

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
**Suit No.1523 of 2019**

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Date Order with Signature of Judge

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*Nasreen Basit Rehman*.....*Plaintiff*

*Versus*

*Shakeel Ahmed and others* .....*Defendants*

Dates of hearing : 20.02.2025

Date of order : 20.02.2025

Mr. Abdul Shakoor, advocate for the plaintiff.  
Mr. Moiz-ur-Rehman, advocate for the legal heirs of defendant  
No.4.

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**ORDER**

**MUHAMMAD JAFFER RAZA, J** :- For the reasons to be recorded later on, the application bearing CMA No.6258/2024 under Order XII Rule 6 CPC read with Section 151 CPC was allowed vide short order dated 20.02.2025, following are the reasons for such short order:-

2. The suit has been filed for specific performance of agreement dated 29.09.2016. The said agreement was executed between the plaintiff and defendants No.1 & 4 and accordingly another agreement was executed between the plaintiff and the attorney of the defendants No.5 & 6. It is pertinent to mention that the subject property is in the ownership of defendants No.1 to 6 as joint owners. Learned counsel for the plaintiff has stated that in the instant suit he is only seeking specific performance of the agreement to sell dated 29.09.2016 and is relying upon the admission (for the purposes of present

application) made by defendants No.1, 5 and 6 in their respective written statements. It is also stated that the defendants No.2, 3 & 4 have already been declared ex-parte vide order dated 20.03.2013 and for the purposes of said application no defence has been furnished. It has further been alleged on part of the plaintiff that after execution of the agreement the plaintiff made a publication in the newspaper, which be found at page 67 of the suit file. It is also pointed out that there was no specific timeline defined in the sale agreement, therefore, time was not the essence of the contract. To the contrary, learned counsel has stated that condition precedent in the agreement was only the mutation of the property in the name of the vendors. It has been argued by the learned counsel that the delay is only attributable on account of the defendants as some of them have passed away, which inevitably delayed the process of mutation due to which the sale deed could not be executed. Without going into the details of the defendants, who have expired, it is pertinent to mention that the last defendant i.e. defendant No.4 died on 24.01.2018.

3. Turning towards the application at hand, the learned counsel has invited my attention to the written statement of defendants No.1, 5 & 6, who have categorically and unambiguously admitted to the execution of the agreement. Upon examination of the written statement of defendant No.1, it is apparent that he has not denied the contents of paragraph No. 1 to 4 of the plaint and therefore, has admitted to the contents thereof. Further the defendant No.1 in his written statement states as under: -

*“It is therefore, respectfully prayed the Defendant No.1 has no objection if the suit of the Plaintiff may be decreed and amount of sale consideration lying with the Nazir of this Hon’ble Court to the extent of my share may be released.*

4. Further the defendants No.5 & 6 have also filed their written statement and have also categorically admitted to the execution of the sale agreement with the plaintiff. In paragraph No.6 of the written statement, they have stated as under: -

*“That the contents of paragraph no.6 are admitted. The Defendant Nos. 5 and 6 are ready to perform Agreement to Sell dated 29.09.2016 and Sale Agreement dated 20.06.2017 through attorney to the extent of their share in respect of the suit property.”*

5. The plaintiff has also invited my attention to the order of the Court dated 07.10.2019, in which the plaintiff was directed to deposit the balance sale consideration and be invested the same by the Nazir of this Court in a profit bearing scheme. The same was done by the plaintiff and ever since the balance sale consideration is lying with the Nazir of this Court and presumably growing due to the interest thereon.

6. Today, during the course of hearing Mr. Moiz-ur-Rehman, advocate, affected appearance on behalf of legal heirs of defendant No.4 has sought time to file a recalling application, in open Court, without the same even bearing a CMA number. The learned counsel filed his vakalatnama when the matter was fixed on 14.02.2025 and thereafter adjourned to 20.02.2025. The learned counsel made no efforts to file any application in the interim period. Such conduct is unwarranted to say the least. The said defendants have already been declared ex-parte and defendant No.1, 5 & 6 (who have themselves executed the agreement in question) have no objection if the suit is decreed in favour of the plaintiff. It is ironic that the legal heirs of defendant No.4 have now come up at this belated stage seeking to file their written statement, despite the fact that defendant No.4 (executor) of the said agreement has now expired.

7. Question was posed to the learned counsel for legal heirs of Defendant No.4 regarding their stance in the matter. The said counsel quite categorically stated that the valuation of the subject property has risen considerably and hence the application at hand may be dismissed. Learned counsel for the plaintiff has stated that the said appearance of the learned counsel on behalf of the legal heirs of defendant No.4 is only to disrupt the instant proceedings and to wriggle out of their obligation. It has further been stated that the said legal heirs of defendant No.4 are enjoying the possession of the property and are only creating hurdles in the execution of the sale deed because the property has risen in value. I am refraining myself from making any observation on the intention behind said belated appearance as the same is not relevant for the purposes of the present application.

8. I have heard the parties and perused the record. The application as noted above has been filed under Order XII Rule 6. The same is reproduced below for the sake of convivence: -

*“6. Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment as the Court may think just.”*

9. Before delineating with the application at hand it will be useful to first highlight the ingredients of Order XII Rule 6 and set the parameters which the plaintiff has to satisfy in this regard. A recent judgment of the Divisional Bench in the case of **M/s New Rabia Enterprises Vs. Eaton Phoenixtee MMPL Col. Ltd<sup>1</sup>** referring to the judgement in the case of **Khalil (Pvt.) Limited through**

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<sup>1</sup> HCA No.02 of 2023

**Authorised Officer vs. MV. Wales II and 3 others**<sup>2</sup> summarised the

principles in paragraph number 15 as under: -

*“(i) First one has to see as to whether there is an admission? If there isn’t, there is no need to look further to see whether is any other issue for determination as between the parties and the application should be dismissed forthwith;*

*(ii) If there is an admission, then one should consider as to whether or not the admission is “specific, clear, unambiguous, categorical and definite?”*

*(iii) to consider as to whether the admission is or isn’t “specific, clear, unambiguous, categorical and definite” the Court should begin by looking at the pleadings of the parties to see whether the pleadings are qualified in any way;*

*(iv) if the admissions are qualified by “categorical and specific” objections, then such objections have to be sustained and the application dismissed;*

*(v) if the admissions are not qualified or qualified by “vague and general” objections, then such objections can be ignored and the Court should then consider the “legal” consequences of the admission;*

*(vi) If the legal consequences of the admission are “clear and definite” and do not require any further determination of a fact the application can be allowed,*

*(vii) if the admission is found to be specific, clear, unambiguous, categorical and definite and the legal consequences of such admission are found to be “clear and definite,” it is irrelevant as to whether or not there is any other issue for determination as between the parties e.g. a counter claim, or a counter suit, the application must be allowed on its own merits.”*

10. In the case of **Khalil (Pvt.) Limited** (supra) a learned single judge of this court in paragraph number 8 held as under: -

*“In other words, for Order XII, Rule 6 to apply, there must be an admission of fact that is not qualified in any manner, and an admission will be so regarded if the admission is clear, specific and categorical, the pleadings in question do not contain any specific or categorical objection to the maintainability of the suit, and a clear legal consequence flows directly from such admission.”*

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<sup>2</sup> 2012 C L D 276

11. In the case of **Macdonald Layton & Company Pakistan Ltd vs. Uzin Export-Import Foreign Trade Co. and Others**<sup>3</sup> the Honourable Supreme Court in paragraph number 3 held as under: -

*“Order XII, rule 6, C.P.C. provides a summary and speedy remedy in cases where admission is made by the defendant in the pleadings -or outside it, but in order to attract this provision it is necessary that the admission should be unequivocal, clear, unconditional and unambiguous. Such admission should not only be in respect of the amount but the liability to pay the same as well” to the plaintiff. The Court in deciding such application exercises its discretion which is regulated by the well-recognised principles.”*

Reliance in this regard is also placed on: -

- **Bashir Ahmed Khan vs. Shamas-ud-din and another**<sup>4</sup>
- **Divisional Superintendent Postal Services Faisalabad and Others vs. Khalid Mahmood and Others**<sup>5</sup>
- **Izzat Khan and another vs. Ramzan Khan and others**<sup>6</sup>

12. It is clear from the pronouncements above that the admissions made by the Defendant/s have to be “*unequivocal, clear, unconditional and unambiguous.*” The admissions made by the relevant defendants have already been reproduced above and can only be classified as such. Moreover, the said defendants have categorially stated that they wish to execute the sale deed in favour of the Plaintiff and admitted having executed the sale agreement.

13. It is also a settled proposition of law that relief is discretionary under Order XII Rule 6. In the present case I find no reason why the discretion should not be exercised in favour of the plaintiff. This is in light of the fact that the plaintiff has promptly deposited the balance sale consideration before the nazir of this court, pursuant to the order mentioned above. The defendants on

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<sup>3</sup> 1996 SCMR 696

<sup>4</sup> 2007 SCMR 1684

<sup>5</sup> 2023 SCMR 354

<sup>6</sup> 1993 MLD 1287

the other hand continue to enjoy uninterrupted possession of the property. The balance sale consideration deposited by the plaintiff has also been invested in a profit bearing scheme and in that respect the defendants shall not be deprived of the fruits of the sale consideration.

In light of what has been held above there is no impediment in the grant of the application in hand (CMA No.6258/2024). The suit is decreed in the terms as prayed for. These are the reasons of the short order dated 20.02.2025.

Judge

Nadeem