

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

R.A. No.293 of 2012.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA-401 of 2014.
2. For katcha peshi.
3. For hearing of C.M.A-1504 of 2012.

03.11.2017.

Mr. Aghis-u-Salam Tahirzada, Advocate for the applicant.

Mr. Abdul Aziz Memon, Advocate for respondent No.1.

Mr. Nouman Raja Khan, Advocate for respondents No.2 to 10.

Mr. Wali Muhammad Jamari, Assistant A.G.

MAHMOOD A. KHAN, J.- By this revision application, applicant has impugned the judgment dated 05.11.2012, passed by the learned District Judge, Mirpurkhas, in Civil Appeal No.113 of 2010, whereby the said civil appeal filed by the applicant was dismissed and the judgment and decree passed by the learned trial Court were maintained.

2. Learned Counsel for respondent No.1 states that the said respondent was not cross-examined and as such his version has gone un-rebutted. Whereas, the case against the present applicant at the appellate stage was withdrawn, as such, this appeal is not maintainable. He has relied upon the case reported as PLD 1992 Karachi 21 and further contended that the applicant can at best only claim the cost of the proceedings.

3. Learned Counsel for respondents No.2 to 10 also filed an application for transposition from being the respondent to the applicant, adopted the arguments of the learned Counsel for the applicant.

4. Having heard the learned Counsels, wherein it is contended on the part of the applicant that the proceedings were not properly contested by the concerned respondents, however, the purchaser has failed to prove its case before the learned Trial Court as neither the witnesses of the purchase agreement were examined nor the purchaser had shown that he was not a defaulter of electricity in the matter. Learned Counsel has relied upon the

cases reported at (i) 1996 MLD 818 (ii) 2015 MLD 335 (iii) 1994 CLC 513 (iv) 1998 CLC 546 (v) 1992 PLD Karachi 46.

5. It appears from the record that the seller has not resisted the purchaser during the proceedings rather it is the co-owner who have had been leading the resistance in the matter.

6. In the mater the specific performance stands allowed by virtue of the orders of the learned trial Court as well as the learned appellate Court wherein, however, it has not been considered that the proceedings having started in the year 2006 based upon the alleged agreement of the year 2000. On account of the proceedings the matter of right as to specific performance cannot be put to question as no exception to the same has been brought up. However, it cannot be questioned that the price of the properties has increased many folds. It is also bearing from the record that a sum of Rs.100,000/- only was paid and the balance consideration payable was Rs.700,000/-. The seller however, has preferred not to deposit the said amount at the relevant time nor thereafter. It must be observed that a right of specific performance is distinct to price of the subject property and no one can be given a benefit of time spent in the proceedings causing increase of market price. It is also a settled element as determined in numerous authorities of the Honourable Supreme Court of Pakistan that in case of balance consideration not having been deposited specific performance cannot be entertained.

7. In the present case, it has been stated on a query of the Court by the learned counsel for the respondent / purchaser that he is willing to pay the market price. As such it is deemed appropriate that a benefit to the extent of the amount paid should be available to him and for the balance amount value thereof be paid according to the present market value. It is, as such, ordered that the executing Court shall determine market price by way of public auction specially a competition between the seller / owner and the purchaser to match the final bid therein. The purchaser shall be liable not to pay only 1/7th of the said price whereas balance price must be paid by him within a reasonable period of 30 to 90 days failing which, the subject land to be near value of 1/7th

be sold and the amount be given to him wherein he will loose all his rights in respect of the said land or the sellers / owners be willing to pay the said amount. The appeal stands dismissed but with these directions with no orders as to costs in the circumstances.

JUDGE

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