

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

R.A. No.192 of 2014.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA-2146 of 2017.
2. For katcha peshi.
3. For hearing of M.A-1397 of 2017..

07.12.2017.

Barrister Taha Rehman Jatui, Advocate for the applicant.

Mr. Parkash Kumar, Advocate for respondent No.2.

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1. These proceedings arise from the conflicting findings delivered by the learned trial Court as well as the learned appellate Court. Initially the suit filed by the applicant for specific performance of contract and permanent injunction was decreed, which judgment made impugned by way of civil appeal, was set aside by the learned appellate Court in favour of the private respondent.

2. Learned counsel for the applicant states that the proceedings for specific performance of contract were allowed by the learned trial Court, however, at the appellate stage the same were dismissed on the ground of limitation. However, it has not been considered that the applicant was holding possession of the subject property and as such the dispute can be limited only to specific performance but the entitlement of possession against sale consideration was never considered. It is further contended on part of the learned counsel for the applicant that the seller had failed to agitate the sale in the matter. Learned counsel for respondent No.2 however, states that the seller had objected the matter of limitation before the learned trial Court by filing application under Order VII Rule 11 CPC. It is further contended on part of learned counsel for respondent No.2 that the sale agreement was executed on 14.01.2005 specifying payment of balance amount of Rs.600,000/- on or before 10.04.2006; whereafter, the applicant himself published public notice dated 21.05.2006 acknowledging non-performance. The matter was finally called for specific performance by filing the suit in the month of August, 2010. Learned counsel for the applicant during the course of the arguments stated that the balance amount was got deposited before the learned trial Court

during the proceedings. Learned counsel for the applicant after arguing finally agreed to the allowance of this revision application subject to payment of the difference of balance consideration alongwith enhanced amount at the market rate for the period when the same was agreed to be paid till the date it was deposited before the learned trial Court, which should have been in accordance with law as default in payment of balance amount was controversial and the applicant was duty bound to pay the said amount on the date agreed to be paid and as such having failed to deposit the balance amount on the date agreed has defaulted in the payment of the said amount on his part, irrespective according to the right being in possession the applicant is duty bound to pay the amount according to the market rate as the difference acquired does not entitle him to keep the benefit with himself whereas he has failed to pocket out the same on the date agreed. The applicant shall pay the said amount within a period of 30 (thirty) days from the date of ascertainment made by the learned executing Court.

3. Revision application stands disposed of.

JUDGE

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