

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.43 of 2021

Appellant : Ghulam Rasool S/o Mir Noor Muhammad
through Mr. Irfan Aziz, Advocate

Respondents : Muhammad Yasin S/o Abdul Rehman &
others through Mr. Suleman Hadi,
Advocate appearing for Respondent No.2 /
National Bank of Pakistan

For State:
Mr. Khaleeq Ahmed, D.A.G.
Mr. Sandeep Malani, A.A.G. Sindh

Date of Hearing : 22.09.2026

Date of Judgment: 22.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through this High Court Appeal, the Appellant/Plaintiff has called in question the order dated 02.02.2021 passed by the learned Single Judge of this Court in Suit No.849 of 2014, whereby the suit instituted by the Appellant seeking declaration, specific performance, directions, cancellation, damages, possession and permanent injunction was dismissed.

2. Briefly stated, the case set up by the Appellant/Plaintiff is that he came to know through Jakhora Group Real Estate and Marketing Group that Respondent No.1 was dealing with property bearing No.R-465, Block-2, F.B. Area, Karachi, comprising ground plus three floors along with a pent-house/terrace. After allegedly satisfying himself regarding Respondent No.1's ownership thereof, the Appellant entered into an Agreement of Sale with him on 15.02.2014 for a total consideration of Rs.90,00,000/-. At the time of execution of the Agreement, Rs.5,00,000/- was paid as part consideration, while

the balance amount of Rs.85,00,000/- was agreed to be paid in installments subject to delivery of peaceful possession of different portions of the property. The Agreement further stipulated that Respondent No.1 would hand over possession within three months, clear all outstanding dues and encumbrances, and execute the requisite documents in favour of the Appellant. It was also represented therein that Respondent No.1 was the lawful owner of the property, possessed a valid and marketable title thereto, and was competent to transfer the same.

3. It was further pleaded that, subsequent to execution of the Agreement, the Appellant continued to make payments to Respondent No.1 through cheques and in cash, the receipt whereof was duly acknowledged. According to the Appellant, portions of the building were already occupied by tenants, notwithstanding Respondent No.1's undertaking to deliver possession thereof. It was asserted that possession of some portions was subsequently handed over, whereas the remaining portions were to be delivered thereafter. The Appellant maintained that he remained ready and willing to pay the outstanding sale consideration upon Respondent No.1 performing the obligations undertaken under the Agreement.

4. The Appellant further pleaded that, in April 2014, he learnt through an employee of the National Bank of Pakistan, New Bridge Branch, Baloch Colony, Karachi, that the subject property had already been mortgaged with Respondent No.2/National Bank of Pakistan and that an amount exceeding Rs.74,00,000/- was outstanding against Respondent No.1. The Appellant thereafter approached Respondent No.1, sought an explanation regarding the alleged mortgage and demanded refund of the amounts claimed to have been paid by him. According to the Appellant, Respondent No.1 failed to satisfactorily address the matter, giving rise to an apprehension that the property might be alienated or transferred in favour of a third party. Consequently, the Appellant issued notices and instituted the suit seeking, inter alia, specific performance of the Agreement of Sale, declaration of his rights, cancellation of certain cheques, damages, possession

and permanent injunction. The plaint also contained allegations of fraud, misrepresentation and concealment against Respondent No.1.

5. The record further reflects that the Appellant had earlier sought temporary injunctive relief, which application was dismissed vide order dated 31.03.2018. The suit was thereafter fixed for examination of the parties and settlement of issues. On 02.02.2021, when the matter was taken up by the learned Single Judge, learned counsel for the Plaintiff was not in attendance despite the matter having been called. The learned Single Judge also took into consideration the Nazir's report dated 22.10.2020, wherein it was recorded that the Plaintiff had failed to deposit the balance sale consideration in compliance with the order requiring such deposit. Upon consideration of the pleadings and material available on record, the learned Single Judge concluded that the Plaintiff had failed to establish his readiness and willingness to perform his part of the Agreement and, on that basis, dismissed the suit. Aggrieved thereby, the Plaintiff has preferred the present Appeal.

6. Learned counsel for the Appellant has assailed the impugned order on the ground that the same is contrary to the facts and law applicable to the case and that the learned Single Judge failed to properly appreciate the pleadings and attendant circumstances. It has been contended that the suit was dismissed without framing issues and without providing the Appellant an effective opportunity to adduce evidence in support of his case. According to learned counsel, the controversy could not have been determined merely on the basis of the Nazir's report, particularly when the plaint raised specific questions concerning the mortgage of the property, alleged fraud, misrepresentation and breach of the Agreement, all of which required determination upon the recording of evidence. It has further been argued that the finding regarding the Appellant's alleged failure to demonstrate readiness and willingness to perform his contractual obligations was unwarranted and that the impugned order was passed without proper adjudication of

the issues arising from the pleadings. On these grounds, interference with the impugned order has been sought.

7. Despite service, none has appeared on behalf of Respondent No.1. The same position has prevailed on the preceding dates of hearing. Learned counsel appearing for Respondent No.2/National Bank of Pakistan, however, has supported the impugned order and submitted that Respondent No.2 has no nexus with the alleged transaction between the Appellant and Respondent No.1. It was contended that the Appellant has failed to establish any legally enforceable right against the Bank in respect of the subject property. Learned counsel further submitted that the impugned order was passed after due consideration of the pleadings and material available on record and, therefore, does not warrant interference by this Court.

8. Learned DAG and learned AAG, Sindh, have also supported the submissions advanced on behalf of Respondent No.2 and sought dismissal of the Appeal.

9. We have heard learned counsel for the parties and have carefully examined the material available on record.

10. The principal question requiring determination is whether, in the facts and circumstances of the case, the learned Single Judge was justified in dismissing the suit on the ground that the Appellant had failed to establish his readiness and willingness to perform his part of the Agreement. It is not in dispute that one of the principal reliefs sought by the Appellant was specific performance of the Agreement of Sale. Such relief does not follow merely from proof of execution of an agreement; the person seeking its enforcement must establish his continuous readiness and willingness to perform the essential obligations resting upon him. This requirement assumes greater significance where a substantial portion of the sale consideration remains payable by the purchaser.

11. The Agreement of Sale records a total consideration of Rs.90,00,000/-, against which Rs.5,00,000/- was acknowledged

as having been paid, leaving a balance of Rs.85,00,000/-. The remaining amount was to be paid in installments against delivery of peaceful possession of the respective portions of the property. The Agreement also imposed obligations upon the vendor regarding delivery of possession, clearance of outstanding dues and encumbrances, and execution of the requisite documents. The respective obligations of the parties were, therefore, expressly incorporated in the contractual arrangement relied upon by the Appellant.

12. The learned Single Judge took note of the fact that the Appellant had been required to demonstrate his readiness and willingness to complete the transaction. In this regard, a direction was issued for deposit of the balance sale consideration with the Nazir. The Nazir's report dated 22.10.2020, however, recorded that the requisite amount had not been deposited. This circumstance could not be regarded as immaterial, particularly when the Appellant was seeking enforcement of the Agreement on the assertion that he remained ready to perform his part of the bargain. His failure to comply with the specific direction of the Court, despite having been afforded an opportunity to do so, was consequently relevant to the determination of his entitlement to specific performance.

13. The Appellant has placed considerable reliance upon the alleged mortgage of the property and the conduct attributed to Respondent No.1. Such allegations may constitute matters for consideration between the parties; however, they do not, by themselves, relieve the Appellant of the obligation to establish his own compliance with the contractual terms. Having invoked the jurisdiction of the Court for enforcement of the Agreement, he was required to demonstrate through his conduct and the material available on record that he remained prepared to discharge the obligations undertaken by him.

14. The Agreement itself contains representations by Respondent No.1 that the property was free from claims, liens, charges and encumbrances, together with an undertaking to indemnify the purchaser against loss or damage resulting from

any misstatement, concealment or defect in title. The alleged mortgage, therefore, did not render the contractual dispute incapable of consideration. At the same time, the existence of such allegations did not dispense with the Appellant's obligation to establish his own entitlement to the discretionary relief sought. The contractual terms themselves contemplated the consequences arising from any defect in title.

15. We are equally unable to accept the submission that dismissal of the suit was impermissible merely because formal issues had not been framed. Ordinarily, where disputed questions of fact arise for determination, a suit proceeds through framing of issues and recording of evidence. However, the impugned order does not indicate that the suit was dismissed solely on account of the absence of formally framed issues. The learned Single Judge considered, inter alia, the nature of the relief claimed, the conduct of the Plaintiff during the proceedings, the direction for deposit of the balance consideration and the Nazir's report evidencing non-compliance. In the circumstances, the failure to comply with the Court's direction was a relevant consideration in determining whether the Plaintiff had established a case for grant of specific performance.

16. The proceedings had remained pending for a considerable period. During their pendency, the Plaintiff was afforded an opportunity to deposit the outstanding sale consideration, yet the Nazir's report dated 22.10.2020 confirmed that no such deposit had been made. Subsequently, when the matter was taken up for examination of the parties and settlement of issues, learned counsel for the Plaintiff was not present. The learned Single Judge thereafter proceeded on the basis of the material available on record. In appeal, the absence of counsel on the relevant date has been emphasized; however, that circumstance does not explain or overcome the Plaintiff's antecedent failure to comply with the direction concerning deposit of the balance consideration.

17. Nor does the record substantiate the allegation that the learned Single Judge acted with undue haste. The suit was

instituted in 2014; the application for temporary injunction was considered and dismissed in 2018, and the proceedings thereafter continued. The impugned order records the stage at which the matter had been fixed, as well as the Court's consideration of the Nazir's report. The learned Single Judge also adverted to the judgments of the Hon'ble Supreme Court dealing with the discretionary character of specific performance and the circumstances in which such relief may be declined. The chronology of proceedings, therefore, does not support the allegation that the matter was disposed of without due consideration.

18. We have also considered the submission that the allegations relating to fraud, mortgage and concealment could only be resolved after recording evidence. There is no dispute with the general proposition that contested questions of fact ordinarily require determination upon evidence. However, the issue before the learned Single Judge was not confined to the alleged conduct of Respondent No.1. The Appellant was seeking enforcement of a contract through the discretionary remedy of specific performance and was, therefore, required to establish his own entitlement to such relief. His failure to comply with the direction for deposit of the balance consideration was directly relevant to that question.

19. The terms of the Agreement further establish that payment of the substantial outstanding consideration was linked with delivery of peaceful possession and completion of the transaction. According to the Appellant's own case, the dispute regarding the property arose shortly after execution of the Agreement upon his alleged discovery of the mortgage. Even thereafter, the Court provided him an opportunity to demonstrate his capacity and willingness to complete the transaction by directing deposit of the outstanding amount. The Appellant did not avail that opportunity. Such conduct could not be disregarded while assessing the correctness of the impugned order.

20. On an overall consideration of the record, the learned Single Judge concluded that the Appellant had failed to satisfy

the requirement necessary for grant of specific performance. We find no material demonstrating that this conclusion was based upon an erroneous appreciation of the record or an improper application of the governing principles. In particular, the Appellant has not shown how, notwithstanding his failure to deposit the balance consideration pursuant to the Court's direction, he had established the requisite readiness and willingness to perform his part of the Agreement.

21. The Appellant has likewise failed to identify any material illegality, jurisdictional defect or misreading of the record in the impugned order warranting interference in appellate jurisdiction. The non-compliance with the direction to deposit the balance sale consideration, considered in the context of the proceedings and the nature of the relief claimed, constituted a material circumstance supporting the conclusion reached by the learned Single Judge.

22. For the foregoing reasons, we are of the considered view that the impugned order dated 02.02.2021 does not suffer from any illegality, infirmity or jurisdictional defect warranting interference by this Court. The Appellant has failed to establish that the learned Single Judge acted contrary to law or disregarded any material circumstance requiring a different conclusion. Consequently, the present High Court Appeal is **dismissed**. The impugned order dated 02.02.2021 passed by the learned Single Judge in Suit No.849 of 2014 is **maintained**.

JUDGE

JUDGE

KAMRAN/PS