

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No. 07 of 2013.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For katcha peshi.
2. For hearing of C.M.A-63 of 2013.

30.11.2017.

Mr. Irfan Ahmed Qureshi, Advocate for the applicant.

Barrister Taha Rehman Jatoh, Advocate for respondents No.3 and 4.

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1. Mr. Abdul Hafeez Memon Advocate files Vakalatnama on behalf of respondent No.1, which is taken on record.
2. These proceedings arise from the concurrent findings / orders passed in a suit for specific performance whereby the plaint was rejected under Order VII Rule 11 CPC by the learned trial Court and such order was maintained by the learned appellate Court.
3. Learned counsels for respondents No.1, 3 and 4 while arguing the case vehemently supported the order of the learned trial Court relying upon the contents of the agreement and the plaint. It is contended on part of learned counsel for respondent No.1 that according to the contents of the plaint, the same having not shown any cause of action was rightly dismissed by the learned trial Court and that the learned appellate Court having provided the required room, which was otherwise not available, as para-12 of the agreement in question provided the penal clause which requires that no amount is liable to be paid, as such the applicant has been dragging unnecessarily the said respondents after entering into the said agreement without any mistake on his part and without payment of the balance amount in the matter. In support of his submission, learned counsel for respondent No.1 relied upon the cases of **Gulshan Hamid v. Abdul Rehman (2010 SCMR 334)** and **Anwar Sajid v. Abdul Rashid Khan (2011 SCMR 958)**. Learned counsel for respondents No.3 and 4 states that the said respondents are only witness to the agreement and do not have any personal liability. He however supports the impugned orders.

4. Having heard the learned counsels for the respondents, the learned counsel for the applicant was heard on the earlier date, and having gone through the record, it is observed that the learned trial Court has passed the impugned order dismissing the plaint without determining the liability and as such the room given by the learned appellate Court comes in conflict with the provision of Order II Rule 2 CPC. It may be observed that at times plaints are not properly filed which cause unavailable orders resulting there-from, however, the power of calling for further particulars is always available to the Courts and as such learned Courts are required to exercise the same in order to bring out the actual dispute between the parties and in this regard the available provisions of Code of Civil Procedure are to be exercised directing the parties to do the needful, where however, such directions are not complied with the plaint is ultimately liable to be dismissed. In this case, unfortunately it is found that the learned trial Court as well as learned appellate Court has not determined the rights and liabilities of the parties. In the present circumstances, it has not been considered that the rights and liabilities were present against the amount said to have been paid. In present circumstances, where it is found that the learned trial Court as well as the appellate Court has not addressed the dispute present between the parties, this matter is remanded to the trial Court. However, since the matter pertains to specific performance, it is observed that the applicant can only acquire right of specific performance alongwith a restraint in this regard only after deposit of the balance amount / value thereof no benefit being available to either party on account of pendency of proceedings. Learned trial Court is also directed to frame proper issue(s) in respect to the rights and obligations of the parties in consideration to the fore-given.

5. The impugned orders are set aside and the matter is remanded to the learned trial Court accordingly.

6. The instant revision stands disposed of.

JUDGE

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