

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1361 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on CMA No.14435/17 (U/S 151 CPC) 2. For hearing of CMA No.3323/17 (U/S 151 CPC). 3. For hearing of CMA No.17554/16 (U/S 148 CPC)

25.10.2017.

Mr. Mushtaq A. Memon, Advocate for Plaintiff.
 Mr. Muhammad Amin, Advocate for Defendant No.1.

1. Notice.

2-3. Application listed at Serial No.3 (CMA No.17554/16) has been filed under Section 148, 151 & 152 CPC on behalf of the Plaintiff seeking extension in time for compliance of Order dated 18.11.2016 and further modification, whereas, Application at Serial No.2 (CMA No.3323/17) has been filed under Section 151 CPC on behalf of Defendant No.1 with the request to dismiss instant Suit as Plaintiff has failed to comply the Order dated 18.11.2016.

Learned Counsel for the Plaintiff submits that the order dated 18.11.2016, whereby, the Plaintiff was directed to deposit the balance sale consideration within 15 days' time could not be complied with and therefore further time be extended. He further submits that the Order be also modified by substitution of the words for depositing the amount in cash with tangible surety for the reason that the Defendant No.1 on the one hand is enjoying the possession of the property in question; and on the other has also received substantial amount of advance money amounting to Rs. 27,000,000/-. He submits that in the alternative the Court may be pleased to cancel the Sale Agreement in question terming it as void and direct the Defendant No.1 to return the amount of

Rs.27,000,000/-. In support of his contention he has relied upon **2017 SCMR 1696** (*Muhammad Abdur Rehman Qureshi v. Sagheer Ahmad*), **1992 CLC 8** (*Waqar Avais v. Raja Muhammad Shafi Janjua and 4 others*), **PLD 2017 Sindh 88** (*Messrs TEE JAYS Exclusive (Pvt.) Ltd. Through Managing Director and another v. Muhammad Naveed*) and **2012 CLC 1902** (*Mst. Shagufta Noor v. Mst. Ishrat Jehan and another*).

On the other hand, Counsel for Defendant No.1 submits that for all practical and legal purposes this is a review application and not a modification application, whereas, the limitation for a review application is 20 days and CMA No.17554/16 has been filed belatedly after 28 days and therefore the same is liable to be dismissed. He further submits that due to non-compliance of the order, the Suit is liable to be dismissed and therefore, the application filed on behalf of Defendant No.1 be allowed. In support of his contention he has relied upon **2012 YLR 1686** (*Sardar Ali and 3 others v. Tehsil Municipal Administration through Tehsil Nazam*), **2009 SCMR 1022** (*Ahmad Jan and others v. Qazi Azizul Haq and others*), **2015 MLD 49** (*Syed Muhammad Waqar un Din v. Owais Ahmed Idrees*), **2013 CLC 154** (*Taj Muhmamad Brohi through Legal Heir v. Mst. Farida Ahmad Muhammad Ahmed Siddiqui through Attorney and 3 others*), **2013 MLD 1132** (*Eng. Inam Ahmad Osmani v. Federation of Pakistan and others*), **2003 SCMR 953** (*Haji Abdul Hameed Khan v. Ghulam Rabbani*).

I have heard both the learned Counsel and perused the record. At the very outset, I had specifically confronted the learned Counsel for the Plaintiff that as to whether through his application any review is being sought to which the learned Counsel has replied in negative. However, on perusal of Plaintiff's Application, to me it appears to be a review application though it may have been worded differently and filed under Section(s) 148, 151 and 152 CPC. If this application would have been

only to the extent of any extension in the time for making deposit of the balance sale consideration, then perhaps and without prejudice to any other objection, this could have been termed as an application seeking modification of the order in question. However, not only this, the Plaintiff has also prayed for substitution of the surety as well as seeking the cancellation of the agreement in question and return of the advance money of Rs.27,000,000/-. Even while arguing the application, the learned Counsel has also made an attempt to justify that the order so passed needs review, inasmuch as it has been contended that on the one hand the Plaintiff has been directed to deposit the balance sale consideration in cash, whereas, the Defendant No.1 is enjoying possession and so also the benefit of the advance amount of Rs.27,000,000/-. This in all appears to be a review application, whereas, admittedly the same has been filed belatedly after lapse of the limitation period, whereas, no supporting application for any such condonation has been filed. Moreover, the application has been filed after lapse of the 15 days' time granted for deposit of balance sale consideration.

Notwithstanding the above observation, even otherwise I do not see any justification to even modify the order by substituting the direction of cash deposit of the balance sale consideration with any tangible surety. This is a case for specific performance and I have already dealt with in detail the pros and cons of the case in hand and have passed a detailed order, which if aggrieved, should have been appealed but has not been done. Moreover, there are other prayers as well which in the given circumstances cannot be termed as a modification prayer, and after passing of the order dated 18.11.2016 no further discussion can be made on the said order. Accordingly, the

application bearing CMA No.17554/16 filed by the Plaintiff is hereby dismissed.

Insofar as Application bearing CMA No.3323/17 filed by Defendant No.1 is concerned, the same cannot be granted as well for the reason that this is a Suit for specific performance alongwith compensation as well as cancellation of the agreement and return of the amount given in advance with interest. Even otherwise while passing the Order dated 18.11.2016, I have already observed that if the balance sale consideration is not paid, the as-interim injunction would stand vacated and therefore once I have passed the said order, no further directions as suggested for dismissal of Suit can be given. Accordingly this application is also dismissed.

J U D G E

Ayaz P.S.