

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D-4363 of 2023

Date	Order with signature of Judge
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FRESH CASE.

1. For orders on Misc. No.20083/2023.
2. For orders on Misc. No.20084/2023.
3. For orders on Misc. No.20085/2023.
4. For hearing of main case.

12.09.2023.

Mr. S. Samiullah Shah, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J. - The Petitioner has impugned the Order dated 05.09.2023 made by the learned VIth Additional District & Sessions Judge, Karachi, Central, dismissing Civil Revision Application No.04/2023 filed by the Petitioner against the Order passed by the learned VIIIth Senior Civil Judge, Karachi, Central on 04.01.2023 in Civil Execution No.03/2021 emanating from consolidated Civil Suit Nos. 755/2016 and 515/2017, whereby his Application under Section 12 (2) CPC was dismissed.

The backdrop to the matter is that a Sale Agreement had apparently been executed between the Petitioner and Respondents No. 1 (i) to (vi) on 07.05.2013 in respect of an immovable property, with Civil Suit No.755/2016 having then been filed by those Respondents seeking its cancellation and restoration of possession of the property in question, and the Civil Suit No.515/2017 then subsequently being brought by the Petitioner seeking Specific Performance & Permanent Injunction.

As it transpires, the matters were consolidated and tried before the learned VIIIth Senior Civil Judge, Karachi, Central, culminating in a Judgment dated 01.10.2020 whereby the Suit of the Respondents was decreed and that of the Petitioner was dismissed, with the Decree then being drawn up accordingly on 05.10.2020. Whilst the Petitioner had initially participated in the proceedings and had filed his written statement, he absented himself from the evidentiary stage onwards, resorting then to the Application under Section 12 (2) CPC on 07.11.2022, which came to be dismissed as being without merit, and with his Revision Application going on to meet the same fate. The relevant excerpt from the Order of the Revisional Court encapsulating the crux of the matter reads as follows:

“I have heard and considered the arguments advanced by the learned counsel for the parties and have gone through the entire record and proceedings of the case. I have also examined the propriety of the impugned order. The record manifest that the learned trial court specifically settled the issues which pertains to the cancellation of sale agreement, default in payment of balance amount by applicant and due to his default respondent No.1 suit No.755/2016 can terminate the sale and specific performance. These issues were thoroughly discussed by the learned trial court in the judgment dated 01-10-2020. There is no cavil that suit No.755/2016 was with regard to the cancellation of sale agreement dated 07-05-2013 and there is no any other agreement brought on record or relied upon, there is no any rebuttal on the part of applicant that he failed to pay the entire balance consideration as envisaged in sale agreement dated 07-05-2013 which date even if the subsequent agreement dated 07-01-2014 is considered was much prior from the date of its execution. It is pertinent to mention here that at one hand applicant is claiming the specific performance of sale agreement dated 07-05-2013 in his suit bearing No.515/2017 on the other hand he raising the objections on same agreement. The record shows that after filing the suit the summons were duly served upon the applicant and in pursuance thereof he appeared in the court and filed his written statement.

Even otherwise, the suit was filed in the year 2016 & 2017 and applicant filed his written statement, however failed to appear for evidence to substantiate his claim before the Court. It has also been noticed that the applicant filed an application U/S 12 (2) CPC after 2 years of the impugned judgment and decree which was passed on 01-10-2020 & 05-10-2020 while the application U/S 12 (2) CPC was moved on 07-11-2022 which was also not justified any reasons for delay, so also no any appeal has been filed against the said judgment and decree. The case laws relied by the learned counsel for the appellant are distinguishable with the fact of the case in hand. All these things reflects that the applicant deliberately file the present application just to defeat the fruits of execution. Further the counsel for the applicant had failed to point out as what fraud and misrepresentation had been committed by the respondent No.1 with him. Thus the arguments advanced by the applicant counsel are not satisfactory.”

On query posed to learned counsel for the Petitioner as to what error, perversity or illegality afflicted the Orders of the fora below under the attendant facts and circumstances of the case, no cogent response was forthcoming. Indeed, a perusal of the underlying Application reveals the same to be bereft of any ground properly constituting a fit case under S.12(2) CPC. Having considered the matter, we are of the view that the Orders in question are unexceptionable and do not warrant interference in exercise of the Constitutional jurisdiction of this Court. Hence, while granting the application for urgency, we hereby dismiss the Petition *in limine*, along with other pending miscellaneous applications.

JUDGE

JUDGE

MUBASHIR