THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No.S- 84 of 2020

Applicant	:	**Ghulam Muhammad Jatt**, Through Mr. Muhammad Qayyum Arain, Advocate.
Respondents 1to4	:	**Government of Sindh & others** Through Mr. Zulfiqar Ali Naich, Assistant Advocate General.
Respondent No.5	:	**Ghulam Muhammad Chachar**, Through Mr. Abdullah Memon, Advocate.
Date of Hearing	:	**26.10.2026**
Date of Judgment	:	**13.11.2026**

J U D G M E N T

Tasneem Sultana, J. – Through this Civil Revision Application under section 115, C.P.C., the applicant, Ghulam Muhammad son of Taj Muhammad, calls in question the judgment and decree dated 17.02.2020 passed by the learned Model Civil Appellate Court/II-Additional District Judge, Sukkur, in Civil Appeal No.33 of 2019, whereby his appeal was dismissed and the judgment and decree dated 18.03.2019 passed by the learned Ist Senior Civil Judge, Sukkur, in F.C. Suit No.127 of 2018 were maintained. Through the latter judgment, the suit instituted by respondent No.5, Ghulam Muhammad son of Qadir Bux, for specific performance and permanent injunction was decreed to the extent of the land recorded in the name of applicant.

2. Briefly stated, respondent No.5 filed the suit for specific performance and permanent injunction on the basis of an agreement dated 27.07.2004 for the sale of eight acres of agricultural land situated in Deh Cheel, Tapa Sangrar, Taluka Rohri, District Sukkur, comprising four acres belonging to the applicant and four acres described as belonging to his father. He stated that he paid Rs.20,000 at the time of the agreement and Rs.80,000 on 10.08.2004, and possession was delivered to him. The balance of

Rs.220,000 was payable on 05.02.2005 against transfer of the applicant's land, while the father's land was to be transferred after change of the Photi Khata. He asserted that he offered the balance consideration on the stipulated date, but the applicant refused to receive it and complete the transfer. His subsequent approaches having remained unsuccessful, and apprehending alienation of the land and dispossession, he instituted the suit.

3. The applicant/defendant No.5 filed his written statement, admitting the sale transaction, receipt of Rs.100,000 and delivery of possession. He denied the alleged offer of payment and stated that respondent No.5 failed to pay the balance consideration by 05.02.2005, withdrew from the agreement and returned possession. He further stated that he had agreed to purchase a house at Mehrabpur in anticipation of receiving the balance consideration and lost the advance paid towards that purchase because respondent No.5 failed to pay him. He accordingly sought dismissal of the suit with costs.

4. The matter has undergone several rounds of litigation. The suit was initially instituted as F.C. Suit No.25 of 2006 and was dismissed under Order XVII, rule 3, C.P.C., vide judgment dated 16.03.2010, bearing F.C. Suit No.109 of 2006. Respondent No.5, Ghulam Muhammad son of Qadir Bux, who was the plaintiff in the suit, challenged that decision through Civil Appeal No.47 of 2010, which was allowed on 27.01.2011, and the matter was remanded to the trial Court. After recording evidence, the learned trial Court again dismissed the suit on 29.05.2012. That judgment described the suit as F.C. Suit No.25 of 2006, renumbered as F.C. Suit No.39 of 2010. Civil Appeal No.67 of 2012, preferred by respondent No.5, was allowed on 24.02.2015, and the matter was remanded for a fresh decision. During the subsequent proceedings, Athar Hussain, Mukhtiarkar, Rohri, was examined at Ex.64 and produced revenue documents concerning the mortgage and its release. The suit was thereafter decreed on 22.02.2017 as F.C. Suit No.83 of 2015, with its earlier number recorded as F.C. Suit No.39 of 2011. Respondent No.5 challenged that decree through Civil Appeal No.69 of 2017, which was allowed on 24.11.2017, and the matter was again

remanded for decision in accordance with the earlier appellate directions. Upon remand, the suit was renumbered as F.C. Suit No.127 of 2018 and decreed on 18.03.2019. The relief was confined to survey No.156/1, measuring four acres, recorded in the name of the applicant, with direction to respondent No.5 to deposit Rs.220,000/- within thirty days with an increase of 20 percent per annum. The applicant challenged that judgment and decree through Civil Appeal No.33 of 2019, which was dismissed on 17.02.2020, whereafter he preferred the present revision.

5. In support of his case, respondent No.5 examined himself as PW-1 at Ex.43 and produced the agreement at Ex.43/A. He examined PW-2 Ali Nawaz and PW-3 Muhammad Rafique at Ex.44 and Ex.45, respectively. The applicant examined himself as DW-1 at Ex.56 and produced a revenue receipt, an agreement concerning the house transaction and an Iqrar Nama at Ex.56/A to Ex.56/C. He also examined his brother, DW-2 Ghulam Ali, at Ex.57. Subsequently, Mukhtiarkar Athar Hussain produced the relevant revenue entries at Ex.64/A and Ex.64/B. The principal controversy was whether respondent No.5 had established his readiness and willingness to pay the outstanding consideration against the agreed transfer, and whether the applicant's refusal or inability to complete the transaction entitled respondent No.5 to the relief claimed.

6. Learned counsel for the applicant contended that the impugned judgments were contrary to the facts and evidence and that the learned appellate Court maintained the decree without adequately examining the objections raised by the applicant; that respondent No.5 failed to pay the balance consideration of Rs.220,000 on 05.02.2005, whereafter the agreement ceased to bind the applicant; that the witnesses examined by respondent No.5 did not support his version; that the applicant repeatedly approached respondent No.5 for payment and obtained a sale certificate on 06.06.2005 to complete the transaction, but respondent No.5 failed to perform his obligation; that his non-payment also caused the applicant to suffer loss in the separate property transaction at Mehrabpur, which was overlooked by the learned appellate Court; that respondent No.5 approached the Court after approximately one

year; and that, as the agreement had become ineffective, any fresh transaction required payment at the prevailing market value after adjustment of the amount already received. He accordingly prayed that the impugned judgments and decrees be set aside and the suit be dismissed.

7. Conversely, learned counsel for respondent No.5 contended that the applicant admitted the agreement, receipt of Rs.100,000 and delivery of possession; that respondent No.5 remained ready and willing to pay the balance, but the applicant could not complete the transfer because the mortgage was released only on 14.04.2005; that the applicant could not rely upon his own failure to clear the encumbrance to avoid the agreement; that the alleged return of possession was not established; that the prolonged litigation, involving successive remands, did not demonstrate unwillingness on the part of respondent No.5 to perform his obligation; that respondent No.5 had deposited Rs.841,256 in compliance with the decree; and that no illegality, material irregularity or misreading of evidence had been shown to warrant interference with the concurrent findings. He prayed for dismissal of the revision.

8. Learned Assistant Advocate General submitted that respondents No.1 to 4 were formal parties; and that the matter may be decided on merits.

9. Arguments heard. Record perused.

10. The scope of revisional jurisdiction under section 115, C.P.C., has been delineated by the Honourable Supreme Court in the case of *Mst. Faheeman Begum (deceased) through L.Rs. and others v. Islam-ud-Din (deceased) through L.Rs.* (**2023 SCMR 1402**), wherein it observed:

> **"7. If the concurrent findings recorded by the lower fora are found to be in violation of law, or based on misreading or non-reading of evidence, then they cannot be treated as being so sacrosanct or sanctified that cannot be reversed by the High Court in revisional jurisdiction which is pre-eminently corrective and supervisory in nature. In fact, the Court in its revisional jurisdiction under section 115 of the Code of Civil Procedure, 1908 ("C.P.C."), can even exercise its suo motu jurisdiction to correct any jurisdictive errors committed by a subordinate Court to**

ensure strict adherence to the safe administration of justice. The jurisdiction vested in the High Court under section 115, C.P.C. is to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law, or with material irregularity, or by committing some error of procedure in the course of the trial which affected the ultimate decision. The scope of revisional jurisdiction is restricted to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality in the judgment of the nature which may have a material effect on the result of the case, or if the conclusion drawn therein is perverse or conflicting to the law."

11. A perusal of the record reflects that the applicant executed the sale agreement dated 27.07.2004 (Ex.43/A) in favour of respondent No.5 for the sale of eight acres of agricultural land situated in Deh Cheel, Tapa Sangrar, Taluka Rohri, District Sukkur. Of this area, four acres stood in the applicant's name, while the remaining four acres were described as belonging to his father. It provided for payment of Rs.20,000 at the time of execution, a further sum of Rs.80,000 on 10.08.2004 and the balance of Rs.220,000 on 05.02.2005 against transfer of the four acres standing in the applicant's name. The arrangement concerning the land described as belonging to the father contemplated transfer after change of the Photi Khata. In paragraph 3 of the written statement, the applicant further stated that the consideration for Survey No.156/3 would be recovered after measurement at Rs.65,000 per acre. The applicant admitted execution of the agreement, receipt of Rs.100,000 and delivery of possession, but disputed his liability to complete the transaction on the ground that respondent No.5 had failed to pay the balance consideration. These admissions do not, by themselves, entitle respondent No.5 to specific performance; he must also establish that he was ready and willing to perform the obligations remaining on his part. Under section 24(b) of the Specific Relief Act, 1877, a person who becomes incapable of performing or violates an essential term of the contract remaining to be performed by him cannot obtain that relief. In the case of *Ijaz ul Haq v. Mrs. Maroof Begum Ahmed and others* (**PLD 2023 SC 653**), the Honourable Supreme Court observed:-

> **"6.Determination of the readiness and willingness to perform the obligations emanating from the contract is a calculus for ascertaining the bona fide of the parties. As the initial burden is always on the plaintiff, he must first state in his plaint the facts demonstrating his readiness and willingness to perform his part of the contract and then prove it by producing convincing and reliable evidence."**

The Honourable Supreme Court further observed:

> **"9. In a suit for specific performance, the vendee also has to prove that at the appointed time, he had sufficient money with which he could pay the balance amount, or if he did not have such money, he made such arrangements, with the help of which, he could pay as promised."**

In the case of *Messrs D.W. Pakistan (Private) Limited, Lahore v. Begum Anisa Fazl-i-Mahmood and others* (**2023 SCMR 555**), the Honourable Supreme Court further explained that readiness and willingness are assessed from the purchaser's conduct before and after institution of the suit. Section 22 of the Act further requires the discretion to grant specific performance to be exercised upon sound judicial principles. The evidence must, therefore, establish readiness and willingness on the part of respondent No.5, and not merely failure by the applicant to complete the transaction.

12. The evidence of respondent No.5, PW-1 Ghulam Muhammad son of Qadir Bux, and PW-2 Ali Nawaz supports the occurrence of a meeting at the office of the Mukhtiarkar, where a dispute arose over payment and transfer of the Khata (Ex.43 and Ex.44). Respondent No.5 stated that the applicant demanded the remaining amount but declined to transfer the Khata because the land was mortgaged, whereupon he refused to pay without the transfer. PW-2 Ali Nawaz, an attesting witness to the agreement, claimed to have attended that meeting. He stated that the applicant sought payment to redeem the mortgage before transferring the land. According to him, respondent No.5 initially insisted upon transfer before payment, but subsequently offered to pay and allow the applicant eight or ten days to complete the transfer. He further stated that, after some days, the applicant refused to receive the money and change the Khata. This evidence explains the dispute over the sequence of payment and transfer. Respondent No.5 placed the meeting on 20 or 25 January 2005, whereas PW-2 Ali Nawaz did not specify its date. Their

evidence related to the meeting at the office of the Mukhtiarkar and did not establish the offer of Rs.220,000 at the village of the applicant on 05.02.2005 stated in the plaint. The Tapedar, in whose presence respondent No.5 claimed to have offered the remaining amount, was not examined.

13. It appears from the testimony of respondent No.5 that he brought Rs.205,000 to the office of the Mukhtiarkar, explaining that he had paid a further sum of Rs.15,000 to the applicant in November. He admitted in cross-examination that this payment was not mentioned in the plaint, in which he had stated that Rs.220,000 remained payable and that he offered that amount on 05.02.2005. PW-2 Ali Nawaz claimed to have personally delivered Rs.15,000 but could not specify the date and time of payment. PW-3 Muhammad Rafique, examined at Ex.45, acknowledged that PW-2 had informed him about the payment. He had no personal knowledge of that payment, and his testimony did not independently establish that it had been made. The evidence concerning the alleged additional payment, considered with its omission from the plaint and the continued assertion that Rs.220,000 remained payable, does not satisfactorily establish that payment. The outstanding balance therefore remained Rs.220,000. PW-2 mentioned this amount in examination-in-chief as having been brought to the office, but in cross-examination stated that the amount was Rs.205,000, consistent with the account given by respondent No.5 himself. Their testimony did not satisfactorily establish that respondent No.5 had the full balance available or had made arrangements to pay it. The evidence, taken as a whole, does not establish that respondent No.5 was ready to pay the balance sale consideration.

14. The applicant, DW-1 Ghulam Muhammad son of Taj Muhammad, admitted in cross-examination that he was required to transfer the Khata on 05.02.2005, but the mortgage was released on 14.04.2005 (Ex.56). The revenue record produced by Athar Hussain, Mukhtiarkar, Rohri, examined at Ex.64, supports this admission. He produced the mortgage entry at Ex.64/A and entry No.380 dated 06.08.2005 at Ex.64/B, recording release of the mortgage pursuant to the bank letter dated 14.04.2005. The statement of Athar Hussain

in cross-examination that the mortgage had been released before 2005 was contrary to these documents and the admission of the applicant. The mortgage thus remained in force on 05.02.2005, when payment and transfer were to take place.

15. The sale agreement (Ex.43/A) provided for payment of balance sale consideration against transfer of Khata. These reciprocal obligations were governed by sections 51 and 52 of the Contract Act, 1872. In the case of *Mst. Samina Riffat and others v. Rohail Asghar and others* (**2021 SCMR 7**), the Honourable Supreme Court observed:

> **"The Promisor need not perform his part of promise or obligation, unless the promisee, (here in this case the vendee) "is ready and willing to perform his reciprocal promise." In cases arising out of sale of immovable property, a vendee seeking specific performance has to demonstrate his readiness and willingness to perform his part of reciprocal obligation as to payment of balance sale consideration."**

The applicant had not cleared the mortgage and, according to respondent No.5 and PW-2 Ali Nawaz, sought payment before its redemption and transfer of the Khata. Respondent No.5 was not required under the agreement to advance the balance unconditionally for that purpose. His refusal to pay without the corresponding transfer could not, therefore, be treated as establishing default on his part. The subsisting mortgage supports his explanation for withholding payment, but does not establish his ability to pay the full balance against the agreed transfer. The applicant's failure to fulfill his corresponding obligation did not, by itself, entitle respondent No.5 to a decree for specific performance.

16. The Courts below did not adequately address the evidence concerning the amount available with respondent No.5 for completion of the transaction. While deciding issues Nos.3 to 6, the learned trial Court relied on the subsisting mortgage and the failure of the applicant to transfer the land and observed that respondent No.5 was ready and willing to perform the agreement. However, it did not resolve the difference between Rs.205,000, which respondent No.5 stated he had brought, and Rs.220,000, which the plaint showed as the balance payable. This required examination of the

alleged additional payment of Rs.15,000, on which respondent No.5 relied to explain the reduced balance. The learned trial Court also did not assess the conflicting statements of PW-2 Ali Nawaz, who mentioned Rs.220,000 in examination-in-chief but Rs.205,000 in cross-examination. The learned appellate Court referred to the conduct of the parties and the subsequent deposit without addressing these discrepancies. The deposit made in compliance with the decree was relevant to subsequent conduct, but did not, by itself, establish that respondent No.5 had the balance sale consideration available at the relevant time. The disputed payment and the conflicting amounts mentioned in evidence bore directly upon that question. By leaving them unexamined, the Courts below accepted readiness and willingness without adequately determining whether respondent No.5 could pay the balance sale consideration. This material non-reading of evidence affected entitlement to the decree and warrants interference under section 115, C.P.C.

17. The relief of permanent injunction also requires consideration under section 53-A of the Transfer of Property Act, 1882. In the case of *Naib Subedar Taj Muhammad v. Yar Muhammad Khan and 6 others* (**1992 SCMR 1265**), the Honourable Supreme Court observed:

> **"5. So far as the applicability of section 53-A of the Transfer of Property Act is concerned, it depends upon the following factors: --**
>
> **(i) There is a contract in writing signed by the transferor in respect of an immovable property;**
>
> **(ii) From the writing, transfer can be ascertained with reasonable certainty;**
>
> **(iii) In part performance of the contract, the transferee has taken possession of the property or any part thereof or if he was in possession, he continues to be in possession in part performance of the contract and has done some act in furtherance of the contract, and**
>
> **(iv) The transferee has performed or is willing to perform his part of the contract."**

In the case of *Rashid Ahmad v. Messrs Friends Match Works* (**PLD 1989 SC 503**), the Honourable Supreme Court, while examining the availability of protection under section 53-A, reproduced the

following passage from Mulla's commentary on the Transfer of Property Act:

> **"The section confers no rights on a party who was not willing to perform his part of the contract. A prospective vendee who had taken possession could not resist dispossession if he were not willing to pay the price agreed upon."**

Execution of the agreement, part payment and delivery of possession were admitted. Those circumstances did not by themselves establish that respondent No.5 had performed or was willing to perform the remaining objections under the agreement. The evidence concerning payment of balance sale consideration, examined above, did not establish the fourth requirement identified by the Hon'ble Supreme Court in the case cited above.

18. In view of the above facts and circumstances, this Civil Revision Application is allowed. The judgment and decree dated 17.02.2020 passed in Civil Appeal No.33 of 2019 and the judgment and decree dated 18.03.2019 passed in F.C. Suit No.127 of 2018 are set aside. Consequently, the suit of respondent No.5 for specific performance and permanent injunction is dismissed. There shall be no order as to costs.

J U D G E

Ahmad