

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**High Court Appeal No. 197 of 2023**  
(Nasir Hussain Versus Mst. Shahnawaz Begum & others)

<b>Dated</b>	<b>Order with signature of Judge</b>
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Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Justice Ms. Sana Akram Minhas

Hearing Case (Priority)

1. For orders on office objection a/w reply at A
2. For hearing of Main Case
3. For hearing of CMA No. 1955/2023 (stay)

**Dated 13.05.2024**

Mr. Raj Ali Wahid Kunwar, Advocate for the Appellant  
Mr. Amir Saleem Advocate for the Respondent No.1  
Mr. Abdallah Azzam Naqvi Advocate for the Respondent No.3

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**Muhammad Shafi Siddiqui, J.-** This appeal is arising out of an order passed in Suit No. 1132 of 2011 whereby plaint of the Appellant in a suit for specific performance was rejected.

2. The brief facts of the case are that an agreement of sale was executed between the Appellant and Mst. Shahnawaz Begum on 04.03.1997 followed by a registered Irrevocable General Power of Attorney. The possession on payment of full sale consideration, as argued, was handed over and up until such attempt was made there was no dispute. The Appellant stated to have made an attempt to have a transfer of the property in the record of D.H.A., Military Land and Cantonment Board which was denied as the title was not drawn. Aggrieved of it a writ of mandamus against authority was filed and they failed in that attempt and consequently after its withdrawal with permission a suit for specific performance was then filed by the Appellant as Suit No. 1104 of 2004. It was pending

adjudication when, as claimed by the Appellant, it was renegotiated, such attempts were disclosed in terms of the e-mails which were exchanged. Based on such understanding, the suit was simply withdrawn. Such understanding and negotiation which took place by virtue of e-mails were not materialized. There was yet another suit filed by the Appellant as Suit No. 1132 of 2011 for specific performance of contract and permanent injunction which came into consideration before the learned Single Judge when the plaint was rejected on the count that the earlier suit was withdrawn without permission to file a subsequent suit.

3. We have heard the learned counsel for the parties and perused the record.

4. All the learned counsels have not argued on the point of limitation. i.e. Article 113 of the Limitation Act, hence that will not come in the way of Appellant as far as enforcing the agreement is concerned. The only point that requires consideration is whether the Appellant was prevented from filing a subsequent suit on account of withdrawal of earlier suit on 27.05.2009.

5. We have perused the contents of the present plaint as well as the correspondence via e-mail that was shown by the learned counsel for the Appellant. Learned counsel for the Respondent though have denied such negotiation and that such material was not available before the learned Single Judge but what was available with the learned Judge is a plaint of subsequent suit which to our understanding discloses all subsequent facts in terms of para 16 and 17; not only that a transaction was agreed to be finalized but an additional amount of Rs.3 Million was agreed as additional consideration. It was also shown that out of the additional amount, as agreed, a portion of it was also paid to the daughter of the Vendor,

notwithstanding, the fact that all this later development is seriously denied by the learned counsel for the Respondent, however, what is surprisingly important in the instant case is that a plaint was rejected under Order VII Rule 11 C.P.C. and the fundamental principle, as settled by the Hon'ble Apex Court that in rejecting plaint while considering an application, all that matters is contents of plaint. The learned single Judge has not stated anything about the new facts disclosed in the plaint which in fact constitute novation of the earlier agreement and gives fresh cause. Learned counsel for the Appellant has to establish such novation as it is a burden of Appellant but that calls for a trial not a summary rejection of the plaint.

6. Learned counsel for the Respondent has relied upon a judgment of the Supreme Court in the case of *Abdul Hakim & others Vs. Saadullah Khan & others* (PLD 1970 SC 63, which while dilating upon the Order II Rule 2 C.P.C. which in fact relates to abandoning the claim, observed that in the subsequent lis on account of same facts and same relief, the bar of Order II Rule 2 C.P.C. will apply. At the very outset this is not the issue before us. As observed the facts demonstrate a cause are different that earlier one. The subsequent plaint of the suit is based on some additional facts which to our understanding amounts to novation of the agreement.

7. If a cause of action has not been disclosed separately plaint as a whole has to be seen and on that count the Appellant/ Plaintiff cannot be penalized. Cause of action constitutes series of facts disclosed in the plaint which in fact give rise to a cause of action.

8. We are thus of the view that in view of the above facts and circumstances, it is not a fit case for rejection of the plaint. The impugned order is thus set aside and is remanded back to the learned Single Judge for its disposal alongwith application, if any. It has been pointed out that the

vendor of Appellant has entered into a transaction with the subsequent buyer represented by Mr. Aamir Saleem. The alleged buyer, in view of the above seems to be a proper and necessary party, he may pleads his case before the learned Single Judge if he was a bona fide purchaser in terms of Section 27 of the Specific Relief Act and Section 41 of the Transfer of the Property Act and may participate in the trial of suit filed by Appellant.

Appeal stands disposed of in above terms along with listed application.

*JUDGE*

*JUDGE*

Amjad PS