

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
**Suit No.776 of 2019**

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Date Order with Signature of Judge

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*Abdul Alim Quadri* .....*Plaintiff*

*Versus*

*Rauf Ahmed Rufi and another*.....*Defendants*

Dates of hearing :31.01.2025 and 03.02.2025

Date of announcement of judgment :04.02.2025

Mr. Akhtar Saeed Shaikh, advocate for the plaintiff along with  
Farid Ahmed, attorney of the plaintiff.

**JUDGMENT**

**MR. JUSTICE MUHAMMAD JAFFER RAZA** ;- Instant suit has been filed by the plaintiff through duly constituted attorney, who is present before the Court today. Before deliberating on the issue at hand, it is imperative to note that the defendants in the instant case were served through multiple modes as provided under Order 5 Rule 20 and resultantly the service was held good on 06.04.2023. Subsequently, due to failure of the defendants to appear despite repeated service this Court vide order dated 09.08.2023 proceeded ex-parte. The plaintiff thereafter filed affidavit of ex-parte proof, which was presented to the Court on 08.11.2023.

2. In the instant Suit the plaintiff has sought declaration, specific performance, possession, recovery of damages and permanent injunction. It is claimed in the memo of plaint and affidavit in ex-parte proof that in the year 2004 a housing project was announced by the defendants in the name and

style of M/s. Ruffi Global City in KDA scheme No.33, Karachi. The plaintiff chose to invest in the said project and applied for booking a plot on 06.09.2004 for a total sale consideration of Rs.729,000/-. According to said booking the plaintiff was allotted a plot bearing No.D-70, Diamond Block, measuring 150 sq. yards in the said project (hereinafter referred to as suit plot), subject to the terms and conditions in the booking agreement. The details of the payment are reflected in para-5 of the plaint and also para-7 of the affidavit in ex-parte proof. It is contended by the plaintiff that the entire amount for the suit plot has been paid and there are no outstanding payments/charges against the same. It is further contended that the last and final payment was made on 04.02.2009 and the defendants with malafide intent have omitted to lease the suit plot in favour of the plaintiff. The plaintiff has further alleged fraud, usurpation and malintent by the defendants. The plaintiff stumbled upon the knowledge of the defendants' arrest on or about 14.12.2017 and thereafter filed an application to the Director General, National Accountability Bureau on 03.04.2019. Prior to same, it is contended by the plaintiff that he visited the office of the defendants several times and also submitted an application for allotment, lease and possession of the suit plot. It is contended further by the plaintiff that the said plea fell on deaf ears and the plaintiff as a last resort filed the instant suit.

3. The attorney of the plaintiff has stepped into the box and on oath has reiterated the contents of his Affidavit in ex-parte proof and has exhibited the following documents. I have examined the following documents in original and the same have been seen and returned by me to the plaintiff:-

S.No.	Description of document	Marked as Annexure
1.	Special Power of Attorney	P/1
2.	Schedule of payment	P/2
3.	Printed application form of Ruffi Global City dated 06.09.2004	P/3
4.	Photocopies of 14 payment receipts and file cover sheet of payments written by the defendants	P/4 to P/18

4. Under order IX Rule 6 it is not mandatory upon the Court to record evidence, however, in the present circumstances I find it both expedient and appropriate to call the attorney of the plaintiff to the witness box for his examination in chief. As noted above, the attorney has reiterated the contents of the affidavit in ex-parte proof and has exhibited the original documents as reflected in the table at para-3 above.

5. The instant case is proceeding ex-parte, however, under order IX Rule 6(a) it is a well settled principle of law that the Court cannot pass an ex-parte judgment in a mechanical manner, shutting its eye to the record, which is before the Court. The Court even in ex-parte cases has the power to dismiss the suit if the plaintiff fails to discharge his burden as enumerated under Article 117 and 118 of the Qanoon-e-Shahadat Order, 1984, after striking the defence of the defendant. The plaintiff in this regard has to stand on his own feet to satisfy the Court as to the existence of any right. In other words, mere absence of the defendant does not justify the presumption that the whole of the plaintiff's case is true. The defendant absence does not in any way lower the plaintiff's burden to proof his case. I would go as far as to say that in ex-parte cases the court is saddled with the additional burden of ensuring that the plaintiff's version of events is atleast prima-facie true and fathomable.

The said principles are enumerated in detail in the following judgments:-

- (1) Munawar Ahmed, Chief Director Samma v. Muhammad Ashraf<sup>1</sup>
- (2) Federation of Pakistan v. Farrukah International Pvt. Ltd<sup>2</sup>
- (3) Chairman, National Highway Authority v. Moon Traders<sup>3</sup>
- (4) Kabir Ahmed v. Saudabad Trust<sup>4</sup>

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<sup>1</sup> PLD 2021 SC 564

<sup>2</sup> 2023 SCMR 1118

<sup>3</sup> PLD 2020 Islamabad 361

<sup>4</sup> 2007 CLC 288

6. A specific question was posed to the plaintiff in reference to law of limitation. It may be noted that the booking of the suit plot was done in the year 2004 and the final payment pertaining to the same was done in the year 2009. The suit, as the record reflects was filed on 23.04.2019. Learned counsel for the Plaintiff has been quick to point out that the period of limitation for specific performance under Article 113 of the Limitation Act 1908 is three years from the date of refusal. The last date of refusal in the present case is the date on which the Plaintiff stumbled upon the knowledge of the defendants arrest on or about 14.12.2017. Hence the suit is within time.

It is a settled principle of law that when no time for the performance of the agreement was mentioned in the agreement to sell, the court was required to enquire when the Plaintiff had notice of refusal of performance. Upon discovery of such period the limitation of three years was computed thereon.

Reliance in this regard is placed on:-

1. Mst. Jaiwani Bai v. Messrs Amir Corporation and others<sup>5</sup>
2. Abdul Rasheed v. M/s. Rufi Builders & Developers<sup>6</sup>

There is nothing to refute the contention of the plaintiff and I am satisfied with the statement of the plaintiff witness and have examined the documents in original. Accordingly, the suit is decreed as prayed in terms of prayer clause A, B, C and D **only**. There is no order as to cost.

Office is directed to prepare the decree in the terms as recorded hereinabove.

Judge

Nadeem

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<sup>5</sup> PLD 2021 SC 434

<sup>6</sup> judgement dated 25.10.2017 in Suit 197/2010.