

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-1493 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection  
For orders on M.A. 7127/2021  
For orders on M.A. 7128/2021  
For hearing of main case

10.08.2023

Mr. Imdad Ali Unar, advocate for petitioner.

Mr. Rafique Ahmed Dahri AAG Sindh

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This petition is arising out of the findings of the two forums below. A suit for specific performance was filed by the plaintiff / petitioner. At the time of filing of the suit the Senior Civil Judge while admitting the plaint on 21.04.2021 issued summons and the legal objection framed by the office were ordered to be heard at the time of hearing. However additional condition of payment of balance sale consideration was imposed (on the plaint being admitted). This was ordered while issuing summons in respect of the plaint filed for specific performance. No such order was passed on the application for an interim relief. There is no time limit given in the order dated 21.04.2021 while the amount was deposited in court on 26.07.2021 on which date an application for the extension of time was pending though counsel submits that it was only as an abundant caution that it was filed. Not only that the application for an extension of time was dismissed but the suit itself was dismissed for noncompliance.

2. We have heard the learned counsel and perused the record. Whereas, Mr. Pirbhulal-U-Goklani counsel for respondents No.1 & 2 remained absent.

3. We have perused the file. It reveals that this condition could have been imposed while hearing the injunction application, a suit was never ripe for decision nor can it be conditionalized for its admission, subject to payment of balance sale consideration. It is always application which may

have seen its dismissal. If the trial court was of the view that balance sale consideration was not paid in time, which in fact was not the essence of the order, the injunction application at the most could have been dismissed.

4. Learned counsel for the petitioner submits that there is no provision in law under Specific Relief Act which could compel the plaintiff / buyer to deposit the entire amount while the suit was being admitted. It is equity which is seen by the court while hearing the injunction application, which could compel the buyer, but the suit requires trial. We agree with such understanding of law.

5. The revisional court as well did not consider such aspects of the case and outrightly dismissed the revision application without giving plausible explanation as to the requirement of the balance sale consideration while admitting the suit and not the application. Nothing is said about the fact as to why injunction application could not be dismissed at the most. Even otherwise a lenient view should have been taken since the amount was deposited on the same day and no time limit was provided in the order.

6. We are of the view that the jurisdiction was not exercised properly by the two forums below and plausible answers were not provided, and hence the case is remanded to the trial court with direction that the amount that has already been deposited through pay order on the same day, prior to passing order, be accepted as balance sale consideration and case be proceeded on merits in accordance with law. With this observation, the petition stands disposed of.

JUDGE

JUDGE