

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1852 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
1. For orders on Statement dated 22.12.2014. 2. For hearing of CMA No.986/15. 3. For hearing of CMA No.1767/17. 4. For hearing of CMA No.16625/15.	-----

26.10.2017.

Mr. Imran Ahmed, Advocate for Plaintiffs.

Mr. Rehman Aziz Malik, Advocate for Defendant No.1.

4. This is an Application under Order VII Rule 11 CPC filed on behalf of Defendant No.1 for rejection of Plaint as the cause of action is no more available to the Plaintiffs after having refused to deposit the balance sale consideration. Counsel for Defendant No.1 submits that vide Order dated 13.01.2015 the Plaintiff was directed to deposit the balance sale consideration within 15 days but the Plaintiff failed to comply with such order and thereafter filed another application for deferring the deposit of balance sale consideration till such time issue of compensation and damages claimed is decided. The said application was also dismissed vide Order dated 13.02.2015 by imposing cost. The Plaintiff then impugned the said order in HCA No.67/2015, which was also dismissed vide Order dated 15.09.2015 as even at that stage, the Plaintiffs did not show their willingness to deposit the balance sale consideration.

On the other hand, learned Counsel for the Plaintiffs submits that in view of Section 19 of the Specific Relief Act, the Plaint cannot be rejected and Suit cannot be dismissed, whereas, the specific performance is a discretionary relief and therefore the application be dismissed. He further submits that the Plaintiff has also claimed damages and therefore the Suit cannot be dismissed or plaint cannot be rejected.

I have heard the learned Counsel for the parties and have perused the record. From the orders so passed in this matter including order(s) dated 13.1.2015, 13.02.2015, and the Order in

HCA No.67/2015 dated 15.09.2015 it appears that all along the Plaintiffs have never shown their willingness to deposit the balance sale consideration. Time and again opportunities were given but the Plaintiff have not deposited the balance sale consideration and have in the alternative, taken a plea that till such time the question of damages is decided, the Plaintiffs shall not be burdened with deposit of balance sale consideration.

It is to be appreciated that the claim of damages itself flows from the agreement of which the specific performance has been sought. If the Plaintiffs are not inclined to perform their part of the agreement, this resultantly means that they are not interested in abiding by the agreement themselves, and therefore the claim of damages becomes meaningless and academic in nature. It is not their case that they are also seeking any other compensation as well. It is only a claim of damages on per month basis which the plaintiffs have prayed. It is but settled law that in a Suit for Specific Performance, the party coming to the Court shall always be willing to perform his part of the agreement. The person coming to the Court seeking Specific Performance must be willing to deposit the balance sale consideration from day one and only then the Court can consider granting the Specific Performance, which otherwise is a discretionary relief. On perusal of the Plaint (See Para-10) it appears that the Plaintiffs have shown their intention to deposit the balance sale consideration however, after passing of orders on the injunction application, the plaintiffs have showed their inability to deposit the balance sale consideration. Now once the plaintiffs are unable to deposit the balance sale consideration, then perhaps there remains no cause of action for the plaintiff to continue with this Suit. If the Court comes to the conclusion that the plaintiffs have made out a case for Judgment and Decree then the balance sale consideration is to be paid by the Plaintiffs to the Defendant, whereas, to secure the ends of justice, and in the interest of both the parties, the Court invariably (barring certain situations) directs the buyer to deposit the balance sale consideration. This now has become more important due to increasing trend of prices of properties. However, from the conduct, the Plaintiffs do not wish to deposit the same, therefore, no useful purpose would be served to proceed further with this Suit insofar as the Plaintiffs are concerned, as they are not inclined to deposit

the balance sale consideration, and therefore, no Specific Performance can be granted by the Court.

In this matter on the other hand the Defendant No.1 has even deposited the advance so received from the Plaintiff and the same is lying with the Nazir of this Court pursuant to Order dated 09.03.2017. Once the Court had directed the appellant to deposit the balance sale consideration on the date when interim order was passed, it was obligatory upon the plaintiff to deposit the same within the period specified therein, or in the alternative, within the extended time. The Hon'ble Supreme Court in the case of **1997 SCMR 181 (Allah Ditta v. Bashir Ahmad) and Haji Abdul Hameed Khan vs. Ghulam Rabbani (2003 SCMR 953)**, has also upheld the order of dismissal of Suit, on failure to deposit the balance sale consideration. A learned Single Judge of this Court in the case of **Syed Muhammad Waqar ud Din v Owais Ahmed Idrees (2015 MLD 49)** has been pleased to dismiss the Suit, wherein, the Plaintiff had specifically shown its reluctance to perform his part of the agreement.

In view of such position, I am of the view that there is nothing in this matter to be adjudicated any further as no cause of action remains to be decided. Accordingly, the Suit is dismissed alongwith all pending applications. The amount lying with the Nazir should be refunded to the Plaintiffs with profit thereon, if any, on proper identification.

Judge