

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1928 of 2016

Date Order with Signature of Judge

Present: **Mr. Justice Nazar Akbar**

Plaintiff : Mr. Mehtab Tahir Niazi
through Mr. Asim Iqbal, Advocate.

Versus

Defendant No.1 : M/s Al-Qasmia Properties.
Defendant No.2 : Mr. Haji Adam Khan Jokhio
Defendant No.3 : Mr. Lal Muhammad Jokhio
through Mr. Muhammad Shafi Rajput,
Advocate.

Defendant No.4 : Registrar/Sub-Registrar, District Malir.

Date of hearing : **20.05.2021**

Date of Decision : **04.08.2021**

JUDGMENT

NAZAR AKBAR, J. The Plaintiff has filed this suit on **29.08.2016** against the Defendants for Declaration, Specific Performance, Injunction and Damages. The plaintiff on **31.08.2016** has obtained an interim order restraining the defendants from creating third party interest in the suit property. Defendant No.2 has filed written statement on **03.02.2017**. The Additional Registrar took 5 years to debar defendants No.1 and 3 from filing written statement on **08.03.2021** and orders to proceed exparte against defendant No.4 (Registrar/Sub-Registrar) was passed on **01.02.2021**, though this defendant being an official has been served on **17.11.2016**.

2. On **22.03.2021** when this suit was listed for examination of parties/settlement of issues. Learned counsel for the plaintiff has refused to file proposed issues while insisting to repeat order of this court dated **22.10.2019** on his application under Section **151 CPC**

to decree the remaining suit in respect of another **bungalow No.B-64**. The perusal of orders dated **22.10.2019** shows that this court on his application under **Section 151 CPC** (CMA No.16879/2017) has not only partially decreed the suit for specific performance of contract dated **10.04.2010** but has also been pleased to put the plaintiff through the Nazir of this court in possession of **bungalow No.B-63** without examination of parties and framing of issues. I was stunned the plaintiff was insisting for a discretionary relief merely because he has deposited monthly installments of sale consideration in court without showing the circumstances through positive evidence to justify such an order as a reward for depositing sale consideration in Court. The order dated **31.08.2016** whereby the plaintiff was allowed to deposit sale consideration in court was not to the effect that once the sale consideration is deposited in court his suit shall stand decreed. In my humble view mere deposit of sale consideration in installments in court is not enough to decree a suit for specific performance of contract of sale of immovable property on the basis of report of Nazir. In my humble view such an order will be against the law laid down by the Hon'ble Supreme Court in number of authoritative judgments that the decree of specific performance of an agreement cannot be claimed by the plaintiff as a matter of right, if any authority is required, one may refer to a latest judgment of the Hon'ble Supreme Court in the case of Muhammad Riaz Hussain vs. Zahoor Ul Hassan (**2021 SCMR 431**). Relevant observations of Hon'ble Supreme Court are reproduced below:-

..... In our considered view, it is by now well-established that the remedy of specific performance is discretionary and cannot be claimed as of right by a party [ref: Mrs. Zaika Hussain v. Syed Farooq Hussain (PLD 2020 SC 401) at para 17]. Such a nature of specific performance has also been reiterated in section 22 of the Specific Relief Act, 1877 ("the Act"):

"22. Discretion as to decreeing specific performance. The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal." (emphasis supplied)

It may be noticed from the above quoted provision that the grant of specific performance is not mandatory and can be refused by a court where the circumstances so require. Reliance is also placed on the judgment of this court in the case of Liaqat Khan v. Falak Sher (PLD 2014 SC 506):

"18: A plain reading of above reproduced statutory provision [section 22] leads to a definite conclusion that the relief of specific performance claimed by respondents Nos.1 to 4 in their suit is, purely discretionary in nature and the court is not bound to grant such relief merely as it is lawful to do so. At the same time, the discretion to be exercised by the court shall not be arbitrary, but it should be based on sound and reasonable analysis of the relevant facts of each case, guided by judicial principles and capable of correction by a court of appeal.....

.....
When the above reproduced provision of law [section 22] is read in conjunction with the case-law cited at the Bar by both the learned Senior Advocate Supreme Courts, the things as regards powers of the court in exercising its discretion, become even more clear that there is no two plus two, equal to four formula available with any court of law for this purpose, which can be applied through cut and paste device to all cases of such nature. Conversely, it will be the peculiar facts and circumstances of each case, particularly, the terms of the agreement between the parties, its language, their subsequent conduct and other surrounding circumstances which will enable the court to decide whether the discretion in terms of section 22 (ibid) ought to be exercised in favour of specific performance or not. Besides, some well articulated judgments on the subject, have further broadened the scope of exercise of such discretion of the court by way of awarding reasonable compensation to the parties, keeping in view the other surrounding circumstances, such as rate of inflation, having direct bearing the value of suit property, inordinate delay/passage of time, and change in the circumstances or status of the subject property etc." (emphasis supplied)

5. It therefore becomes **clear from the above cited passage that rather than mechanically granting the relief of specific performance to every party, courts should examine the circumstances of each case to ascertain whether such relief is equitable on the facts.....**

In view of the above law developed by the Hon'ble Supreme Court, I was not inclined to finally grant decree of specific performance of contract of sale on oral request of the learned counsel for the plaintiff merely on the basis of an interim order passed by this court on **22.10.2019** without touching the merits of the case. Even in the said order my brother Mohammad Faisal Kamal Alam, J, has categorically observed that:-

“Both applications [C.M.A Nos.12377 of 2016 and 16879 of 2017] in the above terms stand disposed of. **It is clarified that this Order is tentative in nature and any observation made herein will not influence the trial of this case and final decision.**” (Emphasis provided)

3. Therefore, on **23.03.2021** as the suit was listed for examination of parties and framing of issues, after hearing learned counsel for the plaintiff and going through the record and pleadings of the parties, I passed the following order:-

This suit is listed for settlement of issues. The perusal of plaint shows that the plaintiff has prayed for specific performance of two different agreement of sale of two different dates in respect of two different properties in one suit. First contract is dated **01.4.2010** and second contract is dated **16.02.2013**. The Plaintiff has not filed written terms and conditions of the contracts with the plaint. Only payment receipts and few letters have been annexed with the plaint. The contesting defendant No.2 has filed written statement as far back as on **03.2.2017** and raised several disputes/ allegations about failure of the plaintiff to perform his part of the contract in accordance with the terms and conditions between the parties annexed with it. The plaintiff, as averred by the defendant in his written statement, has stopped payment of installment of sale consideration since **08.08.2012** and the suit for specific performance was filed on **31.08.2016**. Then the plaintiff obtained interim order on deposit of only amount of **Rs.13,20,000/-** on CMA **No.12377/2016**. Thereafter at the plaintiff's request Nazir's reports were called from time to time and today instead of proposing issues, learned counsel for the plaintiff, requested to dispose of the instant suit on the basis of an earlier order dated **22.10.2019**.

With utmost respect to the order dated **22.10.2019**, I am not persuaded to grant a discretionary decree in favour of the plaintiff without examining his conduct in performing his part of the contract and the default on the part of the defendant, if any, without framing issues which include legal issues about maintainability and if required, other factual issues and without recording of the evidence of the parties. The perusal of annexure E-37 and prayer clause-2 shows that the plaintiff is not entitled to claim Plot No.B-64 as per the very letter dated **16.02.2013** (Annexure E-37) on which the plaintiff relies. It is categorically mentioned in the said letter that only half of plot B-64 has been sold to the plaintiff and despite relying on this document the plaintiff instead of seeking specific performance of half of the plot, has prayed for specific performance of contract in respect of entire Plot No.B-64.

In view of the above facts on record, the contention of the counsel for the plaintiff that the suit may be decreed by following the orders dated **22.10.2019** without framing of issues is misconceived. He has refused to file proposed issues despite order of this court dated **15.02.2021**. In my humble view the suit for specific performance cannot be decreed merely on account of certain amounts have been deposited by the Plaintiff with the Nazir of this court after a gap of several years from the date of payment according to contract etc. It is the duty of the court to frame issues when there is contest between the parties. Therefore, following legal and factual issues are framed from the pleading of the parties.

LEGAL ISSUES

- i. Whether the relief for specific performance of contract of an immovable property showing sale consideration of Rs.55,00,000/- can be entertained by the High Court in view of pecuniary jurisdiction?
- ii. Whether the plaintiff's suit to the extent of relief for specific performance of contract below the pecuniary jurisdiction of High Court is liable to be returned to the plaintiff?
- iii. Whether the suit for specific performance of joint immoveable property is possible unless the property is fully identified and bifurcated between the owners, if not what is its effect on contract in respect of property bearing Plot No.B-64?
- iv. Whether the plaintiff can defeat the law of pecuniary jurisdiction in a suit for specific performance of a contract by adding frivolous and un-natural damages to institute a suit before the High Court knowing well that the relief of specific performance of contract on account of value of sale consideration is outside the jurisdiction of High Court and if not, what is its effect?

FACTUAL ISSUES

- i. Whether the plaintiff is guilty of breach of any of the terms and conditions annexed by the defendant alongwith written statement, if yes what is its effect?
- ii. Whether the plaintiff has stopped payment of installments towards sale consideration from August, 2012 till the date of filing of the suit or subsequent date, if yes, what is its effect?
- iii. Whether two agreements of sale in respect of two different properties entered into by the parties on two different dates can be amalgamated in one suit for specific performance on payment of one court fee?
- iv. Whether the plaintiff is not entitled for specific performance of contract of Plot No.B-64 since he has not purchased the entire plot?
- v. What should the decree be?

The court should take up legal issues first. Learned counsel for the parties are directed to first argue the legal issues before leading evidence.

To come up on **05.05.2021**.

4. On **05.05.2021** learned counsel for the plaintiff sought time and the matter was adjourned for **20.05.2021**. Again on **20.05.2021** as learned counsel for the parties were not willing to assist the court, both the learned counsel were directed to file written arguments for compliance of the order dated 22.03.2021 reproduced above. However, none of them has filed written arguments. Mr. Asim Iqbal, Advocate however, has graciously provided photocopies of the following citations as his entire arguments:-

- i. Messrs Habib Bank Limited vs. Mesrs Marvi Laboratories and 8 others (1999 MLD 3456);
- i. Dr. Pir Muhammad Khan vs. Khuda Bukhsh and others (2015 SCMR 1243);
- ii. Zafeer Gul vs. Dr. Riaz Ali and others (2015 SCMR 1691);
- iii. Sardar Muhammad Kazim Ziauddin Durrani and others vs. Sardar Muhammad Asim Fakhuruddin Durrani and others (2001 SCMR 148);
- iv. Tahmina Islam vs. Zahid Rafi (2017 CLC Note 178);

- v. Messrs Imperial Builders through Managing Partner and another vs. Lines (Pvt.) Limited through Chief Executive and 3 others (PLD 2006 Karachi 593);
- vi. Alam Khan and 3 others vs. Pir Ghulam Nabi Shah & Company (1992 SCMR 2375);
- vii. Mst. Kalsoom Bai and another vs. Muhammad Islami and 20 others (1984 MLD 138);
- viii. Saudi-Pak Industrial and Agricultural Investment Company (Pvt.) Limited, Islamabad vs. Mohib Textile Mills Limited Lahore and 3 others (2002 CLD 1170);
- ix. Riaz ur Rehman Qureshi and 14 others vs. Azad Jammu and Kashmir Council through Secretary and 10 others (2019 CLC 1466);
- x. Messrs Dawood Cotton Mills Ltd. vs. Alamgir and 3 others (1983 CLC 2718);
- xi. The Director of Industries and Mineral Development Government of the Punjab through its Director, Lahore and 3 others vs. Messrs Masood Auto Stores through Masood Ahmed Malik, Partner, Lahore (PLD 1991 Lahore 174);
- xii. Messrs Norwich union Fire INS. Society Ltd., Karachi vs. Messrs Zakaria Industries, Karachi (1994 CLC 1280);
- xiii. Pakistan Railways vs. Javed Nasim & Co. (1994 MLD 1992).

LEGAL ISSUES

5. My findings on legal issues are as follows:-
6. None of the case-laws relied upon by the learned counsel for the plaintiff deal with the legal issues (i) to (iv) nor the plaintiff's counsel has even commented on the question of filing a suit for specific performance of a contract of sale of immoveable properties before High court, though agreed sale consideration for the suit property is far less than the value of pecuniary jurisdiction of High Court. He has contended that since he has also claimed damages, therefore, consolidated valuation of the suit is within the pecuniary jurisdiction of this court. I have pointed out to the plaintiff's counsel that the case-laws cited by him are not on the question of jurisdiction of a court for grant of relief of specific performance of a contract. The first case law (**1999 MLD 3456**) referred by the counsel is from the jurisdiction of Banking Court and it does not deal with the issue that

how to compute Court fee for the relief of specific performance for the purpose of determining jurisdiction of court. The jurisdiction of Banking court was determined by the normal value of the amount of loan paid and outstanding and not by adding relief of imaginary damages to the bank for breach of loan agreement by the defendant. The plaintiff cannot take the suit out of pecuniary jurisdiction of a banking court of original/ main claim in the suit for recovery of loan by adding value of damages over and above thirty million to file it in the High Court as the pecuniary jurisdiction of High Court under banking laws to try a banking suit is above the value of thirty million. The case-law reported in **2001 SCMR 148**, too, does not deal with the valuation of a suit of specific performance for determining the jurisdiction of court. The Supreme Court in this case was seized of an appeal arising out of a suit for cancellation of sale deed and even in this citation there is no discussion on the point that by adding value of relief of damages in a suit for the relief of cancellation of a sale deed, the plaintiff can file it in High Court whereas otherwise such suit for cancellation of sale deed is out of pecuniary jurisdiction of High Court on account of the amount of consideration mentioned in the sale deeds. In the case-law reported in **PLD 2006 Kar 593** two different plaintiffs filed a combined suit in respect of two different properties with one Court fee. The learned single Bench of this court by referring to **Section 17** of the Court Fees Act, 1870 (hereinafter **CFA, 1870**) held that since the two separate agreements of sale relating to separate properties are basis of two distinct and separate causes of action, the plaintiff is directed to pay additional Court fee to cover the second/ separate subject-matter as the jurisdiction of court is to be determined by valuing each subject-matter separately. This case, too, is not relevant because in this case, too, there was no

dispute as far as the original pecuniary jurisdiction of court for grant of relief of specific performance on the amount of sale consideration in each contract was concerned. In the citation in each agreement the amount of sale consideration was within the pecuniary jurisdiction of this court. Unlike the instant suit, the valuation of the suit for the purpose of court fee and jurisdiction was not determined by aggregating/adding court fee of two distinct, separate and independent subject-matters. The case-law reported in **1992 SCMR 2375** is about transactions in a suit for preemption and the issue of pecuniary jurisdiction of the court in a suit for preemption is to be decided by computing the Court fee according to **clause (vi) of Section 7** of the CFA, 1870 whereas in the cases of specific performance the court Fees is computed according to **clause x(a) of Section 7** of the CFA, 1870. Since two independent provisions of law are applicable for the purpose of computing Court fee and valuation of jurisdiction of court, this case law both on facts and law has no relevance to decide the legal issues under discussion. The case-laws reported in **1984 MLD 138, 2002 CLD 1170, 2019 CLC 1466, 1983 CLC 2718, PLD 1991 Lahore 174** and **1994 CLC 1280** are on the provisions of **Order II Rule 3 CPC** dealing with joining of several causes of action in one suit but none of these case-laws are relevant since in none of these cases two causes of action arising from two different contracts of sale of two different immoveable properties with cause of action of damages as a consequence of alleged refusal to honour the contract of sale was combined to change/take the suit of specific performance out of the original pecuniary jurisdiction of District Court for grant of relief of specific performance of contract to the High Court.

7. On the above discussion after perusal of the case-laws cited by learned counsel for the plaintiff, while holding that none of the case-laws are relevant, I am left with no assistance at all to decide these legal issues. However, I am lucky that this High Court has a research department comprising hardworking and dedicated judicial officers from lower judiciary to replace the disinterested lawyers who do not want to extend proper assistance to the court as experienced by me in the instant case. Assisted by research department with case-laws, I am in a position to answer each and every legal issue. It is settled law that it is the substance of the plaint rather than the form in which the relief is sought by the plaintiff is to be looked into for the purpose of court fee and jurisdiction of a court to entertain a suit. The averments of plaint have to be looked into to find out the nature of the suit. If any case-law is required on this preposition one may refer to the cases reported as Ch. Muhammad Iqbal vs. Ahmed Jahan Begum (**PLD 1970 Karachi 548**) and Sardar Khan and others vs. Raja Khan (**1981 SCMR 863**). The substance of the plaint is generally narration of facts fulfill basic requirement of law defining plaint under **Order VII** of the CPC. Relevant provisions of Order VII of the CPC are reproduced below:-

ORDER VII

PLAINT

1. *Particulars to be contained in plaint.* The plaint shall contain the following particulars: --
 - a)
 - b)
 - c)
 - d)
 - e) the facts constituting the cause of action and when it arose;

- f) the facts showing that the court has jurisdiction;
- g) the relief which the plaintiff claims;
- h)
- i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

2.

3. *Where the subject matter of the suit is immoveable property.* Where the subject-matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers.

4.

5.

6.

7. Relief to be specifically stated. Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

8. Relief founded on separate grounds. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

8. **Facts of the case.**

(i) The perusal of facts narrated in the plaint clearly suggest that it is a suit for specific performance of two separate contracts of sale entered into by the parties on two different dates in respect of two different properties bearing bungalow Nos.B-63 and bungalow No.B-64 each measuring 240 square yards in Hakim Villas. The plaintiff in para-3 of the plaint has stated about the first agreement to sell that on **10.04.2010** he booked a bungalow on plot No.190 in the project of defendants on agreed consideration of sale amounting to

Rs.55,00,000/-. Later on by consent of the parties on **09.06.2011** (Annexure P/16) plot No.190 was changed to plot No.B-64 (para-5 of plaint) and again on **08.01.2013** (Annexure P/32) it was changed to **bungalow No.B-63** (para-7 of plaint). It is averred by the plaintiff that by **10.11.2015** he has already paid a sum of **Rs.45,09,968/-** through 58 installments and annexed payment receipts as annexures P/2 to P/38 and P/43 to P/65. However, scrutiny of these annexures reveals that through payment receipts annexure P/61, P/62 and P/63 the plaintiff has paid **Rs.40,000/-** each (total Rs.120,000/-), but in table of payment (para-16 of plaint) amount against said receipts has probably been inadvertently mentioned as **Rs.80,000/-** each, therefore, total amount paid by the plaintiff by the date of filing of suit against property bearing **bungalow No.B-63** comes to **Rs.43,89,968/-** out of Rs.55,00,000/-. However, after these facts the plaint does not disclose cause of action to file suit for specific performance in respect of agreement of sale of bungalow No.B-63. The plaintiff has not given any date and time when the defendant has refused to fulfill his part of contract dated **10.04.2010**. On this score alone since no cause of action has been shown by the plaintiff for seeking direction to the defendants to execute any title documents in respect of property on **plot No.B-63**, the suit to the extent of prayer in respect of agreement dated **10.4.2010** about bungalow No.B-63 ought to have been dismissed in terms of **Order VII Rule 11** of the CPC.

(ii) The plaintiff then in para-9 of the plaint has introduced facts of second agreement of sale in respect of **bungalow No.B-64**. It is averred that on **16.02.2013** token money amounting to Rs.100,000/- was advanced to the defendant and an agreement to sell was jointly

executed by the plaintiff and one Maqbool Ahmed with the defendant.

(Annexure P/39). It is reproduced below:-

DATE:-16.02.13

To,

The Honorable Director
M/S-Al-Qasmia Properties,
Project Hakeem Villas,
Scheme 33, Karachi.

“Plot No.B-64, divided into two equal area and ½ plot is with B-63 and ½ plot is with B-65 the sub-divided B-64 payment will be paid after the complete payment of B-63 and B-65.

The payment is mutually decided between owner and client, is Rs.55,00,000/- in case of constructed and Rs.34,00,000/- in case of un-constructed. **Plot No.B-64 allocated 50% to Maqbool Ahmed and 50% to Mehtab Tahir Niazi.** On the Token amount of Rs.100000/= Cheque No.514080 on dated 16.02.2013 is already paid.”

Yours Truly,

Sd/-

Mr. Maqbool Ahmed/
S/O. CH. Muhammad Ashraf
CNIC No.36302-2323281-3

Sd-

DIRECTOR AL-QASIM
PROPERTIES

Sd/-

Mr. Mehtab Tahir Niazi
S/O. Muhammad Siddique Niazi
CNIC No.42201-0696735-1

The plaintiff has not filed any written communication between the parties that whether the plaintiff and Maqbool Ahmed have agreed to purchase plot No.B-64 with construction or without construction. Be that as it may, the plaintiff has admitted that since **16.02.2013** till the date of filing of the suit on **29.08.2016** he has paid only **Rs.2,20,000/-** (two lac twenty thousand only) towards part payment of sale consideration out of total sale consideration amounting to **Rs.55,00,000/-** (Fifty Five Lac only) as mentioned in second table of payments in para-16 of the plaint, which is reproduced below:-

SR. NO.	DATE	CHEQUE NO.	AMOUNT IN RS.	RECEIPT NO.
1	16.02.2013	5104080	100000 (TOKEN MONEY)	003741
2	26.05.2015	8795421	40,000	000899

3	31.07.2015	8795422	40,000	001008
4	08.08.2015	8795424	40,000	001009

9. **Cause of action and prayers.**

The plaintiff in para-17 of the plaint averred that in September, 2015 the defendant had refused to receive cheques for the month of September and October, 2015 towards payments of installments in respect of sale consideration of **plot No.B-64**. Therefore, the plaintiff on **23.11.2015** sent a legal notice. Perusal of legal notice (annexure P/69) shows that the dispute, if any, was refusal of defendant to accept installments of September and October, 2015 in respect of **plot No.B-64** (para-5 of legal notice). It is pertinent to note that in the legal notice dated **23.11.2015**, the plaintiff has **not** alleged that the defendant has refused to perform his part of the contract of sale dated **10.04.2010** in respect of suit property bearing **bungalow No.B-63**. Nor the plaintiff has alleged that his reputation has been damaged by any illegal act of the defendant but in para-20 of the plaint he has demanded damages of Rs.50,00,000/- (Rupees Fifty Lac) towards loss of reputation. But in prayer clause (iv) he multiplied the claim of damages by 100 and prayed for decree of damages to the tune of Rs.500,00,000/- (Rupees Five Crore). The plaintiff in para-22 of the plaint instead of giving facts in terms of **Order VII Rule 1(f)** and **(i)** of CPC regarding value of each subject matter of the suit for the purpose of court fee and jurisdiction of court has made a general statement that the suit is valued at **Rs.1,60,00,000/-** and the proper Court fees of Rs.15,000/- has been affixed on the plaint. The above facts confirm that in substance the plaintiff through the instant suit wanted relief of specific performance of contract of sale dated **16.02.2013** only regarding bungalow/plot **No.B-64** but with a view to file the same before High Court he has overvalued the suit by

adding relief of declaration and damages and prayed for the following relief(s):-

- (i) Declaration that the plaintiff is liable to pay the balance payment of the bungalow No.B-63 & B-64 in installments as agreed by the defendant.
- (ii) Declaration that the plaintiff will pay the balance amount of the bungalow No.B-64 after complete payment of the bungalow No.B-63 as per defendants letter/agreement dated 16.02.2013.
- (iii) Declaration that the defendants and/or his nominee, agents, attorney and /or any other person acting on their behalf is liable to transfer/convey the said properties i.e., bungalow No.B-63 & B-64 situated at defendant's project known as Hakeem Villas a residential project in scheme No.33, Karachi to the plaintiff and the plaintiff is legally entitled for the transfer/conveyance of the same in his name to him, with valid, subsisting and marketable title.
- (iv) Direct the defendants to pay damages to the plaintiff to the tune of Rs.500,00,000/-.
- (v) Injunction restraining the defendants from transferring/conveying, alienating, charging, transferring mortgaging the properties in question to any other person except to the plaintiff or his nominee.
- (vi) Specific Performance direction the defendants to perform the contracts conveying the said properties to the plaintiff as agreed/settled and in case of the defendant's failure/negligence/refusal to perform the contracts, direct the Nazir of this Honourable Court to execute a Sub-Lease/Sale Deed in favour of the plaintiff and/or his nominees in respect of the said properties i.e., bungalow No.B-63 & B-64 situated at defendant's project known as Hakeem Villas a residential project in scheme No.33, Karachi.
- (vii) Cost of the suit.
- (viii) Any other/further relief that this Honourable court may deem fit and proper under the circumstances of the case.

10. The plaintiff has sought seven relief(s) in a suit for specific performance on alleged refusal of defendants to accept installments of sale consideration in respect of only one contract of sale dated **16.02.2013** only in respect of plot **No.B-64**. First three relief(s) of declarations reproduced in para-8 above shows that none of these declarations are about any right of the plaintiff in the suit property

nor the defendant has denied any legal character of the defendant. Fourth prayer is claim of damages amounting to Rs.500,00,000/- (Rupees Five Crore) without disclosing the facts constituting cause of action for seeking huge damages. When the cause of action arose, too, has not been mentioned in the plaint or legal notice. In the light of the facts narrated in the plaint prima-facie cause of action only to the extent of contract of sale dated **16.02.2013** in respect of only **bungalow No.B-64** appears to have accrued to the plaintiff, prayer (vi) if at all. The other relief(s) (v), (vii) and (viii) are formal and do not contribute in computing the value of the suit for court fee and jurisdiction. Learned counsel for the plaintiff has not explained in any of the averments of the plaint that how the suit has been valued at **Rs.1,60,00,000/-** to fall within the pecuniary jurisdiction of High Court.

11. According to the Court-Fees Act, 1870 & Suits Valuation Act, 1887 the plaintiff is required to give valuation of court fee on each relief sought by computing court fee according to **Section 7** of the Court Fee Act, 1870 and the same value has to be considered for the purpose of jurisdiction of court. The main relief sought by the plaintiff is about specific performance of two different contracts of sale of two different immovable properties. Irrespective of the fact that plaintiff has not disclosed cause of action for one of the two contracts of sale, in any case court fee payable in suit for specific performance of each contract of sale is to be computed according to **clause x(a)** of **Section 7** of CFA, 1870 separately as the Court fee shall be separately chargeable on each subject matter according to **Section 17** of the Court Fees Act, 1870. It is to be noted that even in a suit for the declaratory decree, an amendment has been introduced by the Sindh Government whereby **clause iv-A** after **clause (iv)** to

Section 7 of the CFA, 1870 has been added. According to Sindh amendment the value of Court fee even in suit for declaratory decree in respect of immoveable property is to be computed on the value given in the alleged sale, exchange or mortgage etc. The newly added **clause iv-A of Section 7 of CFA, 1870** being with phrase “Notwithstanding anything contained in clause (iv)”. This non-obstante clause has taken away the discretion of the plaintiff to state the value of the relief of declaratory decree as he likes. The plaintiff’s discretion to determine the value of subject matter in suit for declaratory decree under **clause iv(a) to (d) of Section 7 of CFA, 1870**, is not available to the plaintiff when he files a suit for declaratory decree based on alleged **“sale”**, gift or mortgage etc. **Section 7, clause iv** and (Sind amendment) **clause iv-A, clause x(a)** and **Section 17** of the Court Fee Act, 1870 are reproduced below:-

7. Computation of fees payable in certain suits:
 The amount of fee payable under this Act in the suits next hereinafter mentioned **shall be** computed as follows:-

iv. In suits—

(a)

(b)

(c) *for a declaratory decree and consequential relief; to obtain a declaratory decree or order, where consequential relief is prayed,*

(d) *for an injunction; to obtain an injunction*

(e)

(f)

in all such suits the plaintiff shall state the amount at which he values the relief sought.

SINDH AMENDMENT

After clause iv, the following shall be added as clause iv-A.

iv-A. Notwithstanding anything contained in clause (iv), in suits for a declaratory decree with consequential relief as to right in, or title to, immoveable property based on alleged sale gift, exchange or mortgage thereof—according to the value of the property;

x. *for specific performance;* In suit for specific performance—

- (a) of a contract of sale—**according to the amount of the consideration:**
- (b)
- (c)
- (d)

17. Multifarious suits.— Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, 1908 (Act V of 1908), section 9.

12. The jurisdiction of court to entertain a civil suit depends on territorial as well as the pecuniary jurisdiction combined in one court. It is expressly provided in **Section 6** of the CPC that pecuniary jurisdiction of an ordinary court should be respected unless expressly provided in law to the contrary. It is reproduced for convenience as under:-

6. Pecuniary jurisdiction.—Save insofar as is otherwise expressly provided, nothing herein contained **shall** operate to give any court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Nothing is expressly provided in any law that a suit for specific performance of a contract can be filed in “any court” other than the court having pecuniary limits of an ordinary court. The jurisdictional value of a court to entertain a suit for the relief of specific performance of a contract of sale has been fixed by the statute according to amount of the consideration **[(Section 7(x)(a) of CFA, 1870)** and it has to be strictly adhered to by the litigation. According to **Section 8** of the Suits Valuation Act, 1887, the value of Court fees

and the value for the purpose of jurisdiction shall be same. **Section 8** of the said Act is reproduced below:-

8. Court-fee value and jurisdictional value to be the same in certain suits.— Where in suits other than those referred to in the Court-fees Act, 1870 (7 of 1870), section 7, paragraphs v, vi and ix, and paragraph x, clause (d), Court-fees are payable ad valorem under the Court-fees Act, 1870, the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same.

The plaintiff seems to have purposely avoided to separately mention the court fee payable on each relief sought by him from the court. Learned counsel for the plaintiff knew that in terms of **Section 7** of the Sindh Civil Court Ordinance, 1962 a suit for specific performance of contract of sale showing consideration amounting to Rs.55,00,000/- (Fifty Five Lac), has to be filed in the court of District Judge having both the territorial as well as pecuniary jurisdiction to try such suit. The pecuniary jurisdiction of this court by amendment in the Sindh Civil Courts (Amendment) Act, 2010 dated **24.02.2011** is Rs.1,50,00,000/- (Rupees Fifteen Millions) and the instant suit for the relief of specific performance of a contract of sale showing amount of sale consideration only **Rs.5500,000/-** was filed on **29.08.2016**. Any court lacking pecuniary jurisdiction to entertain a suit for specific performance of contract of sale on account of the amount of sale consideration mentioned in the contract would be lacking authority to try such suit. The plaintiff cannot be allowed to file a suit for specific performance of a contract of sale of immoveable property in “any court” of even higher pecuniary jurisdiction on the pretext that he has also prayed for other reliefs and on addition of value of other distinct and separate relief the total valuation of his suit “exceeds” the pecuniary jurisdiction of a court where he should have filed civil suit for specific performance of a contract according to

amount of the consideration. Trial of cause of action for specific performance in a court lacking pecuniary jurisdiction to try it on the pretext of joinder of other causes of action would be violation of **Section 6** of the Civil Procedure Code. The phrase “Save insofar as otherwise expressly provided” used in **Section 6** of the CPC when read with similar phrase “Save as otherwise provided” in **Order II Rule 3(1)** of the CPC would only mean that the plaintiff may unite in one suit only those causes of action which are triable by one and the same court. **Order II Rule 3(1)** of CPC is reproduced below:-

3. Joinder of causes of action.—(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

The legislature by using the term “Save as otherwise provided” in Order II Rule 3 CPC has protected pecuniary jurisdiction of court from misuse by over-smart litigant to oust the jurisdiction of one court for a particular cause of action and take it to another court in the name of joinder of several causes of action against the same defendant. It is manifest from reading of **Section 6** with **Order II Rule 3(1)** of the CPC that the plaintiff may unite several causes of action in the same suit but it should be without offending the provisions of law conferring pecuniary jurisdiction on court to try a particular cause of action. The Plaintiff cannot combine several causes of action of different pecuniary value in a court which lacks pecuniary jurisdiction to try any one of the causes of action. The plaintiff may unite several causes of action but he cannot unite several courts into a court of his choice for trial of different and distinct causes of action by ignoring pecuniary value of even one of the causes of action. When

it is provided under **Section 6** of the CPC that nothing herein (in CPC) contained **shall** operate to give any court jurisdiction over suits the amount or value of subject matter of which exceeds (or falls below) the pecuniary limit, (if any) of its ordinary jurisdiction. However when a court seized of a multifarious suit comes to the conclusion that one cause of action out of the several causes joined by the plaintiff in one suit does not fall within its pecuniary jurisdiction, the court should immediately stop its proceeding insofar as it relates to the cause of action which does not fall within its pecuniary jurisdiction. In a situation where a plaintiff has several causes of action, including a cause of action for specific performance the plaintiff, should not file the suit for specific performance in a court lacking pecuniary jurisdiction by combining it with other distinct and separate causes of action. Instead he should file a separate suit for the other distinct and separate causes of action in the court having pecuniary jurisdiction to try such “causes of action”. The court, in a situation where one of the causes of action joined by the plaintiff in a suit falls out-side its pecuniary jurisdiction has the power to order separate trial of such cause of action or pass such other order as may be expedient by invoking power of court under **Order II Rule 6** of the CPC. It is reproduced below:-

6. Power of court to order separate trials.—Where it appears to the court that any **causes of action** joined in one suit **cannot be conveniently tried or disposed of together**, the court may order separate trials or **make such other order as may be expedient**.

It goes without saying that when a court lacks territorial or pecuniary jurisdiction to try and dispose of a cause of action, it cannot decide such a cause of action. The court has no power to assume “jurisdiction over suits the amount or value of subject matter of which

exceeds its ordinary pecuniary jurisdiction” (Section 6 of CPC) even if it is convenient to try it alongwith other causes of action for the simple reason that an order of a court on any subject matter without jurisdiction is nullity in the eyes of law.

13. In the case in hand, the plaintiff according to **clause x(a)** of **Section 7** of the CFA, 1870 was under an obligation to treat the amount of the sale consideration agreed in the contract dated **01.04.2010**, as the value for computation of court fee for its specific performance. Likewise, the amount of consideration mentioned in another contract of sale dated **16.02.2013** should have been separately considered for the purpose of court fee for that contract’s specific performance. This principle has been explained by a Division Bench of Hon’ble Peshawar High Court in the case of Arbab Ghulam Ali Khan and 14 others ..Vs.. Arbab Muhammad Hussain (since dead), represented by Legal heirs and Others (**PLJ 1986 Peshawar 57 [DB]**) relevant observation are reproduced below:-

*The scope and effect of Section 17 of the Court Fees Act was considered in a Full Bench decision reported in **AIR 1954 Madrass 594** wherein it was held that “Distinct subjects” in Section 17 of the Court Fees Act mean distinct causes of action in respect of which separate suit should be filed but for the enabling provisions allowing to be clubbed up in one suit. The distinctness or identity of the cause of the action is the only criterion of the applicability of the Section. It was also observed that a simple illustration makes the meaning of the section clear; A files a suit against B on two promissory notes executed by B in A’s favour. The value of the relief in respect of the one promissory note is taken and the Court fee on such value is calculated. Then the value of the relief on the second promissory note is taken and the Court fee payable on such value is arrived at. Thereafter the said two sums are added and the total amount is the Court fee payable on the plaint. The case reported in **AIR 1953 Madrass 888** may also be considered wherein by reference to two earlier decisions reported in AIR 1935 Calcutta 573 and AIR 1943 Patna 356 it was held that :-*

“I am inclined to hold that present form in which the suit stands, the decision of the learned

subordinate Judge that the plaintiffs should be deemed to have asked for nine separate declarations of the same kind in respect of each of the nine inams, that **the suit as framed embraces distinct subjects and that the Court fee payable as governed by provisions of Section 17 of the Act is justified.** His further direction that the plaintiffs should pay Court fee of Rs.100/- in respect of each one of the nine declarations is also correct, so long as the frame of the suit remains, what is it”.

Incidentally it may be mentioned that in AIR 1935 Calcutta 573 it was held that where 73 persons filed a suit in which they prayed for a declaration that each plaintiff had a raiyati-jote interest in one out of 73 plots of land and for a declaration that certain compromise decree was void and inoperative would mean that there were in effect prayers for 73 declarations of affecting 73 persons separate titles and that, therefore, the proceedings embraced 73 distinct subjects within the meaning of Section 17. Hence 73 separate amounts of Court fee were payable.

4. *In the case in hand it is obvious that the **plaintiffs could have instituted separate suits for each one of the amount claimed against the defendants and in that case each item of the compensation being below Rs.25,000/- they would not have been liable to pay Court fee under the amended Section 2 of the NWFP Court Fees (Abolition) Ordinance, 1978(XIV of 1978) which provides that no Court fee shall be payable in any case of civil nature the value of the subject matter whereof, or relief claimed wherein, does not exceed Twenty Five thousand rupees. The mere fact that the plaintiffs in filing the present suit had taken advantage of the enabling provisions of Order 1 Rule 1 and Order 1 Rule 3 CPC they could not be deprived of the benefit to which they would be otherwise entitled under the provisions of NWFP Court Fees (Abolition) Ordinance, 1978. In Ava A. Cowasjee and others v. Nasreen Nizam Shah and others (1984 CLC 2705) it was held that in a suit embracing several distinct subjects and the plaintiffs making separate claims against the defendants which were based upon distinct subjects, and the plaintiffs were required to value each subject and to pay Court fee on each relief separately.***

The above principle of law clarifies that by combining several causes of action the plaintiff cannot take a cause of action from ordinary pecuniary jurisdiction of a court to the court of higher pecuniary jurisdiction. In the cited judgment in one case there were 17 distinct subjects matters, in another 73 plaintiffs had joined and in both

cases each one of the plaintiff, was required to pay court fee separately. However it should be noted that by adding court of 17 subject matters or 73 distinct causes of action, the pecuniary jurisdiction of original ordinary court was not changed. Every component of a multifarious suit on its individual / distinct value should be triable by the court of its ordinary jurisdiction according to **Section 6** of the CPC. The dictum laid down in the above quoted judgment of Division Bench of Peshawar High Court is that the pecuniary jurisdiction of a court for any cause of action will remain one and the same in a multifarious suit and any cause of action which does not fall within the pecuniary jurisdiction of a court should not be joined in such multifarious suit. This principle has also been followed by this court in the case of *Imperial Builders (PLD 2006 Karachi 593)* relied upon by the plaintiff and yet he has joined two distinct causes of action in one suit neither of which within the pecuniary jurisdiction of the High Court thus violation of **Section 6** of the CPC and provisions of court fee act, as well as the above cited case law. Hon'ble Justice **Nadeem Azhar Siddiqui** in the case of *Imperial Builders* has reiterated this principle in the following observations:-

In this case the two agreements cannot be said to be arising out of the same act and transaction. Both the plaintiffs have no link with each other in the transaction except that the plaintiff No.1 executed General Power of Attorney in favour of Plaintiff No.2, but the suit was filed and plaint has been signed and verified by the plaintiff No.1. I, therefore, hold that the reliefs claimed in the suit are based on two distinct and separate causes of action. Where the plaintiffs combine two or several causes of action in one suit the value for the purposes of court-fee is to be determined by valuing each subject matter separately under section 17 of the Court-Fees Act.

Order II Rule 6 provides that the court is empowered to order separate trials. Rule 6 gives discretion to the court to order separate trial when

it appears that such causes of action cannot be conveniently tried or disposed of together. Mr. Khawaja Shams-ul-Islam relied upon reported case of Alam Khan and 3 others v. Pir Ghulam Nabi Shah & Company (1992 SCMR 2375) in support of his plea that even if two distinct causes of action have been combined plaintiff cannot be rejected.

The only defect in the plaint is that the plaintiffs have filed a suit combining two distinct and separate causes of action based on two distinct subjects, but have paid the court-fees payable on one suit of specific performance of one agreement. The plaint on this account cannot be rejected, but separate trial can be ordered.

Where the plaintiffs combined two or more distinct subjects or causes of action, then each claim on the basis of cause of action is to be valued separately and requisite court-fee is to be paid on it.

The High Court of Sindh in the above cited judgment was otherwise fully competent to try each suit on two different contracts of sale separately, therefore, there was no fraud with statute of Court Fee Act, 1870 and the Suit Valuation Act, 1887. The suit was not filed in the High Court by adding frivolous claim of damages to the two different amounts of sale considerations in two different sale agreements to overvalue the suit above Rs.15 million to bring it within the pecuniary jurisdiction of High Court. In the case in hand the jurisdictional value of each cause of action for specific performance of the two distinct subject matters was Rs.5500,000/- each. Even if both were united in one suit, the jurisdiction to try the combined cause of action would remain with the court of the District Judge according to the value of the subject matters individually. The pecuniary jurisdiction cannot be changed by adding frivolous claims of damages to the values of two distinct and separate causes of action to make the total value of the suit over Rs.15000,000/- (Fifteen Million) in order to file it in the High Court. Even if ten causes of

action, each worth Rs.5500,000/- were joined together the pecuniary jurisdiction of the court would remain on the basis of the individual amount of Rs.5500,000/- and by any mathematics it cannot be enhanced to bring these causes of action to the High Court. The plaintiff or plaintiffs for each distinct and separate cause of action would be required to pay court fee jointly or severally and file the suit in the Court of the lowest grade competent to try it as envisaged in **Section 15** of the CPC, reproduced below for convenience.

15. Court in which suits to be instituted.—

Every suit shall be instituted in the court of the lowest grade competent to try it.

14. Another attempt of plaintiff to take his simple suit for specific performance of a contract of sale of immoveable property from the pecuniary jurisdiction of District Court to High Court was the addition of declaratory relief(s) and damages in the plaint. However, even this attempt of the Plaintiff was misconceived because his suit was not for simple declaration and consequential relief at all. The plaintiff in terms of **Section 42** of the Specific Relief Act, 1877 (**SRA, 1877**) has to assert his pre-existing legal right as to the property or his legal character to be protected through a suit for declaratory decree. The plaintiff's instant suit is for direction to the defendant to execute sale for which the parties have entered into a contract of sale only and **Section 54** of the Transfer of Property Act, 1882 clearly distinguishes between "sale" and a **contract of sale** of immoveable property. **Section 54** of the Transfer of Property Act, 1882 is reproduced below:-

54. "Sale defined." "Sale" is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

Sale how made. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other

intangible thing, **can be made only by a registered instrument.**

In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs in possession of the property.

Contract for sale. A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

In view of the above legal status of a “**contract of sale**” of an immovable property, until the suit is decreed and “**sale**” is made by a registered instrument, the question of declaratory decree in respect of immovable property merely on the basis of contract of sale does not arise. Therefore the plaintiff had no occasion to allege that the defendant has denied any of his rights or legal character. Even perusal of prayers for declaration shows that none of the declarations sought by the plaintiff comes under the purview of **Section 42** of the SRA, 1877. Nor consequential relief sought by the plaintiff in the instant suit has any nexus to these declaratory relief(s). Therefore, these three prayers are out of the context of the grievances, if any, of the plaintiff. Neither these declaratory relief(s) are maintainable in a suit for specific performance of a contract of sale nor has the plaintiff himself even mentioned the amount at which these relief(s) have been valued for the purpose of Court Fee and jurisdiction of court. In fact, the plaintiff, by asking for the relief of declaration, has given an impression that for the purpose of court fees and jurisdiction he has discretion to value the subject-matter of the suit under clause **iv(c)** of **Section 7** of the Court Fees Act, 1870 and ignored the jurisdictional value of a court for the relief of specific performance which has to be

determined according to **clause x(a) of Section 7** of the CFA, 1870. However, for the sake of argument if a declaratory relief can be prayed by the plaintiff on the basis of sale agreement, after the Sindh Amendment under **clause iv-A of Section 7** of the CFA, 1870 it would be valued at same amount at which relief of specific performance has been valued. Irrespective of the fact that this suit is not based on '**sale**', according to the Sindh Amendment in the court Fees Act, 1870 in a suit in respect of immoveable property based on alleged '**sale**', gift or mortgage the valuation of suit for the purpose of Court fee and jurisdiction is to be determined according to the sale value under **clause iv-A of Section 7** and **not** by application of **clause iv-c** of the CFA, 1870 and therefore, it would not change the pecuniary value of the Suit for the purpose of jurisdictional value of the court.

15. Regarding prayer clause (iv) whereby plaintiff has sought damages to the tune of **Rs.5,00,00,000/-** suffice to note that on examination of the plaint I did not find narration of facts as required to be pleaded in compliance of **Order VII Rule 1(e)(f) and (i)** of the CPC in the plaint to justify / make out a case for relief of general damages. In the entire plaint the plaintiff is as brief about damages as para 20 of the plaint and nothing else is stated to understand neither the damages nor the cause of action for such damages, if any, to connect with the cause of action for specific performance of a contract of sale. Para 20 of the plaint is reproduced below:-

20. That due to this illegal act of the defendants, the plaintiff's reputation has badly been affected amongst the friends, well-wishers family members and locality. The plaintiff claims Rs.5,000,000/- (Rupees Fifty lakh) as damages from the defendants in this regard.

The only relationship between the plaintiff and the defendant is by virtue of contract of sale of an immoveable property. The defendant has not communicated anything to any of the friends of the plaintiff or well-wishers or family members to cause any damage to his reputation. In fact the defendant has not even replied to the legal notice of the plaintiff. Therefore, in the absence of any specific/particular illegal act attributed to the defendant adversely affecting unknown reputation of the plaintiff, it cannot be said that the defendant has damaged reputation of the plaintiff. It may be noted that when the plaintiff instituted suit under **Section 12** of the SRA, 1877, the plaintiff has only alleged breach of contract of sale by defendants and he has not prayed for any compensation in terms of **Section 19** of the SRA, 1877. He has not alleged that by virtue of any delay and / or other acts and omissions of the defendant the plaintiff is entitled to any “compensation for its breach, either in in addition to or in substitution for such performance”. When according to **Section 54** of Transfer of Property Act, 1882, no right or interest has accrued in favour of the plaintiff by virtue of the contract of sale of immoveable property, how can any alleged breach of this contract could damage the reputation of the plaintiff. When the plaintiff cannot even claim specific performance as a matter of right, as held by the Hon’ble Supreme Court in the case of Muhammad Riaz Hussain supra (relevant observation quoted in para-23 above), the question of general damages does not arise even under the law of tort. The kind of damages claimed by the plaintiff in para-20 of the plaint and prayer clause-iv are specifically barred under **Section 73** of the Contract Act, 1872. **Section 73** of the Contract Act, 1872. It is reproduced below for convenience:-

73. Compensation for loss or damage caused by breach of contract.--- When a contract has been broken,

the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

According to **Section 73** *ibid* only one of the two types of loss or damage can be claimed by the plaintiff in case of breach of a contract, (1) naturally arose in the usual course of things or (2) which the parties knew to be likely to result from such breach, and there is a strong embargo on court to grant any ***remote and indirect loss or damage*** sustained by reason of the breach of contract. The plaintiff's claim of damage to his unknown reputation amongst his friends, family and well-wishers etc. is not a loss or damage which naturally arose in the usual course of things from breach of a contract of sale of an immovable property. Neither would a prudent mind believe that at the time of entering into a contract of sale worth only **Rs.5500,000/-** the plaintiff has put his reputation at stake and on refusal of the defendant to perform his part of the contract the plaintiff would suffer loss or damage to the tune of **Rs.500,000,000/-** as prayed in prayer clause (iv). Though the plaintiff has not prayed for award of any compensation for alleged breach of contract in his plaint, if we examine the provisions of **Section 19** of SRA, 1877 we will notice that legislature has not use the word "damages" in case of any complaint of breach of contract. Section 19 of Specific Relief Act is reproduced below:-

19. Power to award compensation in certain cases.—Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in

addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance **ought not to be granted**, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance **ought to be granted**, but that it is not sufficient to satisfy the justice of the case, and that **some compensation** for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

The perusal of above quoted provision reveals that the plaintiff cannot ask for compensation in every case of breach of a contract. The award of compensation is subject to two conditions enumerated in para 2 and 3 of **Section 19** of SRA, 1877 starting with word “**if**”. In the first condition compensation shall be awarded when specific performance *ought not to be granted*. It mean compensation could be in substitution of specific performance; and in second condition when specific performance *ought to be granted* but mere decree of specific performance is not sufficient, then only “**some**” compensation may be awarded. The word “**some**” used as prefix to compensation for breach of the contract simultaneous to the grant of specific performance cannot be equal to the amount of entire sale consideration. Nor it could be double the value of agreed sale consideration. It is manifest from the reading of **Section 73** of the Contract Act, 1872 and **Section 19** of SRA, 1877, that the legislature has consciously controlled power of court for award of compensation for loss or damage caused by breach of contract. Though quantum of

loss or damages caused by the breach of contract has not been given in these provisions of the law, the use of certain words/phrases in **Section 73** of the Contract Act, 1872, such as “*naturally arose in the usual cause*” or “*which the parties knew*” and not to be given for any “*remote and indirect*” loss or as well as limitations imposed by **Section 19** of the SRA, 1877 on award of compensations have indicated that parties claiming breach of contract shall not be entitled to general damages like mental torture, shock and loss of name and reputation. The analysis of the law on the question of consequences of breach of contract in the light of **Section 73** of Contract Act, 1872 and **Section 19** of SRA, 1877 leads us to the irresistible conclusion that the parties complaining breach of contract in a suit are barred from raising claim of general damage on such breach in general and in cases on breach of contract of sale of immovable property in particular. Therefore, prayer for general damages which do not arise in the natural course of things are specifically barred by **Section 73** of the Contract Act, as being “*remote and indirect*” loss or damage in a suit for specific performance independent to the prayer for direction to the defendant to abide by his promises with the plaintiff.

16. It appears from the above discussion of facts and law, and particularly the manner of seeking relief of declarations and damages in the instant suit that the plaintiff has taken pains to exorbitantly overvalue a simple suit for specific performance of contract of sale of immovable property to invoke the jurisdiction of the High Court, whereas it should have been filed in the original civil jurisdiction of the District Judge, who has both the territorial as well as pecuniary jurisdiction to grant or refuse the relief of specific performance to the plaintiff. This practice of lawyers to deliberately overvalue suits by

adding frivolous prayers in the plaint to cover pecuniary jurisdiction of High Court is possible only in the district courts in Karachi because High Court has concurrent territorial jurisdiction with district courts of Karachi to entertain civil suits relating to immovable properties. The difference of jurisdiction of district courts of Karachi and high court is only on the basis of pecuniary limits of courts in Karachi. The language of **Section 7** of the Sindh Civil Court Ordinance, 1962 is the main basis of deliberate and willful overvaluation of suits by unscrupulous lawyers and litigants **Section 7** of Sindh Civil Courts Ordinance, 1962 is reproduced below:-

**The Sindh Civil Courts (Amendment) Act,
2010
Sindh Act No:III of 2011**

1.....

2. In the Sind Civil Courts Ordinance, 1962, hereinafter referred to as the said Ordinance, for section 7, the following shall be substituted:-

“7. Original Jurisdiction of the Court of District Judge.

Subject to this Ordinance or any law for the time being in force, the original jurisdiction of the Court in civil suits and proceedings shall be without limit of the value thereof excepting in the Karachi Districts where the original jurisdiction in civil suits and proceedings of the value exceeding fifteen million rupees shall be exercised by the High Court:

Provided that nothing contained hereinabove shall affect any suit or proceedings pending in the High Court prior to the commencement of the Sindh Civil Courts (Amendment) Act, 2010 and all such suits and proceedings shall continue to be tried and decided by the High Court.”

This practice of falsely overvaluing the suit for the purpose of Court fee and jurisdiction particularly by adding frivolous claim of damages has been deprecated by this court time and again. In the case of Anwarul Huda and another vs. Fahimul Huda and another (**PLD**

2006 Karachi 155) in para-4 learned single Judge of this court has held as under:-

4. It is a settled principle that **jurisdiction of courts cannot be ousted by undue overvaluation of claims made in a suit as it amounts to fraud upon the law.** The courts should not allow a plaintiff to evade the law relating to the matters of jurisdiction. **Where it is found that plaintiff has deliberately exaggerated his claim in order to bring his suit in a court which otherwise would not have jurisdiction, the plaint should be returned for presentation before court of appropriate jurisdiction.**

In 2015, a Division Bench of this court in an unreported case bearing HCA No.248/2015 (Dr. Chaudhry Ikramul Haq vs. Jalaluddin & others) has dismissed a high court appeal with cost of Rs.50,000/- and observed as under:-

.....the learned Single Judge after a thread bare examination of the relief(s) sought in both the Suits, has come to the conclusion that at this stage, **it was not open to the appellant to file another Suit on the same subject matter, by adding a claim of damages and increasing the pecuniary jurisdiction so as to bring the lis before this court**, as the appellant was legally required to bring the whole claim while filing the first Suit before the court of Senior Civil Judge. It further appears that the first Suit bearing No. 999 of 2007 already stands dismissed by the trial court vide judgment dated 23.5.2013, and during pendency of such proceedings another Suit bearing No. 401 of 2013 had been filed before this court on 3.4.2013. Moreover, when confronted, Counsel for the appellant could not controvert that admittedly the appellant is a tenant, whereas, in rent proceedings order for ejection was passed against the appellant, which on appeal was remanded, against which a petition being No. S-70 of 2010 was filed which was also dismissed and after remand of the matter in the first round of litigation between the parties, the matter is pending. Perusal of the record reflects that in fact the appellant who is admittedly a tenant has initiated proceedings by filing frivolous Suits against the owner of the property on one ground or the other, just to thwart the rent proceedings. Such conduct of the appellant does not appear to be justified to us and is to be deprecated; compelling us to observe that if the rent proceedings have been delayed or suspended due to pendency of these proceedings, we direct the concerned court to decide the same expeditiously and within reasonable time but not later than 60 days from today. In view of such position, we are of the view that the impugned order is correct in law, whereby the plaint has

been rightly rejected being hit by the provisions of Order II Rule 2 CPC, whereas the Counsel for the appellant has not been able to point out any illegality or perversity in the impugned order so as to disturb the same. Accordingly, instant appeal being misconceived in facts and law is hereby dismissed in limine with cost of Rs.50,000/-

The crux of the above discussion is that legal issues No.1 and 4 are answered in the negative and issue No.2 is answered in the affirmative. The plaint may be returned to the plaintiff as this court has no pecuniary jurisdiction to grant relief of specific performance of a contract of sale of immovable property showing sale consideration amounting to Rs.5500,000/- only. The Nazir of this court is directed to return the sale consideration deposited by the plaintiff in installment to him with all the interest, if any, accrued on the same. Nazir should also obtain possession of bungalow No.B-63, Hakeem Villas from the plaintiff and hand over the same to the defendants subject to refund within 15 days from today the amount received by the defendant from the Nazir while handing over possession of bungalow No.B-63 to the Nazir on interim order passed by this court on **22.10.2019**. I am not passing any comment on legal issue No.3 while returning the plaint leaving it for the trial court to examine it if at all the plaintiff prefers to present the plaint before the court having pecuniary jurisdiction to entertain the suit for specific performance according to the amount of sale consideration mentioned in the impugned agreement of sale.

17. While concluding, I feel it necessary to direct that the Additional/Deputy Registrar (O.S) to be vigilant in examining the plaint before admission with particular reference to the pecuniary jurisdiction of this court. Every plaint should be examined from the point of view that whether the original claim emerging from the substance of the plaint falls within the pecuniary jurisdiction of this

court or not. If it is noticed that the main relief does not fall within the pecuniary jurisdiction of this court and frivolous claim like declaration and damages, as in the case in hand, have been added by the plaintiff, the Deputy Registrar (O.S) shall take judicial notice of it and before assigning any number should note thereon the reasons for returning of the plaint under **Order VII Rule 10** of the CPC and place the same before the judge hearing miscellaneous matters for formal order of the court in terms of his responsibility contained in **Rule 119** and **121** of **Chapter-V** of the S.C.C.R (O.S). It may be noted that when Deputy Registrar has power to note reasons to reject the plaint under **Order VII Rule 11** of the CPC, and submit for order of the court he can also exercise similar power to note reasons to return the plaint under **Order VII Rule 10** of the CPC and submit it before the Hon'ble Judge hearing miscellaneous matters.

JUDGE

Karachi
Dated:04.08.2021

Ayaz Gul/SM