IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS.

Civil Revision Application No.S-06 of 2024

Applicant	:	Akbar son of Ghulam Fareed alias Fareed Ahmed through his attorney Iqbal Ahmed son of Ghulam Fareed alias Fareed Ahmed. Through Mr. Farhan Ahmed Bozdar, Advocate.
Respondent No.1:		Muhammad Ashraf son of Ghulam Muhammad. Through Mr. Imdadullah Hingoro, Advocate.
Official Respondents:		Through Mr. Harish Chander, A.A.G (called absent).
Date of hearing	:	20.07.2026.
Date of Order	:	31.07.2026.

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Akbar has invoked the revisional jurisdiction of this court, assailing the judgment and decree dated 23.12.2023 passed by the learned Additional District Judge, Khipro, in Civil Appeal No.13 of 2023, whereby the appeal preferred by the applicant was dismissed and the judgment and decree dated 28.04.2023 rendered by the learned Senior Civil Judge, Khipro, in F.C. Suit No.45 of 2022 were affirmed. By the said judgment, the learned trial Court decreed the suit instituted by respondent No.1 for specific performance of contract together with consequential possession, subject to payment and verification of the balance sale consideration, while declining the claims for mesne profits and damages.

2. The facts giving rise to the present proceedings, briefly stated, are that respondent No.1 (hereinafter referred to as "the plaintiff") instituted a suit alleging that the applicant (hereinafter referred to as "defendant No.1") had agreed to sell agricultural land measuring (2-38) acres, comprising Survey No.4/1, situated in Deh Sigh, Taluka Khipro, District Sanghar, for a total sale consideration of Rs.958,750. According

to the plaint, the agreement was reduced into writing through a registered agreement to sell bearing Registration No.848 dated 24.12.2019. It was further pleaded that, at the time of execution of the agreement, the plaintiff paid Rs.315,000 as earnest money, whereas the remaining consideration of Rs.643,750 was agreed to be paid on 30.03.2020, simultaneously with the execution and registration of the sale deed and delivery of vacant possession of the suit property.

3. It was the further case of the plaintiff that, upon the arrival of the stipulated date, he repeatedly approached defendant No.1, expressed his readiness and willingness to perform his part of the contract, and requested him to receive the balance consideration, execute the registered sale deed and deliver possession of the suit property. These requests, however, were allegedly evaded and ultimately refused by defendant No.1. Consequently, the plaintiff caused a legal notice dated 09.01.2021 to be served upon defendant No.1, calling upon him to honour his contractual obligations. The plaintiff further pleaded that, in order to demonstrate his continued readiness and financial capacity, he procured Banker's Cheque/Pay Order No.23800454 dated 24.05.2022 for Rs.643,750 in the name of defendant No.1, which was subsequently produced before the learned trial Court.

4. The suit was contested by defendant No.1 through his special attorney and real brother, Iqbal Ahmed, who filed a written statement denying the plaintiff's claim in its entirety. The defence taken was one of absolute denial. It was specifically pleaded that no agreement whatsoever had been executed between the parties, no sale consideration or advance amount had ever been received by defendant No.1, and that the document relied upon by the plaintiff was forged, fabricated and devoid of legal effect. It was further alleged that the suit had been instituted with the mala fide object of unlawfully depriving defendant No.1 of his property by relying upon a false and fabricated document.

5. Upon the pleadings of the parties, the learned trial Court framed issues encompassing the maintainability of the suit, the execution and genuineness of the registered agreement to sell, the allegation of forgery, the plaintiff's continuous readiness and willingness to perform his contractual obligations, his entitlement to mesne profits and damages, and the ultimate relief claimed. In support of his case, the plaintiff examined the Supervising Tapedar, an official from the office of the Sub-Registrar, himself, both attesting (marginal) witnesses to the agreement, the scribe who prepared the instrument, and the concerned bank manager. In rebuttal, defendant No.1 examined his special attorney, Iqbal Ahmed, and one Niaz Muhammad.

6. Upon an appraisal of the oral and documentary evidence, the learned trial Court concluded that the execution of the agreement to sell, the receipt of the advance sale consideration, and the plaintiff's readiness and willingness to perform his part of the contract had been satisfactorily established. The suit was, accordingly, decreed to the extent of specific performance of the agreement and consequential delivery of possession, while the claims for mesne profits and damages were declined. The learned first appellate Court, upon an independent reappraisal of the entire record, concurred with the findings recorded by the trial Court. It particularly noticed the material inconsistencies between the defence pleaded in the written statement and the testimony subsequently rendered by the special attorney of defendant No.1, and, finding no infirmity in the conclusions reached by the trial Court, dismissed the appeal.

7. Learned counsel appearing for the applicant has assailed the concurrent judgments primarily on the grounds that both the Courts below misread and failed to consider material evidence, thereby rendering findings which are legally unsustainable. It has been contended that the plaintiff failed to establish his continuous readiness and willingness to perform the contract, as required by law, inasmuch as the balance sale consideration admittedly became payable on 30.03.2020, whereas the banker’s cheque/pay order was procured only

on 24.05.2022. It has further been argued that the plaintiff, during cross-examination, admitted that he had produced no independent evidence regarding payment of the advance consideration and had not approached any competent authority for about one year following the alleged refusal by defendant No.1 to perform the agreement.

8. Learned counsel has further submitted that the testimony of the attesting witnesses was not worthy of implicit reliance, as they were closely associated with the plaintiff and, therefore, interested witnesses. It has also been argued that material contradictions existed in the plaintiff's evidence with respect to the amount and mode of payment, the time of arrival at Khipro, the duration of the parties' stay at the offices of the scribe and the Sub-Registrar, and the manner in which the transaction was allegedly concluded. It has additionally been contended that the statements of certain official witnesses, as well as that of the scribe, were recorded without oath and without affording an opportunity for cross-examination, and, therefore, such material was legally inadmissible and could not have been relied upon by the Courts below.

9. Learned counsel for the applicant has further contended that the Courts below failed to give due consideration to the defence that a private faisla had allegedly taken place before Syed Abdullah Shah, during which the plaintiff purportedly declined to pay the balance sale consideration and it was consequently resolved that the advance amount of Rs.315,000 would be refunded to him. In support of this contention, reliance has been placed upon the testimonies of Iqbal Ahmed and Niaz Muhammad. It has also been argued that the learned first appellate Court erred in rejecting the application filed under Order VI Rule 17, C.P.C., whereby the applicant sought amendment of the written statement during the pendency of the appeal so as to plead, inter alia, the execution of the agreement to sell, the plaintiff's alleged default in performing his contractual obligations, and the intention of defendant No.1 to refund the advance consideration.

10. Conversely, learned counsel appearing for respondent No.1 has supported the concurrent judgments, contending that the execution of the registered agreement to sell stood established through cogent oral and documentary evidence, including the original registered instrument, the testimony of both attesting witnesses, and the official record produced from the office of the Sub-Registrar. It has been submitted that the defence adopted by defendant No.1 was inherently self-destructive and mutually irreconcilable. While the written statement contained a categorical denial of the very existence of the agreement and receipt of any consideration, the testimony of the special attorney unequivocally acknowledged both the transaction and the receipt of Rs.315,000, and the subsequently proposed amendment to the written statement proceeded further by expressly admitting the agreement itself while seeking to attribute default to the plaintiff and asserting an intention to refund the advance. According to learned counsel, such inconsistent and shifting stands wholly undermine the credibility of the defence and lend substantial support to the plaintiff's case.

11. I have carefully considered the submissions advanced by the learned counsel for the parties and have examined the record with their able assistance. The revisional jurisdiction of this Court under section 115, C.P.C. is supervisory in nature and is circumscribed by well-settled limitations. This Court does not sit as a Court of second appeal, much less as a third Court of facts, and cannot undertake a fresh appraisal of the evidence merely because another view of the matter may also be possible. Interference with concurrent findings of fact is warranted only where such findings are shown to be perverse, arbitrary, unsupported by any evidence, or founded upon a material misreading or non-reading of the evidence on record, or where the subordinate Courts have exercised a jurisdiction not vested in them by law, have failed to exercise jurisdiction so vested, or have acted in the exercise of their jurisdiction illegally or with material irregularity.

None of these contingencies is to be lightly inferred, and the burden to establish their existence squarely rests upon the applicant.

12. Before adverting to the merits of the controversy, it is necessary to clarify that the instrument forming the basis of the suit has, at certain places in the issues and the judgments of the Courts below, been erroneously described as a "registered sale deed." The record, however, leaves no room for doubt that the document is, in fact, a registered agreement to sell. This inadvertent misdescription is one of nomenclature rather than substance and has not occasioned any miscarriage of justice. The pleadings, the evidence adduced by the parties, the issues framed, and the relief sought and granted uniformly relate to the enforcement of an agreement to sell and the consequential execution of a future conveyance. At no stage did either of the Courts below proceed on the erroneous premise that title had already passed to the plaintiff by virtue of the agreement itself. The impugned judgments, when read as a whole, unmistakably demonstrate a correct appreciation of the true nature and legal effect of the instrument.

13. It is equally well settled that registration of a document, though a relevant and significant circumstance, is not by itself conclusive proof of its due execution, nor does it, in the case of an agreement to sell, operate to transfer title in the property. The fact of registration must, therefore, be evaluated in conjunction with the entirety of the evidence on record. In the present case, the concurrent finding regarding the execution of the agreement does not rest upon registration alone. The plaintiff produced the original registered agreement before the trial Court, and both of its attesting witnesses, namely Ali Ghulam and Abdul Razzaque, entered the witness box. Each witness identified the original instrument, acknowledged his respective signatures or thumb impressions thereon, and unequivocally deposed regarding the execution of the agreement by the parties, its attestation, and its subsequent presentation before the scribe and the Sub-Registrar for registration. Their testimony furnished direct and substantive evidence

of execution, while the official act of registration afforded further corroboration.

14. The evidence of the attesting witnesses is both material and consistent on the essential particulars of the transaction. Ali Ghulam categorically deposed that the agreement to sell was executed by the parties in his presence at the office of the scribe and was thereafter presented before the Sub-Registrar, where it was duly registered. Abdul Razzaque likewise testified that the parties personally appeared before the registering authority, the contents of the agreement were read over and explained to them, and, upon admitting the correctness thereof, the parties and the attesting witnesses signed or affixed their thumb impressions in the presence of the registering authority. He further affirmed that defendant No.1 expressly acknowledged having received Rs.315,000 as advance sale consideration at the time of the transaction. These material assertions remained consistent on the core elements of the transaction and substantially reinforce the plaintiff's case regarding the due execution of the agreement and payment of the earnest money.

15. Of even greater significance are the admissions emerging from the defence evidence itself, which substantially fortify the plaintiff's case. Iqbal Ahmed, the special attorney and real brother of defendant No.1, unequivocally deposed that a transaction concerning the suit property had in fact taken place between the plaintiff and his brother, Akbar (defendant No.1). He further admitted that Rs.315,000 had been received by defendant No.1 towards the sale consideration and stated that, pursuant to an alleged private faisla, defendant No.1 had subsequently offered to refund the said amount. More importantly, he acknowledged that an agreement between the plaintiff and defendant No.1 had already been executed prior to the alleged settlement. These admissions, emanating from the defendant's own constituted attorney, constitute substantive evidence against the defence and materially corroborate the plaintiff's version regarding the execution of the agreement and receipt of the advance consideration.

16. The aforesaid admissions stand in stark and irreconcilable conflict with the categorical defence set forth in the written statement, wherein the execution of the agreement, receipt of any consideration, and the very existence of the transaction were emphatically denied. The inconsistency is neither trivial nor capable of reconciliation; rather, it strikes at the very foundation of the defence. Equally significant is the fact that defendant No.1 himself abstained from entering the witness box. He neither denied the execution of the agreement in his own testimony, nor explained the circumstances surrounding its registration, nor sought to repudiate or clarify the admissions made by his duly constituted attorney. No explanation whatsoever has been offered for his failure to appear as a witness. In these circumstances, the Courts below were fully justified in drawing an adverse inference against defendant No.1 and in preferring the original registered instrument, the direct testimony of the attesting witnesses, and the admissions contained in the defence evidence over the bare and unsubstantiated denials embodied in the pleadings.

17. The testimony of Niaz Muhammad does not advance the defence either. On the contrary, it further exposes the inconsistency and lack of coherence in the defence case. During his examination-in-chief, he advanced an inherently contradictory version by asserting that the agreement had been executed between himself and the plaintiff and that the payments had been made to him. He also gave varying figures with regard to the balance sale consideration, thereby rendering his own testimony uncertain on material particulars. However, during cross-examination, he unequivocally admitted that the agreement had in fact been entered into between the plaintiff and defendant No.1 by mutual consent and that the plaintiff had paid Rs.315,000 to defendant No.1 as advance sale consideration. He further conceded that he was not an attesting witness to the registered agreement and had not witnessed its execution. His testimony, therefore, not only fails to substantiate the defence but, in material respects, lends support to the plaintiff's case.

18. The plea that the agreement was forged or fabricated is wholly devoid of evidentiary support. No handwriting or fingerprint expert was examined; no comparison of the disputed signatures or thumb impressions was sought; no complaint alleging impersonation or fraudulent registration was shown to have been lodged before any competent authority; no official from the office of the Sub-Registrar was produced to dispute the personal appearance of the executant; nor was any other affirmative evidence adduced to establish the alleged forgery. It is a settled principle of law that an allegation of forgery, being of a serious nature, cannot be sustained merely on the strength of a bare denial in the pleadings or suggestions put during cross-examination. The plaintiff discharged the burden initially resting upon him by producing the original registered agreement and examining the attesting witnesses who proved its execution in accordance with law. The admissions subsequently emerging from the defence evidence furnished additional and compelling corroboration, leaving no lawful basis to disbelieve the genuineness of the instrument.

19. The contention that the testimony of the plaintiff's attesting witnesses ought to be discarded merely because of their acquaintance or association with the plaintiff is equally devoid of merit. Ali Ghulam candidly acknowledged that he knew the plaintiff and resided upon his land, while Abdul Razzaque stated that he was employed as a munshi by a cousin of the plaintiff. Such circumstances were fairly disclosed before the Court and bear upon the weight to be attached to their testimony rather than their competency to testify. It is a matter of common experience, particularly in transactions relating to agricultural property in rural areas, that attesting witnesses are ordinarily chosen from among persons known to the parties and available at the relevant time. Mere familiarity or social association does not, by itself, render a witness interested, partisan, or unworthy of belief. What is of greater significance is whether the testimony withstands judicial scrutiny. In the present case, both witnesses remained consistent on the material particulars relating to the identity of the parties, the execution and

attestation of the agreement, the payment of the advance consideration, and the subsequent registration of the instrument. Their evidence finds substantial corroboration from the original registered agreement itself as well as the admissions emerging from the defence evidence, and no cogent reason has been shown to discredit their testimony.

20. Likewise, the discrepancies highlighted by the learned counsel for the applicant concerning the precise time of departure, the mode of travel, the exact time of arrival of defendant No.1 at Khipro, and whether the parties remained for one hour or a longer period at the offices of the scribe and the Sub-Registrar relate only to collateral and peripheral matters. The evidence was recorded more than three years after the execution of the transaction, and it would be wholly unrealistic to expect every witness to reproduce with mathematical precision each incidental detail of events occurring several years earlier. Minor variations of this nature are, in fact, indicative of the natural fallibility of human memory rather than of deliberate falsehood. Such discrepancies do not detract from the intrinsic reliability of the witnesses where they remain consistent on the material and foundational aspects of the case, namely, the identity of the contracting parties, the description of the suit property, the agreed sale consideration, the execution of the agreement to sell, the payment of the advance consideration, and the personal appearance of the parties before the registering authority. These core facts have remained substantially unshaken throughout the evidence and are further reinforced by the documentary record.

21. It is true that, at one stage during his oral testimony, the plaintiff referred to the advance payment as Rs.300,000, whereas the registered agreement to sell and the overwhelming weight of the remaining evidence consistently record the amount as Rs.315,000. This isolated verbal inaccuracy, however, cannot be viewed in isolation or elevated to a contradiction of such magnitude as to undermine the plaintiff's case. The documentary evidence leaves no ambiguity whatsoever

regarding the financial terms of the transaction. The total agreed sale consideration was Rs.958,750, while the balance payable at the time of execution of the sale deed was Rs.643,750. Simple arithmetic necessarily establishes that the advance payment amounted to Rs.315,000. This figure is not only expressly recorded in the agreement itself but also stands affirmed by Abdul Razzaque, Iqbal Ahmed, and Niaz Muhammad in their respective testimonies. In these circumstances, the plaintiff's isolated oral misstatement is plainly an inadvertent lapse of memory and is wholly insufficient to displace the express written terms of the agreement or the consistent admissions emerging from the defence evidence.

22. It is indeed borne out from the record that the statements of the Supervising Tapedar, the official from the office of the Sub-Registrar, the scribe, and the concerned bank manager were recorded without oath and without affording an opportunity for cross-examination. Such a procedure cannot be regarded as the ideal mode of recording evidence, and, as a general rule, findings of fact should rest upon evidence duly recorded in accordance with the prescribed procedure. It must, however, be borne in mind that these witnesses were summoned principally for the limited purpose of producing official or institutional records maintained in the ordinary course of business or in discharge of statutory functions. Significantly, nothing has been brought on record to show that any contemporaneous objection was raised before the trial Court either to the production of those records or to their exhibition in evidence. In the absence of such objection, the procedural irregularity complained of cannot, by itself, be treated as fatal to the proceedings, particularly where the impugned findings do not substantially rest upon the narrative portions of those statements.

23. Even if, for the sake of argument, the narrative or explanatory portions of the statements made by the aforesaid witnesses are altogether excluded from consideration, the ultimate conclusions reached by the Courts below remain fully sustainable on the strength of the remaining admissible evidence. The execution of the agreement

stands established through the sworn testimony of the plaintiff and the two attesting witnesses, duly corroborated by the original registered agreement itself. The admissions made by Iqbal Ahmed, the special attorney of defendant No.1, and by Niaz Muhammad furnish additional corroborative evidence of considerable probative value. Equally, the plea that the suit property belonged to Iqbal Ahmed rather than defendant No.1 finds no support from any documentary evidence. The existence of Banker's Cheque/Pay Order No.23800454 for Rs.643,750 was never effectively disputed, and the learned trial Court, with due caution, made the decree expressly conditional upon verification of the validity and realization of that banking instrument. In these circumstances, the applicant has failed to demonstrate that the alleged procedural irregularity occasioned any prejudice or resulted in a failure of justice so as to warrant interference in the exercise of revisional jurisdiction.

24. The defence founded upon the alleged private faisla is equally untenable. At the outset, it is noteworthy that no such plea was incorporated in the written statement. It is a settled principle that evidence led beyond the pleadings cannot ordinarily be looked into for determining the rights of the parties. Apart from this fundamental defect, the alleged settlement remained wholly unsubstantiated. No written faisla or memorandum evidencing its terms was produced before the Court. Iqbal Ahmed himself candidly admitted during his testimony that no such document had been brought on record. More importantly, Syed Abdullah Shah, before whom the alleged settlement was said to have taken place, was never examined, nor was any independent participant or witness to the alleged proceedings produced in support thereof. Likewise, no receipt acknowledging repayment, no deed of cancellation, no written acknowledgment of refund, and no other contemporaneous document was adduced to establish either the existence or implementation of the alleged settlement. The plea, therefore, remains a bare assertion unsupported by either pleadings or proof.

25. The contention that the suit property, in reality, belonged to Iqbal Ahmed and not to defendant No.1 is equally devoid of substance. The revenue record admittedly reflected defendant No.1 as the recorded owner of the suit land. While it is true that entries in the revenue record are not, in every case, conclusive proof of title, they nevertheless carry a presumption of correctness until displaced by cogent and reliable evidence. In the present case, Iqbal Ahmed failed to produce any documentary evidence whatsoever to substantiate his claim of ownership. No registered sale deed, mutation entry, partition deed, inheritance document, declaratory decree, or any other instrument conferring title in his favour was brought on record. His unsupported oral assertion, standing alone and contradicted by the official revenue record, was wholly insufficient to displace the recorded ownership of defendant No.1 or to undermine the validity of an agreement admittedly executed by the person shown in the public record as the owner of the suit property.

26. Even assuming, for the sake of argument, that defendant No.1 had offered to refund the advance consideration, such an offer, standing alone, would not operate to rescind or extinguish a subsisting contract. The agreement to sell did not confer upon the vendor an unfettered or unilateral right to terminate the transaction merely by returning the earnest money. There is nothing on the record to suggest that the contract was rescinded by mutual consent, terminated through a lawful notice issued in accordance with its terms, cancelled by a competent Court, or otherwise brought to an end in a manner recognized by law. Equally significant is the fact that the plaintiff never accepted the alleged refund or acquiesced in the purported faisla. In the absence of mutual rescission or any legally recognized mode of termination, the contractual obligations of the parties continued to subsist and remained enforceable.

27. It is trite that, in a suit for specific performance, the plaintiff is required to establish that he has either performed, or has at all material times remained ready and willing to perform, the essential obligations

resting upon him under the contract. The requirement of readiness pertains to the plaintiff's financial ability and preparedness to fulfil his contractual commitments, whereas willingness is to be inferred from his conduct before, during, and after the institution of the proceedings. The determination of these requirements must necessarily be based upon the cumulative effect of the evidence and the surrounding circumstances rather than upon any isolated act or omission. The law does not insist that a purchaser must keep the entire balance consideration continuously in cash throughout the contractual period, nor does it require him to perform the futile formality of tendering payment to a vendor who has unequivocally repudiated the contract or refused to complete the transaction.

28. In the present case, the agreement stipulated 30.03.2020 as the date for completion of the transaction. The plaintiff consistently maintained that, upon the arrival of the stipulated date, he approached defendant No.1 with a request to receive the balance sale consideration, execute the registered sale deed, and deliver possession of the suit property, but defendant No.1 avoided performance of his contractual obligations. The plaintiff thereafter served a legal notice dated 09.01.2021, calling upon defendant No.1 to honour the agreement. Subsequently, and before the conclusion of the trial, he procured Banker's Cheque/Pay Order No.23800454 dated 24.05.2022 for the exact balance amount of Rs.643,750 in the name of defendant No.1 and produced the same before the learned trial Court. These acts constitute contemporaneous evidence of the plaintiff's continuing assertion of his contractual rights and his willingness to complete the transaction.

29. It is true that the banker’s cheque was obtained considerably after the contractual date fixed for completion. That circumstance is undoubtedly relevant and merits due consideration; however, it is by no means decisive of the controversy. The agreement did not stipulate that the contract would stand automatically cancelled upon the expiry of 30.03.2020, nor did it contain an express forfeiture clause or confer

upon the vendor an unrestricted right of unilateral cancellation in the event of delay. Equally, there is no evidence that defendant No.1 ever issued any contemporaneous notice calling upon the plaintiff to pay the balance consideration within a specified period, declaring the contract rescinded, or forfeiting the earnest money. On the contrary, the defence consistently taken in the written statement was not that the plaintiff had committed default under an admitted agreement but that no agreement had ever existed at all. The subsequent attempt to attribute default to the plaintiff emerged only after the defence evidence had itself acknowledged both the transaction and the receipt of the advance consideration.

30. A party who categorically denies the very existence of a contract and refuses to execute the contemplated conveyance cannot, as a matter of law and equity, ordinarily be permitted to contend that the purchaser failed to comply with the empty formality of tendering payment to a person who had already repudiated the transaction. The law does not compel the performance of futile acts. Once the vendor's stand is one of complete denial and refusal to perform, the purchaser cannot reasonably be faulted for not making a formal offer of payment which, on the admitted stance of the vendor, would inevitably have been rejected. The subsequent plea alleging default on the part of the plaintiff is not only inconsistent with the original defence embodied in the written statement but also stands contradicted by the admissions subsequently made through the testimony of the defendant's own witnesses.

31. Nor does the plaintiff's admission that he did not immediately approach a public authority for about one year following the alleged refusal establish abandonment of the contract. The evidence discloses that he first sought to resolve the matter through local elders and notables, a course not uncommon in disputes relating to immovable property in rural communities. When those efforts proved unsuccessful, he issued a legal notice within approximately ten months of the stipulated date for completion and thereafter instituted the suit

well within the period of limitation prescribed by law. The balance sale consideration was ultimately secured through a banking instrument and produced before the trial Court. Significantly, the defence failed to adduce any convincing evidence demonstrating that the plaintiff lacked the financial capacity to perform his obligations, had expressly refused to pay the balance consideration, or had otherwise abandoned or relinquished his contractual rights. Viewed in their entirety, the plaintiff's conduct is more consistent with an intention to enforce the agreement than with any abandonment thereof.

32. It is, no doubt, correct that the procurement of the banker's cheque/pay order on 24.05.2022 does not, by itself, retrospectively establish that the plaintiff continuously maintained the exact balance amount in the same account from 30.03.2020 onwards. Such proof, however, is not the inflexible standard contemplated by law. The requirement of readiness and willingness is to be deduced from the totality of the plaintiff's conduct and the surrounding circumstances, rather than from any single mechanical or ritualistic form of evidence. In the present case, the plaintiff consistently asserted his willingness to complete the transaction, called upon defendant No.1 through a legal notice to perform his contractual obligations, procured a banker's cheque for the precise balance consideration, produced the same before the trial Court, and accepted a decree requiring simultaneous performance of reciprocal obligations. On the other hand, the defence failed to produce any reliable contemporaneous evidence demonstrating that the plaintiff had abandoned the contract, lacked the financial capacity to perform his obligations, or otherwise manifested an intention inconsistent with enforcement of the agreement. Viewed cumulatively, the evidence sufficiently establishes the plaintiff's continuous readiness and willingness within the contemplation of law.

33. Equally, the mere fixation of 30.03.2020 as the date for completion of the transaction does not, by itself, render time the essence of the contract. In contracts relating to immovable property, the general rule is that time is not ordinarily regarded as being of the

essence unless such intention is clearly manifested by the parties. Whether time assumes such significance must be gathered from the language of the agreement as a whole, the consequences expressly stipulated for delay, the conduct of the parties before and after the stipulated date, and any subsequent notices or communications exchanged between them. In the present case, the agreement contains neither an automatic cancellation clause nor a forfeiture provision, nor does it confer upon the vendor an unrestricted right to terminate the contract upon mere expiry of the stipulated date. Likewise, no subsequent notice was issued by defendant No.1 declaring time to be of the essence or requiring the plaintiff to perform within a specified period upon pain of cancellation. The contractual framework and the conduct of the parties, therefore, furnish no basis for treating the agreement as having stood automatically determined upon the lapse of the stipulated date.

34. The grant of specific performance undoubtedly rests within the judicial discretion of the Court; however, such discretion is neither arbitrary nor unguided but must be exercised in accordance with settled legal principles and upon sound judicial considerations. The record discloses no circumstance disentitling the plaintiff to equitable relief. No evidence has been produced to suggest that the agreed consideration was unconscionable or grossly inadequate, that the terms of the agreement were uncertain or incapable of enforcement, that the transaction was procured through fraud, coercion, misrepresentation, or undue influence, or that its enforcement would occasion any hardship to defendant No.1 which was unforeseen at the time of its execution. On the contrary, the essential ingredients of a specifically enforceable contract, the identity of the property, the agreed consideration, the amount paid as advance, the balance payable, and the reciprocal obligations of the parties, were all clearly defined and capable of enforcement. The inconsistent, shifting, and mutually destructive positions successively adopted by defendant No.1 from complete denial of the transaction to its subsequent

admission coupled with an alleged default by the plaintiff cannot be permitted to generate equitable considerations in his favour so as to defeat an otherwise valid and enforceable agreement.

35. The challenge directed against the order passed on the application under Order VI Rule 17, C.P.C. is likewise devoid of merit. The record unmistakably shows that the learned first appellate Court did not ignore or leave the application undecided. On the contrary, it expressly adverted to the application while deciding the appeal, noticed that the proposed amendment sought to introduce an entirely different factual foundation by admitting the registered agreement and the receipt of Rs.315,000, in direct contradiction to the categorical denials contained in the written statement, and, for that reason, declined the request for amendment. The grievance that the application remained unattended is, therefore, factually incorrect and stands belied by the appellate judgment itself.

36. The original defence, as disclosed in the written statement, was one of complete and unequivocal denial. The proposed amendment sought to abandon that defence altogether and substitute an entirely different factual foundation, namely, an admission of the agreement to sell, acknowledgment of receipt of the advance consideration, an allegation that the plaintiff had committed default in paying the balance amount, and an assertion that the advance had been offered to be refunded pursuant to a private faisla. Significantly, these were not subsequent developments arising after institution of the suit. According to the testimony of the applicant's own attorney, the alleged faisla had taken place prior to the institution of the proceedings. No explanation whatsoever was furnished as to why these alleged facts, if true, were omitted from the original written statement and withheld throughout the trial. The omission is not merely procedural but strikes at the bona fides of the proposed amendment.

37. It is no doubt permissible, in appropriate circumstances, for a party to raise alternative or even inconsistent pleas. Such latitude,

however, is not without limitation. An amendment sought after the conclusion of the trial and the passing of an adverse decree, which has the effect of withdrawing a categorical admission or denial and substituting an altogether new factual case requiring recasting of issues and reopening of evidence, cannot ordinarily be permitted unless the requirements of due diligence, bona fide necessity and absence of prejudice are satisfactorily established. None of these conditions stands fulfilled in the present case. To permit the amendment would have enabled the applicant to fundamentally alter the nature of his defence after the plaintiff had already led evidence on the issues originally framed, thereby causing manifest prejudice to the plaintiff while rewarding the applicant for having deliberately withheld his alleged true case during trial. The learned first appellate Court, therefore, committed no jurisdictional error or material irregularity in declining the application under Order VI Rule 17, C.P.C.

38. It was faintly argued that the appellate judgment is brief and contains certain infelicities of expression. Brevity, however, is not synonymous with non-application of mind. A judgment must be read as a whole and not dissected sentence by sentence. Upon a careful reading of the appellate judgment, it becomes evident that the learned appellate Court independently considered the evidence produced by the plaintiff, the documentary record, the testimony of the defendant's attorney, the inconsistencies emerging from the defence, and the application for amendment before affirming the findings of the trial Court. A judgment is not rendered vulnerable merely because every piece of evidence or every argument advanced by counsel is not separately reproduced or discussed, provided that the real controversy between the parties has been appreciated and determined on the basis of the material available on the record. That test stands fully satisfied in the present case.

39. The general grounds alleging non-reading, misreading, lack of application of mind and miscarriage of justice are not supported by identification of any decisive document or admission ignored by the

Courts below. The defence produced no title document in favour of Iqbal Ahmed, no private faisla, no notice of cancellation, no proof of refund, no expert evidence of forgery and no reliable evidence of refusal by the plaintiff to pay the agreed balance.

40. The trial Court correctly refused mesne profits and damages because the plaintiff had neither paid the entire price nor acquired title or possession before decree and had not proved actual loss. The direction for delivery of possession as a consequence of specific performance was legally appropriate, as execution of the conveyance without possession would leave the relief incomplete. Upon independent examination of the record, the concurrent findings are supported by the original agreement, the attesting witnesses, the admissions of the defendant's attorney, the corroborative admission of Niaz Muhammad, the absence of the principal defendant from the witness box and the production of the balance consideration through a banking instrument. No finding is shown to be perverse, arbitrary or based on no evidence.

41. The applicant, in substance, seeks a complete reappraisal of evidence and substitution of a view favourable to him. Such exercise is beyond the legitimate scope of section 115, C.P.C. Minor discrepancies, imperfect reasoning or the possibility of another view do not constitute jurisdictional defects. No material irregularity or failure of justice has been established. Consequently, the Civil Revision Application is dismissed, with no order as to costs. The judgment and decree dated 23.12.2023 passed by the learned Additional District Judge, Khipro, in Civil Appeal No.13 of 2023 and the judgment and decree dated 28.04.2023 passed by the learned Senior Civil Judge, Khipro, in F.C. Suit No.45 of 2022 are maintained, subject to the following clarification and directions:

a) Respondent No.1 shall, within thirty days from receipt of this order by the executing Court, establish that banker's cheque/pay order No.23800454 dated 24.05.2022 for Rs.643,750 remains valid and capable of immediate realization in favour of the applicant.

b) If the instrument has expired, become stale, been cancelled or is otherwise incapable of realization, respondent No.1 shall deposit Rs.643,750 before the executing Court through a fresh pay order, banker's cheque or another secured mode within the same period or such further period, not exceeding fifteen days, as may be granted for sufficient cause.
c) Upon verification or deposit of the balance consideration, the applicant shall execute and present for registration the sale deed relating to agricultural land admeasuring 2 acres and 38 ghuntas, bearing Survey No.4/1, situated in Deh Sigh, Taluka Khipro, District Sanghar, within thirty days.
d) In case of failure by the applicant, the executing Court shall cause the sale deed to be executed and registered through its competent officer in accordance with law, upon payment of the requisite stamp duty, registration fee and other statutory charges by the party legally liable to bear them.
e) Possession of the suit land shall be delivered to respondent No.1 simultaneously with execution and registration of the sale deed. The executing Court may issue appropriate process for delivery of possession after due identification of the property.
f) The balance consideration shall be released to the applicant upon completion and registration of the conveyance, subject to any lawful deductions or directions of the executing Court.
g) Nothing contained in this order shall be construed as granting mesne profits or damages, those claims having already been declined by the Courts below.

The pending applications, if any, also stand disposed of.

JUDGE

Adnan Ashraf Nizamani