

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO. 551 of 2019

Plaintiff : Aqeel Karim Dedhi

Defendants : Suroor Investments Ltd. and others.

APPEARANCE:

M/s. Arshad Tayabaly & WaqarAlam, advocates for the plaintiff.

Mr. Wasiq Hussain Malik, advocate for defendant No.2.

Mr. Ali Almani, advocate for defendant No.3.

Date of hearing : 09.12.2021 and 10.12.2021.

Date of order : 13.12.2021

ORDER

SALAHUDDIN PANHWAR, J.- By the dint of this order, I decide injunction application (CMA No.4612/2019), filed by the plaintiff wherein praying therein that:

“For reasons disclosed in the accompanying affidavit and the facts stated in the plaint, it is respectfully prayed on behalf of the Plaintiff above-named that this Hon'ble Court may be pleased to restrain the Defendants, their agents, employees, servants or any other person acting through or under them from transferring and/or creating any third party interest in respect of the assets of the Defendant No.3 and/or further restrain the Defendant No.2, his agents, employees, servants or any other person acting through or under him from alienating, transferring and/or creating any third party interest in respect of the shareholding of the Defendant No.3 held by him, pending final disposal of the main suit.”

2. Precisely relevant facts, as set out in the plaint, are that the defendant No.1 being an offshore company is managed and controlled by the defendant No.2 as evident from the structure chart for the defendant No.1; that in the month of April-May of 2011, the defendant No.2 approached the plaintiff with a request for financial assistance to the tune of PKR 856,457,130/- in

order to subscribe the sponsors' portion for Defendant No.1 for the right shares of Summit Bank Limited; that it is further substantiated by the letter dated 27.06.2015 sent by the Defendant No.2 to the Governor, State Bank of Pakistan; that the Defendant No.2 informed the Plaintiff that the Defendant No.1 is a sponsor shareholder of Summit Bank Limited and needs immediate funds to subscribe to the right shares of the same since due to some unforeseen circumstances he cannot make the same available in time for the payment due; that in view of such circumstances, the Plaintiff agreed to provide a loan to the Defendant No.1 and 2 to the tune of **PKR 856,457,130/- (Pak Rupees Eight Hundred Fifty Six Million Four Hundred Fifty Seven Thousand One Hundred and Thirty Only) ("Loan Amount)** subject to certain terms, conditions, representation and warranties, which were made part of the loan agreement dated 03.05.2011 ("Loan Agreement") signed between the Plaintiff and the Defendant No.1; that said Loan Agreement was signed by the Defendant No.2 on behalf of the Defendant No.1; that Defendant No. 2 on behalf of the Defendant No.1 undertook to repay the Loan Amount by 31.05.2017 and assured the Plaintiff of timely repayment of the Loan Amount along with interest at the rate of 6 month BID KIBOR per annum; that in view of the said Loan Agreement and the representations and warranties given by the Defendant No.2, the Plaintiff deposited a cheque dated 31.05.2011, bearing No. 6224986 in favour of Summit Bank Limited Rights Subscription Account for an amount equivalent to the Loan Amount on behalf of the Defendant No.1 as requested; that in view of the Loan Agreement between the parties, the Defendant No.1 and 2 were liable to return the Loan Amount to the Plaintiff latest by 31.05.2017 for which the Plaintiff made repeated verbal requests and reminders to Defendant No.1 and 2 in the year 2017. It is further averred in the plaint that after repeated requests, when the Defendant No.2 realized that the same will not be in a position to repay the Loan Amount to the Plaintiff on time as committed, the Defendant No.2 approached the Plaintiff again and offered to partly settle the money owed to the Plaintiff by offering to sell 45% of the shareholding of the Defendant No.3 to the Plaintiff or one of the companies in its group; that particular offer was made vide a letter dated 04.05.2017 and was subsequently accepted by the Plaintiff by signing the same letter and returning it to the Defendant No.2 making it a valid contract ("**Share Transfer Agreement**"); that since the Defendant No.2 was

unable to repay the Loan Amount to the Plaintiff, he agreed to sell 45% shareholding of the Defendant No.3 to the Plaintiff which he valued at PKR 2 Billion; that the amount owed by the Defendant No.1 and 2 to the Plaintiff was the Loan Amount plus interest making the total outstanding amount being PKR 1,621,278,075/- (including markup of PKR 764,820,945/- till 31st January 2019); that the abovementioned offer was made to the Plaintiff since the Defendant No.2 is the Director and majority shareholder of the Defendant No.3 while being the sole shareholder of the Defendant No.1; that despite the Loan Agreement, several verbal requests by the Plaintiff, assurances by the Defendant No.2 to fulfill his commitment and subsequently the Share Transfer Agreement agreeing to transfer 45% shares of the Defendant No.3 to the Plaintiff, the Defendant No.2 is unlawfully and in breach of its agreement failed on its obligation to transfer the shares of the Defendant No.3 to the Plaintiff or repay the Loan Amount (and the mark-up) to the same and continues failing to do so; that even after 04.05.2017 when the share transfer was offered and accepted in lieu of the Loan Amount, the Plaintiff has reminded the Defendant No.2 of its obligations on several occasions including vide a letter dated 8 March, 2019 but to no avail, hence the plaintiff has preferred the instant suit. The plaintiff in the plaint has further depicted that cause of action accrued firstly when the Loan Amount deposited on 31.05.2011, then on 03.06.2011 when the Loan Agreement was signed, then on each and every date when the Plaintiff was assured of the repayment, then on 04.05.2017 when the Share Transfer Agreement was signed, then on 08.03.2019 when the letter was sent and then on each and every date the Plaintiff asked for performance of the Share Transfer Agreement and the Defendant No.2 assured to perform the same and/or repay the Loan Amount along with interest and the same continues to arise from day to day till filing of this Suit. Therefore, the plaintiff prayed as under:

PRAYER

- (i) Direct the Defendants No.1 and 2 to specifically perform the Share Transfer Agreement dated 04.05.2017 and transfer the 45% shares of the Defendant No.3 in the name of the Plaintiff as agreed; or in the alternate;
- (ii) Direct the Defendant No. 1 and 2 to repay the Loan Amount of PKR 1,621,278,075/- (including markup of PKR 764,820,945 till 31st January 2019) to the Plaintiff

along with further markup from 31 January 2019 until realization; and

- (iii) Grant Permanent Injunction restraining the Defendants, their agents, employees, servants or any other person acting through or under them from transferring and/or creating any third party interest in respect of the assets of the Defendant No.3 including any ongoing development/construction project undertaken by the Defendant No.3;
- (iv) Grant Permanent Injunction restraining the Defendants and more specifically the Defendant No.2, his agents, employees, servants or any other person acting through or under him from alienating, transferring and/or creating any third party interest in respect of the shareholding of the Defendant No.3 held by him;
- (v) Grant Permanent Injunction restraining the Defendant No.6, its agents, employees, servants or any other person acting through or under it from allowing the Defendants No. 1 to 3 from repatriating any amounts from Pakistan to any other country;
- (vi) Any other relief / reliefs which may be deemed fit and proper in the circumstances of the case may also be granted to the Plaintiff.

3. After issuance of summons, the defendant No.2 has filed written statement contending therein that the documents annexed and relied upon by plaintiff were neither readable nor admissible in accordance with law or irrelevant or maliciously designed; that the letter attached by Plaintiff at annexure B/1 is unreadable, unlawful and inadmissible under the law to produce before any court under SBP Act; that the document annexed at annexure B are also unreadable and inadmissible having no lawful status for the purpose of producing same before court hence suit is liable to be dismissed.

4. Defendant No.3 has also filed written statement wherein, preliminary objections were raised to the effect that no declaratory relief or injunction can be granted against Defendant No.3 in this Suit because there is no relationship between him and Plaintiff which entitles the latter to claim a relief in respect of any legal character, right or obligation; hence suit is beyond the scope of the Specific Relief Act, 1877 ("1877 Act"); that Plaintiff has filed this suit on the basis of (i) cheque dated 31.05.2011 for an amount of

PKR 856,457,130 by Aqeel K Dedhi Securities (Pvt.) Ltd in favour of "Summit Bank Ltd Right Share Account and (ii) loan agreement dated 3.06.2011 between Plaintiff and Defendant No. 1; however, defendant No.3 is not party to any of the foregoing documents and there is no privity of contract between him and Plaintiff, hence no cause of action has, therefore, accrued in favour of Plaintiff against Defendant No.3. It is further stated by the defendant No.3 in the written statement that Plaintiff has sought relief against him allegedly on the basis that Defendant No. 2 allegedly offered to sell his shares in Defendant No.3 to settle his outstanding liabilities towards Plaintiff, however, it is settled law that (i) a company is a separate legal entity; and (ii) any assets/liabilities of a company are distinct to those of its shareholders, therefore, Plaintiff cannot lay a claim over or seek injunctive relief in respect of the assets of Defendant No.3 whilst having a dispute with Defendant No.3's shareholder(s); that Plaintiff has relied on the financial statement from the year 2010-2011, which has no nexus with the issue(s) in the present Suit; that there is also mis-joinder and non-joinder of parties as the Plaintiff has failed to implead the proper and necessary parties i.e. (i) Aqeel K. Dhedi Securities (Pvt.) Ltd; and (ii) Summit Bank Limited because the funds for the alleged Loan Agreement were drawn on account of Aqeel K. Dhedi Securities (Pvt.) Ltd in favour of Summit Bank Limited's rights issue account. It is further stated that in the written statement that Defendant No.3 is a separate legal entity and is not involved in any alleged transaction between Plaintiff, Defendant No.1 and Defendant No.2 and thus has no knowledge of the same. It is, however, worth mentioning that:

- (i) The alleged Loan Agreement has allegedly been executed between Plaintiff and Defendant No.1 and not Defendant No.3;
- (ii) There is no mention of Defendant No.2 in the Loan Agreement, let alone Defendant No.3;
- (iii) The alleged Loan Agreement has been executed on 3.06.2011, yet the funds were deposited earlier on 31.05.2011;
- (iv) It is odd (if not suspicious) for a businessman of Plaintiff's alleged repute to provide funds first and then execute an agreement for the return of the funds;
- (v) The funds were not paid by Plaintiff, but by another legal entity- Aqeel K. Dhedi Securititas (Pvt) Ltd. That entity, however, is not a party to this Suit; and

- (vi) Since these funds were allegedly used to subscribe to shares of Summit Bank Limited, Plaintiff claim at best can be against Defendant No.1 and ultimately for the shares of Summit Bank Limited.

5. It is further submitted that letter dated 4.05.2017 clearly shows that it is not related to any alleged loan agreement between Plaintiff, Defendant No.1 and Defendant No. 2 and this letter of intent was nothing more than an offer made by Defendant No. 2 to AKD Group/Zarwahi Developments jointly for the furtherance of Defendant No. 3. It is not even addressed to Plaintiff; that Plaintiff has tried to dress this letter up as a "Share Transfer Agreement". Calling a document by a different name does not change its substance (or in this case, its form). Even otherwise, the offer was subject to two conditions - (i) approval by DHA; and (ii) the offer had to be accepted within sixty days. Since the second condition was never fulfilled (i.e. acceptance of the offer), the question of fulfilling the first condition (i.e. obtaining approval from DHA) did not arise. The offer never having been accepted, lapsed. No legally binding "Sale Purchase Agreement" between Plaintiff and Defendant No. 2 ever came into force; that signature of Plaintiff on the bottom of the letter has clearly been forged only for the purposes of this Suit (i.e. put on the document after the fact and for the sole purpose of filing this suit); further the signature itself does not indicate acceptance of the offer and at best it would indicate receipt of the offer. It is also clear that said letter (with Plaintiff's alleged signature on 18.05.2017) was never sent by Defendant No. 2 nor was the same copied to Defendant No.3 (had it been otherwise, Plaintiff would no doubt have attached proof); that the alleged loan and Loan Agreement have no concern with Defendant No.3, even on Plaintiff's own documents (as produced with the Memo of Plaintiff), there is no relation or connection between the shares of Defendant No.3 and loan or other arrangement between Plaintiff and Defendants No.1 and 2. Defendants No. 1 & 2 and Defendant No. 3 are separate legal entities; that a company and its assets are not owned by its shareholders. A common shareholding between two companies does not make one company responsible for the liabilities or obligations of the other; that Defendant No. 2 is a Director and shareholder of Defendant No.3. Defendant No. 2, however, is not the Chief Executive Officer of Defendant No.3 and is, therefore, not involved in its day-to-day administration and Operation; that the offer was purely made for the furtherance of Defendant

No.3 and it was not related to any repayment of loan or any alleged transaction between Defendant No.2 and Plaintiff; that Plaintiff accessed Form-A and financial statements of Defendant No.3; that Plaintiff is, without any documentary or other evidence, seeking to link two entirely separate and distinct transactions and effectively making an effort to extort money and blackmail Defendant No.3; that the alleged Loan Agreement is between Plaintiff and Defendant No. 1 and has no concern with Defendant No.3, who being a separate legal entity has no knowledge of any alleged correspondence or transaction between Defendant No.1 and Plaintiff; that letter of intent dated 4.05.2017 was not related to any loan agreement between Plaintiff and Defendant No. 1 and the offer was only made to ensure investment in Defendant No.3; that since the terms of the offer were never fulfilled, Plaintiff could not have accepted the offer and, therefore, this letter cannot be considered a "Sale Purchase Agreement" and further the signature on the letter is forged purely for the purpose of this Suit so as to deceive this Court; that there is no agreement between Plaintiff and Defendant No. 2 or Defendant No.3 that can be enforced, even if there were such an agreement (which is denied), it has no relation to the alleged loan agreement between Plaintiff and Defendant No. 1; that Plaintiff has failed to bring on record any document that shows it has suffered considerable damages due to, inter alia, transfer of Defendant No.2's shares in Defendant No.3; that no cause of action has accrued in favour of Plaintiff, therefore the instant suit is liable to be dismissed with costs.

6. I have carefully heard the arguments of respective sides and have also gone through the available record with able assistance of respective parties.

7. Through CMA No.4612/2019, filed by the plaintiff through which he seeks :-

“For reasons disclosed in the accompanying affidavit and the facts stated in the plaint, it is respectfully prayed on behalf of the Plaintiff above-named that this Hon'ble Court may be pleased to restrain the Defendants, their agents, employees, servants or any other person acting through or under them from transferring and/or creating any third party interest in respect of the assets of the Defendant No.3 and/or further restrain the Defendant No.2, his agents, employees, servants or any other person acting through or under him from alienating, transferring and/or creating any third party interest in respect

of the shareholding of the Defendant No.3 held by him, pending final disposal of the main suit.”

8. *Prima facie*, it is quite evident that an ‘injunction’ (interim restraining order) is being sought in respect of assets and shareholding of the defendant no.3 but surprisingly the defendant no.3 has not been a party to any of the document(s), allegedly, executed by the plaintiff i.e:-

“loan agreement dated 03.05.2011 ("Loan Agreement") signed between the Plaintiff and the Defendant No.1; that said Loan Agreement was signed by the Defendant No.2 on behalf of the Defendant No.1;

letter dated 04.5.2017, if any, made by the Defendant No.2 to partly settle the money owed to the Plaintiff by offering to sell 45% of the shareholding of the Defendant No.3 to the Plaintiff or one of the companies in its group which subsequently accepted by the Plaintiff by signing the same letter and returning it to the Defendant No.2, claiming same as (“Share Transfer Agreement”)”

9. Without prejudice to what is claimed by defendant No.2 regarding legality of ‘loan agreement’, the perusal of such document, *prima facie*, shows that it was between plaintiff (lender) and Suroor Investments Ltd. (borrower) and consequences thereof were / are legally confined to ‘parties’ to agreement alone and same can’t be used / exploited to bind third person. This document includes payment to ‘lender’ by the ‘borrower’ as is evident from clause-6 thereof which reads as:-

“6. That the Borrower shall make all payment under this Agreement including but not limited to the Loan Amount plus markup to the Lender in Karachi through pay order/ bank draft in the name of the Lender or His Nominees.”

10. A careful perusal of the above document, *prima facie*, leaves nothing ambiguous that it was an independent document between two i.e. **Aqeel Karim Dedhi Resident of 83 Khayaban-e-Hafiz, D.H.A. Phase 6, Karachi (“AKD or “Lender) And SUROOR INVESTMENTS LIMITED**, a limited company incorporated under the laws of Mauritius (“Borrower”) which expression shall whenever the context permits, mean and include its Administrators, successors-in-interest and assigns).

11. One can't take an exception to legal position that for grant of an 'injunction' it was / is obligatory upon the plaintiff to establish co-existence of all required three ingredients i.e 'prima facie case; balance of convenience and irreparable loss'. The relief (s), sought by the plaintiff, includes:-

ii) Direct the Defendant No. 1 and 2 to repay the Loan Amount of PKR 1,621,278,075/- (including markup of PKR 764,820,945 till 31st January 2019) to the Plaintiff along with further markup from 31 January 2019 until realization; and

Inclusion of such relief, prima facie, suggests that plaintiff still sticking with recovery of loan amount from none but the 'defendant Nos.1 & 2' hence appears to be in doubt about legality of the 'share transfer contract' else would not have sought such relief. The above position allows me to add that the plaintiff can't legally plead the plea of prima facie case; balance of convenience and irreparable loss even if his injunction against assets and shareholding of the Defendant No.1 fails because in case of success for alternative relief the rights and liabilities shall be protected / secured. Guidance is taken from the case of Puri Terminal Ltd. V. Govt. of Pakistan & Ors 2004 SCMR 1092 wherein it is observed as:-

"21. No doubt an injunction is a form of equitable relief and is to be issued in aid of equity and justice but not to add injustice. For grant of such relief, it is mandatory to establish that in order to obtain an interim injunction, the applicant has not only to establish that he has a prima facie case, but he has also to show that the balance of convenience is on his side and that he would suffer irreparable injury / loss unless he is protected during the pendency of suit. It is pertinent to note that the petitioner irrespective of seeking declaration, permanent injunction, compensation also claimed damages as an alternative relief. By claiming damages as an alternative relief, the petitioner seemed to be not confident about the grant of other relief. Section 56 of the specific Relief Act stipulates that an injunction cannot be granted in the cases where an interference is sought in the functions of public duties of any department of the Federal Government or any Provincial Government or department of the Federal Government or any Provincial government or with the sovereign acts of a foreign government. Though it was a service matter yet this Court in the case of Province of West Pakistan through the Deputy

Commissioner ,Hyderabad and another v. Malik Asghar Khan 1971 SCMR 569 held that issuance of temporary injunction against the Government departments in respect of service matters is bound to disturb their wrong and they should not ordinarily be issued unless there are compelling reasons to do so because balance of convenience ordinary would not lie in disturbing the administrative arrangements of a department. On the question of any irreparable injury it has also been observed that respondent on refusal of temporary injunction can claim a monetary compensation in case he succeeds in the suit. To further fortify , it would be relevant to refer the case of Ghulam Nabi and others vs. Seth Muhammad Yaqob and others PLD 1983 SC 344 wherein this Court has observed that in view of provisions of section 56(i) no injunction should be granted when equally efficacious relief can certainly be obtained by any usual mode of proceedings. Since the petitioner has claimed compensation / damages as an alternative relief in the suit, as such the above principle is fully attracted in the instant case.”

12. Without prejudice to above, now let’s take a look at other document, claimed by plaintiff, as **‘share transfer agreement’** (available at page-47) which reads as:-

“M/s.
AKD - GROUP/ZARWAHI DEVELOPMENTS
PAKISTAN

Subject: Letter of Intent

Dear sir

Reference to the above subject matter and our earlier conversation; we would like to inform you that we, as the shareholder of the Company Global Haly Development Private Limited owning 100% of the Company’s capital, have the intention to sell 45% of the Company’s capital to AKD - GROUP/ZARWAHI DEVELOPMENTS, subject to approval from DHA for an amount of PKR 1 Billion + 1 Billion (Premium). One Billion PKR to be paid upon DHA approval and balance amount to be paid from project income (The Company revenue).

Should you accept this offer, then we will carry on the transfer and sell as per the agreed terms and conditions.

The intent of this letter is to serve as description of interest to invest in Global Haly Development Private Limited Company and is valid for 60 days only.

We look forward to receiving your reply in this regard during the above-mentioned Validation Period.

Yours sincerely,

Sd/-

H.E. NASSER LOOTAH

Sd/-

AQEEL KARIM DHEDI

The above letter of intent, *prima facie*, was subject to 'acceptance of offer' which, too, by sending such reply within validation period. The plaintiff, nowhere, has claimed to reply within validation period but claiming to have accepted by making signature on the same letter and retaining the same with him without any claim of having returned / sent within validation period. Here, it is also worth adding that this letter was never addressed to the plaintiff but 'M/s..... AKD - GROUP/ZARWAHI DEVELOPMENTS PAKISTAN' which is not the plaintiff in the instant suit though relief with reference to such document is being sought which, I shall add, can't be sought by the present plaintiff but 'M/s..... AKD - GROUP/ZARWAHI DEVELOPMENTS PAKISTAN'. Be that as it may, to constitute a valid and binding agreement there must not only be offer but acceptance thereof against some consideration. In the case of Dr.Azeem Shad v. Municipal Committee, Mulan PLD 1968 Lahore 1419 it is observed as:-

"The general rule relating to offer and acceptance has always been understood to be that there can be an acceptance of an offer by the communication of the assent of the person to whom the offer is made or by his doing some act which he is required by the terms of the offer to do. Under section 3 of the Contract Act, the communication of proposals and the acceptance of proposal "are to be deemed by any act or omission of the party" proposing and accepting "by which he intends to communicate such proposal" and acceptance. Our attention has not been drawn to any act or omission of the acceptance to the plaintiff. A mere acceptance without, communicating the same cannot be binding..."

13. I am conscious of the law, relied upon by the plaintiff i.e **Muhammad Sattar & Ors v. Tariq Javed & Ors 2017 SCMR 98**, but same is not applicable for disposal of the injunction application because in that case itself it is observed as:-

"20. Thus, it appears that the proposition of law that an Agreement to Sell not signed by one of the parties if proved to have been accepted and acted upon would be a valid Agreement to Sell, is a valid contract enforceable in law in fact been reiterated."

21. In view of the above, it is evident that the proposition that where an Agreement to Sell pertaining to immovable property is not signed one of the parties thereto, in each and every eventuality, is invalid and not specifically enforceable is

fallacious and contrary to the law. The existence and validity of the Agreement and it being specifically enforceable or otherwise would depend upon the proof of its existence validity and enforceability in accordance with the Qanun-e-Shahadat Order, 1984, the relevant provisions of the Contract Act, 1987, the Specific Relief Act, 1877 and any other law applicable thereto.

14. *Prima facie*, the law itself makes it clear that existence and validity of such agreement would depend upon the proof of its existence, validity and enforceability thereof which, I may safely add, can't help in seeking an injunction because proof and prima facie case both have different meanings. Thus, such plea, at the most, can help in maintaining suit on such plea but for constituting a prima facie case and balance of convenience the requirements are entirely different because grant or refusal of an injunction normally does not prejudice merits of the case. Thus, legality and validity of such document also requires proof which requires evidence and proof by the plaintiff that there is a valid and binding contract which, too, would bind the defendant no.2 alone to transfer the shares with an alternative option to pay back the amount, mentioned in loan agreement, as has been prayed by the plaintiff himself.

15. Be that as it may, it is never the claim of the plaintiff that the Defendant No.3 ever came into direct contact with him for any transaction but the allegedly claimed '**share transfer agreement**' too is by Defendant No.1 wherein he claimed to be owning 100% share and capable to transfer 43% percent of shares of Defendant No.3 but such claim and competence of the Defendant No.2 has seriously been denied by the Defendant No.3 though status of the Defendant No.2 to be 'director' and 'share holder' is not denied by Defendant No.3. Such offer alone, I would add, would not be sufficient to establish competence of the Defendant No.2 to such an extent it is not the claim of the plaintiff that the company of the Defendant No.3 is run and controlled by the Defendant No.2 else he (plaintiff) would not have sued the Defendant No.3 separately nor would have sought alternative relief.

16. I would further add that it shall never be the words and claims of one but legal documents, showing his competency and legal

character so as to enter into any legal transaction. Such liability squarely remains upon the Vendee, as held in a case reported as **PLD 2011 Pesh. 228** that:-

“----Vendee must inquire into title of his vendor right from point A to point Z- Entire chain of ownership of vendor must be probed into to see that there was no missing link in chain nor same was clouded by suspicious and doubtful circumstances.”

This has never been the claim of the Plaintiff that the Defendant No.2 was / is competent for such relief, therefore, he (plaintiff) has arrayed the Defendant No.3 in the suit which, too, without seeking any 'main declaratory relief'. This, prima facie, suggests that rights and interests of the Defendant No.3 have been dragged without seeking any direct relief against the Defendant No.3 but both 'main relief(s) of declaration are against Defendant No.1 and 2. Such approach, I must add, is not appropriate rather is a defect.

17. There is another interesting aspect that though the plaintiff claims the second document in continuity or first document but by keeping relief with reference to first document alive the plaintiff himself hurts the relief, being sought with reference to second document. Here, it would be conducive to refer the case of **Haji Baz Muhammad Khan & another v. Noor Ali & another 2018 SCMR 1586** wherein it is held as:-

“2. In such circumstances, the respondent No.1 could not have sought specific performance of the oral agreement that stood novated on terms reflected in the arbitrators' award signed and acknowledged by both the parties. Once a party novates a contract then enforcement of the earlier agreement cannot be sought in terms of section 62 of the Contract Act unless it is expressly stipulated in the fresh agreement that his rights in the original agreement will not be prejudiced. Thus the oral agreement to sell came to an end and in consequence thereof the respondent no.1 was only entitled to receive Rs.1,400,000/- and handover the possession of the shop to respondent no.2. Thus the suit for specific performance was not maintainable.

18. The above discussion and perusal of the record, *prima facie*, shows that the plaintiff has failed to establish co-existence of all three required ingredients in his favour rather his own pleading goes to

show that he (plaintiff) has kept his rights and interest protected and alive by seeking alternative relief with reference to '**loan agreement**' which is an independent agreement whereby the Defendant No.1 / 2 is liable to return the loan amount. Such failure of the plaintiff was / is sufficient to hold the instant CMA as not tenable, hence the same is hereby dismissed.

J U D G E

SAJID