

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 545 / 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For hearing of CMA No. 17932/2015.
- 2) For hearing of CMA No. 8445/2013.
- 3) For hearing of CMA No. 9030/2013.
- 4) For hearing of CMA No. 5328/2013.
- 5) For hearing of CMA No. 6349/2013.
- 6) For hearing of CMA No. 9388/2013.
- 7) For orders on Nazir report dated 4.12.2014.
- 8) For orders on CMA No. 15539/2014.

Date of hearing: 07.02.2018.

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Mr. Bhajan Das Tejwani Advocate for Plaintiff.
 Mr. Khawaja Shamsul Islam along with
 Mr. Shahzad Mehmood Advocates for Defendants No. 11 & 12.

1, 2, 3 & 4) At Serial No. 4 is an application under Order 39 Rule 1 & 2 CPC seeking restraining orders against the Defendants from selling and or creating any third party interest in respect of Suit property vis. Bungalow No. 125-T, Block 2, PECHS Society, Main Khalid Bin Waleed Road, Karachi, whereas, at Serial Nos. 1 to 3 are applications under Order 7 Rule 11 CPC filed by Defendants for rejection of plaint.

Learned Counsel for the Plaintiff submits that the Plaintiff entered into an agreement dated 10.1.2012 with Defendants No. 1 to 8 for purchase of the Suit property for a total sale consideration of Rs. 3,70,00,000/- (Three Crore Seventy Lacs) out of which the Plaintiff paid as advance Rs. 47,65,000/- (Forty Seven Lacs Sixty Five Thousand) and for one reason or the other the said Defendants failed to execute Sale Deed as agreed; hence, instant Suit. Learned Counsel submits that the agreement in question has not been denied, whereas, subsequently, after filing of this Suit it came to the knowledge of the Plaintiff that the Suit property has also been sold to Defendants No. 11 and 12 who were thereafter, joined as Defendants, whereas, pursuant to order dated 6.11.2014 the Plaintiff deposited the balance sale consideration which order was challenged in HCA No. 284 and 329 of 2014 and vide order dated 12.1.2015 the same was set aside, whereafter, without prejudice, the amount so deposited was taken back. Per learned Counsel the Plaintiff was always willing to deposit the balance sale consideration but in the peculiar facts of this case when property has been sold to

another buyer, the amount deposited was withdrawn. However, if the Court directs, the Plaintiff will deposit the same. He further submits that in the agreement time was not the essence of the contract, and therefore, no default occurred on the part of the Plaintiff; hence the Plaintiff is entitled for an injunction. Insofar as the application under Order VII Rule 11 CPC on behalf of the Defendants is concerned, learned Counsel submits that no case is made out for rejection of the Plaint as the objections are general in nature, whereas, no law has been referred to under which the plaint could be rejected. In support he has relied upon *Hakim Saleem Ahmed and 8 others v. Government of Sindh and 3 others (1982 CLC 269)*, *Muhammad Sharif and others v. Mst. Fateh Bano and others (2004 SCMR 813)* and *Syed Moazzam Ali Shah v. Muhammad Suleman and others (2011 CLC 1412)*.

On the other hand, learned Counsel for Defendants No. 11 and 12 submits that the conduct of the Plaintiff does not entitles him for any discretionary relief of injunction as admittedly, the agreement was entered into on 10.1.2012 whereas, instant Suit was filed on 29.4.2013 and his clients entered into the agreement to purchase on 28.2.2013 i.e. much prior to the filing of instant Suit. He further submits that the Plaintiff never showed any willingness to deposit the balance sale consideration, whereas, the amount earlier deposited was on the directions of the Court which has been withdrawn, therefore, the conduct is not which could compel the Court to exercise its discretion. Learned Counsel has also referred to orders dated 19.11.2013 and 6.11.2014 and submits that the Plaintiff never joined the present Defendants in this matter until the order dated 6.11.2014 was impugned in the Appeal and was set aside, therefore, the Plaintiff cannot claim any interest in the property as he has not been vigilant. He further submits that upon his failure to deposit the balance sale consideration, the plaint is liable to be rejected, whereas, the agreement as of today cannot be specifically performed, therefore, there is no cause of action, hence, the plaint is also liable to be rejected. Learned Counsel submits that there is no privity of Contract between Plaintiff and Defendants No. 11 and 12 and therefore, no relief can be sought, whereas, his clients are the lawful owners of the property in question and are also in possession. In support he has relied upon *Hamood Mehmood v. Mst. Shabana Ishaque and others (2017 SCMR 2022)*, *Iqbal Ahmed v. Abdul Kabir (2005 YLR 1916)*, *Saedd Naseem v. Mrs. Rukshanda Khan (2005 YLR 1905)*, *Muhammad Abdul Rehman Qureshi v. Sagheer Ahmed (2017 SCMR 1696)*, *Haji Abdul Hameed Khan v. Ghulam Rabbani (2003 SCMR 953)*, *Allah Ditta v. Bashir Ahmed (1997 SCMR 181)* and *Syed Muhammad Waqar ud Din v. Owais Ahmed Idrees (2015 MLD 49)*.

I have heard both the learned Counsel and perused the record. Insofar as the application for injunction at serial No. 4 is concerned, it appears that the Plaintiff entered into an agreement with Defendants No. 1 to 8 on 10.1.2012 and apparently such

agreement has not been denied. The Plaintiff paid advance Rs. 47,65,000/- (Forty Seven Lacs Sixty Five Thousand) and thereafter, as contended certain requirements were to be fulfilled by the said Defendants which they failed to do so, hence, the balance sale consideration was not paid and instant Suit was filed on 29.4.2013. It further appears that during this period the Defendants No. 1 to 8 sold the property in question to Defendants No. 11 & 12 on the ground that the Plaintiff failed to honour his commitment within the specified time, whereas, all such documents were ready with them. Such agreement was entered into between Defendants No. 1 to 8 and Defendants No. 11 & 12 on 28.2.2013 i.e. much prior to the filing of this Suit. The Plaintiff came before this Court after more than one year and never bothered to pursue any legal remedy during this intervening period. It need not be reiterated that the relief of specific performance is discretionary in nature, whereas, the conduct of the parties is most important and pivotal to the very genesis of the case. The Plaintiff though says that an agreement was entered into which has not been denied but waited for a long period in seeking the appropriate legal remedy of specific performance. This within itself does not go in favour of the Plaintiff for grant of any injunctive relief. In the intervening period the owners of the property have sold it to someone else and that has been done admittedly much prior to the filing of this Suit and passing of any status quo order. The plaintiff waited for so long in filing instant Suit for specific performance which also is a material factor reflecting adversely on the conduct of the plaintiff, at least for grant of an injunction. Moreover, Specific Relief Act, as complete code also provides for compensation in such cases. In view of this peculiar facts and circumstances of this case, I am of the view that the Plaintiff has not been able to make out any prima facie case for grant of any injunction, whereas, neither balance of convenience lies in his favour nor any irreparable loss would be caused to the Plaintiff. Accordingly, for these reasons, the listed application was dismissed by means of a short order on 07.02.2018.

Insofar as the applications under Order VII Rule 11 CPC filed on behalf of the Defendants are concerned, it may be observed that no valid legal ground has been made out so as to reject the plaint. Merely, for the fact that the Plaintiff (according to the Defendants) has not shown his willingness to deposit the balance sale consideration a plaint cannot be rejected summarily, whereas, substantial amount has been paid as advance to Defendants No. 1 to 8. The case law which has been relied upon by the learned Counsel for the Defendants No. 11 & 12 does not apply to the peculiar facts of the case as in this matter no such directions were given by the Court for deposit of the balance sale consideration which was not complied with by the Plaintiff. The entire case law which has been relied upon in respect of either rejection of plaint and dismissal of Suit is based upon the fact that the directions of the Court were never complied with for depositing the balance sale consideration. This is not the case here in this matter. In

such circumstances, all the three applications under Order VII Rule 11 CPC were also dismissed by means of a short order dated 7.2.2018 and these are the reasons thereof.

6) This is an application under Section 3 & 4 of the Contempt of Court Act, 1976 alleging violation of order dated 2.5.2013 as according to the Plaintiff through such order the Defendants were restrained not to create any third party interest, whereas, admittedly Defendants No. 1 to 8 have entered into another agreement to sell the property. However, it appears that the Suit has been filed on 29.4.2013 whereas, order was passed on 2.5.2013, and much prior to filing of the Suit as well as passing of the above order, the agreement was already entered between Defendants No. 1 to 8 and Defendant No. 11 and 12. Therefore, apparently no case for contempt is made out and for this reason, this application was also dismissed through a short order dated 07.02.2018 and these are the reasons thereof.

J U D G E

ARSHAD/