

**ORDER SHEET**  
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1228 of 2017  
along with  
Suit No.852 of 2021

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Date	Order with signature of Judge
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Suit No.1228 of 2017.

1. For hearing of CMA No.15170 of 2016.
2. For hearing of CMA No.6496 of 2017.

Suit No.852 of 2021.

1. For hearing of CMA No.15006 of 2020.
2. For hearing of CMA No.17603 of 2021.

**06.09.2022**

Mr. Khalil Ahmed, Advocate, for Plaintiff in Suit No.1228 of 2017 and for Defendant No.1 in Suit No.852 of 2021.

Mr. Haseeb-ur-Rehman, Advocate for Plaintiff in Suit No.852 of 2021 and for Defendant in Suit No.1228 of 2017.

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Arguments on Application-CMA No.17603 of 2021 [*under Order VII Rule 11 of CPC*], filed by learned counsel for Defendant No.1 in Suit No.852 of 2021, have been heard.

Mr. Khalil Ahmed, learned counsel representing the Plaintiff in Suit No.1228 of 2017 and Defendant No.1 in Suit No.852 of 2021 stated that earlier Sale Agreement dated 19.04.2012 was executed, which became the basis of compromise in Suit No.1701 of 2009 and the Order dated 07.11.2012 has added a proviso that the entire balance sale consideration should be paid on or before 07.07.2013. However, the same was never paid, despite sending Plaintiff (Purchaser) Legal Notices. Learned Advocate has also referred to the Order dated 04.02.2021 in Civil Petitions No.1355-K and 1356-K of 2020, passed by the Hon'ble Supreme Court, refusing the leave to present Plaintiff, which earlier in a Rent Proceeding failed to comply with the Tentative Rent Order and the defence was struck off. It is contended that Plaintiff is a habitual defaulter.

Mr. Haseeb-ur-Rehman, Advocate, representing the Plaintiff (Purchaser/Vendee) in Suit No.852 of 2021 and Defendant in Suit No.1228 of 2017, has rebutted the arguments of Defendant's counsel and states that since the property was not vested in Defendant No.1, therefore, the entire payment was not made, but, Plaintiff/vendee is still ready to complete the sale transaction in question; contends that no provision of law has been cited in the Application under consideration and hence the present Suit filed by Plaintiff / Vendee is maintainable. He further states that earlier connected Suit No.1228 of 2017 is filed by Defendant No.1 (Seller/Vendor), although for Cancellation of the Sale Agreement, but it shows that the same is still alive.

Arguments heard and record perused.

The undisputed facts are that the above Sale Agreement was entered between the present Defendant No.1 as Vendor and Mr. Ahmed Iqbal Baloch, who claims to be the major shareholder in the Plaintiff's Company as Vendee. For the sake of reference, the Sale Agreement is called as "**Contract**". Total Sale consideration is Rs.19,000,000/- (*rupees nineteen million only*) and Rs.1,400,000/- (*rupees fourteen hundred thousand only*) has been paid so far to Defendant / Vendor. Possession of the **Suit Property**-Plot No.5-F, admeasuring 400 Square Yards, situated at Block-6, PECHS, Karachi, is with the Vendor/Defendant No.1 [of Suit No.852/2021]. The Order passed in the earlier Suit (*supra*) for payment of balance sale consideration, **has not been complied with**, even partly. Nothing is on record to show that what is the cause for such an inordinate delay, in not making the balance sale consideration even after passage of 10 (ten) years. The Proviso added in the above Order has clearly made the Subject Contract a Contract, wherein, time is the essence, as envisaged under Section 55 of the Contract Act (1879).

Recent judgments of the Courts relating to the performance of a contract concerning an immoveable property, has revisited the earlier view, that usually time is not the essence of a contract [when it is for a sale of an immoveable property]; and what has emerged from the present judicial view is that even for the agreements relating to the immoveable properties, time factor is significant and violation thereof is fatal. This rule is laid down, *inter alia*, considering the present day inflationary trend and volatile property market. Judgment handed down by the Hon'ble Supreme Court and reported in **2017 SCMR 1696 [Muhammad Abdur Rehman Qureshi vs. Sagheer Ahmad]**, is applicable to the facts of present case.

The Hon'ble Supreme Court in the case reported in **2012 SCMR 900 [Muhammad Sharif and others vs. Nabi Bakhsh and others]** has taken into consideration the objections of the respondent-vendee of that reported case, that due to mutation entry and mortgage of the property, the transaction could not be completed, but such objection was rejected. The Hon'ble Supreme Court was of the view that nonpayment of balance sale consideration for five years in Court clearly reflects that vendee was neither willing nor ready to purchase the property.

From the above Hon'ble Supreme Court Order dated 04.02.2021 [in the present case] it is obvious that even the Tentative Rent Order was not complied with, resulting in the adverse consequences against the present Plaintiff / Vendee. A property situated in PECHS is under the litigation for more than a decade and a meager amount of Rs.1.4 Million is only paid from the entire sale price of Rs.19,000,000/- (*rupees nineteen million only*). The rule laid down in the above Hon'ble Supreme Court Judgments is fully attracted to the present case. The present Plaintiff has miserably failed to show his *bona fide* intent to complete the sale consideration, hence, lacks readiness and willingness.

*Secondly*, to enforce a Contract of 19.04.2012; he has presented the plaint on 09.11.2019, that is, after seven years; but intriguingly the same was numbered as Suit No.852 of 2021. Under Article 113 of the Limitation Act, 1908, three years' time is mentioned, inter alia, for seeking enforcement of the contract from the date of refusal. In this present case, the question of refusal does not arise in view of the above Order [of 07.11.2012] passed in earlier Suit No.1701 of 2009 between present Parties, in which Order the proviso has made the entire Contract in which time is the essence; besides, that the possession of the Suit Property is with Vendor/Defendant No.1, and Plaintiff/Vendee cannot even claim benefit of Section 53-A of the Transfer of Property Act, relating to the possession in part performance of a sale agreement. Hence, the adverse effect of Article 113 of the Limitation Act is applicable to the facts of present case and the Suit No. 852 of 2021 is barred by time and law.

Consequently, in view of the above, this Application-CMA No.17603 of 2021 [*under Order VII Rule 11 of CPC*], filed by learned counsel for Defendant No.1 in Suit No.852 of 2021 is allowed and plaint is rejected. Office to draw up a Decree.

Learned counsel for Defendant No.1 is ready to deposit the amount made so far, viz. Rs.1,400,000/- (*rupees fourteen hundred thousand only*) with the learned Nazir of this Court within four (four) weeks from today. Once the amount is deposited, the learned Nazir will release the same to Plaintiff, as per Rules.

In view of the above Order, learned counsel for Plaintiff does not press his Suit No.1228 of 2017, as the Subject Contract is otherwise cannot be enforced. Consequently, this Suit is dismissed as withdrawn along with all listed applications.

JUDGE