectively honoured the terms of the agreement, paying the outstanding amount and ensuring compliance with the contractual obligations. Thus, the first purchaser, having deposited the total outstanding sum, can be considered to have performed his part of the contract. This payment not only fulfilled the remaining dues but also demonstrated the first purchaser's willingness and ability to meet the financial requirements outlined in the original agreement. As such, the first purchaser's actions signify his commitment to complete the transaction and satisfy the conditions laid out in the sale agreement.

19. The record reveals that the first purchaser filed his suit on 15.02.2014, while the sale deed in favour of the subsequent purchaser was executed on 06.08.2014 and registered on 24.10.2014. This timeline indicates that, during the pendency of the suit, the builders unlawfully transferred the property to a third party, the subsequent purchaser, which is a clear violation of Section 52 of the Transfer of Property Act, 1882. This section prohibits the transfer of property during ongoing litigation, ensuring

that the subject property is not alienated while the legal dispute is unresolved. As a result, the trial Court rightly declared the transfer to the subsequent purchaser as void, ruling that the builders could not proceed with this sale while the matter was still in litigation. The trial Court also directed the builders to execute the sale deed in favour of the first purchaser, provided the remaining payment was made. Additionally, the sale deed executed in favour of the subsequent purchaser shows a significantly lower sale consideration of Rs.6,00,000/-, in stark contrast to the agreed amount of Rs.30,60,000/- required from the first purchaser, highlighting the questionable nature of the transaction.

20. According to Condition No.6 of the agreement, the builders were obligated to assist the first purchaser in obtaining a loan from a loan-giving company. The builders did not provide any assistance to the first purchaser to obtain the loan. This failure on the part of the builders to assist the first purchaser in obtaining the loan was a clear violation of the terms set forth in the agreement. It is important to note that the first purchaser did not refuse to make the payment; rather, the absence of the sanctioned loan, which was beyond his control, prevented him from fulfilling the payment in full. Despite this, the first purchaser was still committed to fulfilling his obligations and, in compliance with the trial Court's order, deposited the entire sum of Rs.16,35,000/-, which included the amount originally intended to be covered by the bank loan (Rs.10,00,000/-). This action further demonstrates that the first purchaser was not in default but was instead hindered by circumstances outside his control i.e. the failure of the builders to assist him in securing the loan.

21. Moreover, the first purchaser was unaware of the cancellation of the agreement, as no notice of cancellation was served to him. The builders proceeded with transferring the property to a third party (subsequent purchaser) while the suit was still pending, which violated

Section 52 of the Transfer of Property Act, prohibiting property transfers during litigation. Therefore, the builders' actions, including the unlawful transfer to a third party, further invalidate their claims against the first purchaser.

22. In light of these facts, the case laws cited by learned Counsel for the builders regarding Section 12 of the Specific Relief Act are not applicable here. The first purchaser was always willing to perform his part of the agreement, and the failure to pay was due to the builders' failure to assist him in obtaining the loan. Therefore, the first purchaser should not be penalized for circumstances beyond his control, and the builders' actions in transferring the property during the pendency of the suit further support the first purchaser's position.

23. The case of the subsequent purchaser involves his position and rights in the ongoing dispute between the first purchaser (Naveed Ahmed) and the builders (M/s Aqsa Tower). While the subsequent purchaser may claim to have bought the property in good faith, it is important to consider the legal implications of the ongoing litigation at the time of the sale. As per Section 52 of the Transfer of Property Act, 1882, property that is the subject of an ongoing legal dispute cannot be transferred or alienated during the pendency of the suit.

24. In this case, the builders transferred the property to the subsequent purchaser after the first purchaser had already filed a suit in February 2014, seeking specific performance. Therefore, the transfer of the property to the subsequent purchaser is a violation of the provisions of the Transfer of Property Act, as the property was still under dispute. This transfer would be considered void and of no legal effect, as it occurred during the litigation process.

25. The subsequent purchaser, while having the right to seek remedy against the builders, is not in a position to claim any legal rights over the property in light of the ongoing dispute and the fact that the sale took place during the legal proceedings. The subsequent purchaser's rights to the property are contingent upon the outcome of the ongoing legal process, and he may need to sue the builders for any damages or compensation. However, any claim to the property is undermined by the fact that the transfer occurred while the dispute between the first purchaser and the builders was unresolved.

26. In view of above detailed discussion, the applicants have failed to point out any illegality or irregularity in the judgments and decrees passed by the Courts below, and as such, there is no need for interference under the revisional jurisdiction of this Court, as per Section 115, CPC. The concurrent findings of both Courts below are upheld, as interference by this Court would be an improper use of its revisional powers, as held in the case of Abdul Mateen and others v. Mst. Mustakhia (2006 SCMR 50).

27. These are the reasons of the short order dated 07.10.2024, whereby this Court **dismissed** both the civil revisions along with pending applications. However, the subsequent purchaser may seek legal remedies against the builders, who failed to honour the terms of their contract with the first purchaser and unlawfully transferred the property during the pendency of the legal suit. The subsequent purchaser's legal actions are independent of the first purchaser's claim, and he will need to pursue resolution based on his own contractual relations with the builders, in accordance with the applicable laws.

Office is directed to place a signed copy of this judgment in the connected file.

J U D G E