

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Suit No.1546 of 2016

Plaintiff	through Mr. Mayhar Kazi, advocate.
Defendant No.1	through Mr. Mushtaque A. Memon, advocate
Date of hearing	19.12.2017.

ORDER

YOUSUF ALI SAYEED J: The instant Suit has been filed seeking Specific Performance of a Sale Agreement executed between the Plaintiff and the Defendant No.1.

2. On 13.03.2017, pursuant to a statement of the Defendant No.1 that he was ready to transfer the property in question, subject to payment of balance sale consideration, seven days' time was granted to the Plaintiff to deposit the same with the Nazir of this Court. Thereafter, on 27.03.2017, an order was made to the effect that subject to the realization of the amount by the Nazir, the property in question was to be transferred in favour of the Plaintiff.
3. However, it appears that the Defendant No.1 subsequently raised a plea that the original title documents of the property had been snatched away from him, in respect of which a complaint was filed before the concerned Police Station and a public notice as to the loss was published in the Daily Newspapers.

4. It is in this context the instant application (CMA NO.6239/2017) has been filed, seeking compensation under Section 19 of the Specific Relief Act, 1877, on account of alleged diminution in the value of the property due to the loss of documents following an ascertainment of such diminution, and retention of the amount deposited pending such determination.

5. Learned counsel for the Plaintiff submitted that the loss of documents is a willful act on the part of the Defendant No.1 so as to frustrate the orders of this Court of 13.03.2017 and 27.03.2017, and refers to the report dated 24.07.2017 submitted by the Nazir of this Court in compliance of the subsequent order dated 20.06.2017 made on the instant application whereby the Nazir was directed to consult three local property agents and seek information as to the financial impact of loss of property documents of an immovable property situated in DHA. He points out in said report. The Nazir submits that the diminution in value is between 25% to 30% and in view of such findings, appropriate order may be passed as to adjustment by way of compensation. He further submits that this Court had undertaken such exercise of valuation for the specific purpose of determining the quantum of loss and the report of the Nazir is clear and unequivocal and ought to be given effect.

6. Conversely, learned counsel for Defendant No.1 referred to the Objections filed in respect of the Nazir's report and submitted that the same cannot be regarded as conclusive. Per learned counsel, the opinions of Estate Agents are merely speculative. He further submitted that as far as the property situated in DHA is concerned, due to the manner in which the records are maintained, loss of documents does not diminish the value. He contended that the loss of documents was not by design and the Plaintiff was not entitled to any damage or compensation.

7. Having perused the order dated 20.07.2017 and considered the submissions made by the learned counsel for the Parties, I am of the view that such exercise as undertaken by the Nazir, was specifically intended to be without prejudice to the rights of the parties, and cannot, at this stage, be regarded as conclusive of the factum of loss for the purpose of any authoritative determination as to diminution in value being made in that regard. Under the changed circumstances following the order of 13.03.2017 and 27.03.2017, to my mind such question can only be properly answered following the settlement of issues and evidence.

8. Thus, should the Plaintiff choose to pursue his claim, the question of specific performance of agreement as well as the implication of Section 19 of the Specific Relief Act, 1877 may be taken up at the final stage. The amount lying deposited by the Plaintiff with the Nazir may be retained pending such determination.

9. CMA NO.6239/2017 stands dismissed in the above terms.

JUDGE

MUBASHIR