

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.31 of 2021

[Saeed Ahmed v. Muhammad Saleem & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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**Present: - Muhammad Shafi Siddiqui
Jawad Akbar Sarwana, JJ**

Hearing case (priority)

1. For order on office objection/reply at "A".
2. For hearing of main case.
3. For hearing of CMA No.493/2021(stay).

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Dated 17.10.2023

Mr. Shamshad Ali Qureshi, Advocate for the Appellant.
 Mr. Naeem Suleman, Advocate for Respondent No.1.
 Mr. Abdul Jaleel Zubedi, Assistant Advocate General.

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This Appeal is arising out of the order dated 02.02.2021 whereby on failure of the alleged buyer to deposit the balance sale consideration, as determined by the learned single Judge, the suit was dismissed.

It is appellant's case that this analysis of not depositing the balance sale consideration could at the most lead to the dismissal of the injunction application and not the suit itself. It is stated that the Appellant has paid a substantial amount towards sale consideration and only a balance is left, hence it requires trial.

Mr. Naeem Suleman, learned counsel for Respondent No.1 has seriously opposed the Appeal on the count that it is a balanced order as the balance amount towards the sale consideration has not been deposited, despite order of the learned single Judge.

We have heard learned counsel for the parties and perused the material available on record.

Insofar as the necessity of depositing the balance sale consideration is concerned, that is not the requirement of law for maintaining a suit for specific performance, however, a Judge has to

weigh the case of both the parties while hearing injunction application and the parties may be put to the terms so that the interest of both the parties be secured at the interim stage. As far as this suit is concerned, the learned single Judge has put the purchaser on terms to deposit all unpaid/balance amount so that the interest of the seller be secured and that has not been done by the alleged buyer. Substantially, buyer has not shown his willingness by depositing amount and complying order. This might be conceived against the buyer as far as willingness to pay the balance amount is concerned. In our view however at this stage it would lead to the dismissal of the injunction application. The suit may be tried after framing of issues by the learned single Judge.

Both the learned counsels have agreed and conceded to the appointment of Commissioner for recording of evidence which may be recorded at the earliest preferably in four months' time. With this understanding the order of dismissal (impugned) is maintained only to the extent of injunction application with its consequential effect, whereas suit is restored and trial of suit may commence, as agreed.

JUDGE

JUDGE

Ayaz Gul