IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.364 of 2006

Appellant	:	Younus Billoo S/o Sharif Billoo through M/s. Shahab Sarki, Farrukh Aziz Shaikh & Muhammad Zafar, Advocates
Respondent	:	Mst. Piyari Begum W/o Sadiq Wahab through Mr. Izhar Hameed Memon, Advocate
Date of Hearing	:	23.11.2026
Date of Judgment:		___.11.2026

J U D G M E N T

Amjad Ali Sahito, J-. Through this High Court Appeal, the appellant has called in question the judgment and decree dated 14.09.2006 passed by the learned Single Judge in Suit No.312 of 2003, whereby the suit instituted by the appellant for specific performance of the sale agreement dated 13.07.2000 in respect of property bearing Plot No.13-C, Block-6, Pakistan Employees Cooperative Housing Society, Karachi, was dismissed with costs. The appellant seeks setting aside of the impugned judgment and decree and a decree for specific performance of the agreement.

Facts and background:

2. The facts, briefly stated, are that the appellant entered into a tenancy agreement dated 12.05.2000 with the respondent in respect of the suit property, namely Plot No.13-C, Block-6, P.E.C.H.S., Karachi, at a monthly rent of Rs.20,000/-. Under clause 2 of the tenancy agreement, the appellant paid a sum of US$15,000/- as advance rent, with an express understanding that the said amount would be adjusted towards the sale consideration in the event of his purchasing the property.

3. Subsequently, through a written sale agreement dated 13.07.2000, the respondent agreed to sell the suit property to the appellant for a total consideration of US$120,000/-. The agreement acknowledged receipt of US$15,000/- and stipulated that the remaining amount of US$105,000/- would be paid within sixty calendar days from the date of execution of the agreement. The agreement further provided that upon final payment, the respondent would relinquish all her interest in the property, whereas the appellant would assume responsibility for local maintenance expenses and property taxes.

4. It is the appellant's case that, in addition to the initial amount of US$15,000/-, he paid a further sum of US$26,500/- through different demand drafts and other payments, thereby making the total payment of US$41,500/- towards the agreed sale consideration. Consequently, a balance amount of US$78,500/- remained payable. According to the appellant, despite receipt of the aforesaid substantial amount, the respondent did not proceed with the execution of the conveyance in his favour. Instead, through a letter dated 11.03.2003, received by the appellant through fax on 24.03.2003, the respondent called upon him to pay the outstanding sale consideration. The appellant maintains that he was always ready and willing to pay the balance amount, subject to completion of the sale transaction and execution of the necessary transfer documents by the respondent. As the respondent was allegedly contemplating the creation of third-party interest in the suit property, the appellant instituted Suit No.312 of 2003 on 27.03.2003 seeking specific performance of the sale agreement and a permanent injunction.

5. Along with the suit, the appellant filed an application under Order XXXIX Rules 1 and 2, read with section 151, C.P.C., seeking restraint against the respondent from transferring or creating third-party interest in the suit property. An interim order was passed on 28.03.2003. Subsequently, the appellant also filed CMA No.1741 of 2003. The said application, along with another connected application, was disposed of by consent

through order dated 31.08.2004, whereby the interim order dated 28.03.2003 was confirmed subject to the appellant depositing US$78,500/- with the Nazir of this Court within two weeks. The learned Single Judge further directed that the amount so deposited be invested in a profitable government scheme and observed that the dispute regarding the agreed sale consideration would be determined after recording evidence. In compliance with the aforesaid order, the appellant deposited the entire balance sale consideration of US$78,500/- through Demand Draft/Pay Order bearing No.FD-000130/127/04, issued by Bank Alfalah Limited, dated 09.09.2004. Thus, the balance consideration, as claimed by the appellant under the written sale agreement, came to be deposited with the Nazir of this Court during the pendency of the suit.

6. The respondent contested the suit. Although execution of the tenancy agreement, sale agreement and delivery of possession were admitted, it was asserted that the appellant had failed to pay the remaining sale consideration within the stipulated period of sixty days. The respondent further alleged that, upon the appellant's request, the time for payment had subsequently been extended and the sale consideration enhanced from US$120,000/- to US$175,000/-. It was also pleaded that the amount of US$15,000/- paid initially was adjustable towards rent and that the sale agreement had been cancelled on account of the appellant's default. The alleged enhancement of the sale consideration and extension of time, however, were disputed by the appellant.

7. On the basis of the pleadings, the learned Single Judge framed ten issues. Evidence was recorded through a Commissioner, and both parties were subjected to cross-examination. Upon conclusion of the evidence and hearing the learned counsel for the parties, the learned Single Judge, through the impugned judgment dated 14.09.2006, held that the agreed sale consideration was US$120,000/- and that the respondent had failed to establish either the alleged enhancement of the sale price to US$175,000/- or the alleged

extension of time on the revised terms. Nevertheless, the suit was dismissed principally on the ground that the appellant had failed to pay the balance sale consideration within sixty days and had not produced documentary evidence showing his attempts to tender the balance amount before institution of the suit. Being aggrieved, the appellant has preferred the instant appeal.

8. Learned counsel for the appellant mainly contended that the learned Single Judge, despite recording findings in his favour regarding the original sale consideration and rejection of the respondent's plea of enhancement, misdirected himself in law by treating the stipulated period of sixty days as an inflexible condition resulting in automatic termination of the agreement. It is further contended that the learned Single Judge failed to appreciate the legal effect of the respondent's acceptance of substantial payments, her subsequent demand for the balance sale consideration in March 2003, her failure to communicate any prior cancellation of the agreement, and, above all, the appellant's deposit of the entire outstanding consideration pursuant to the order dated 31.08.2004. He further contended that the Sale Agreement contained no stipulation regarding automatic cancellation or forfeiture, nor was any notice of rescission ever communicated to the appellant. He argued that the respondent's subsequent demand dated 11.03.2003 for payment of the remaining sale consideration, coupled with her admission regarding acceptance of substantial payments and extension of time, established that the agreement continued to subsist. He also submitted that the appellant had always remained ready and willing to perform his part of the contract, as evident from the institution of the suit shortly after the respondent's demand and deposit of the entire outstanding consideration of US$78,500/- in Court. He further questioned the finding regarding payment of the balance consideration in the United States, contending that no such condition was incorporated in the written agreement and that the final transfer was admittedly to take place in Pakistan. Lastly, he argued that the direction for refund of only US$23,500/- after adjustment of alleged tenancy dues was contrary to the admitted payments and

the subsequent judgment of this Court dated 18.12.2020, wherein the appellant's possession was held to be in the capacity of a purchaser and not as a tenant. On these grounds, he prayed for setting aside the impugned judgment and decree.

9. On the other hand, learned counsel for the respondent, while supporting the impugned judgment and decree, contended that the appellant had failed to fulfil his contractual obligation by not paying the balance sale consideration of US$105,000/- within the stipulated period of sixty days from execution of the Sale Agreement dated 13.07.2000. He submitted that despite repeated demands and extensions of time, the appellant failed to complete the transaction, whereas the respondent had always remained willing to execute the sale deed upon receipt of the agreed consideration. He further argued that the appellant could not derive any benefit from the subsequent deposit of US$78,500/- in Court, as the same was made after considerable delay and institution of the suit, and could not cure his earlier default. He maintained that the subsequent correspondence relied upon by the appellant did not alter the contractual obligations or confer upon him any vested right to seek specific performance. He, therefore, submitted that the learned Single Judge had rightly appreciated the evidence and recorded findings against the appellant, which called for no interference in appeal. In support of his contention, learned counsel has relied upon the cases reported as Mst. Mobin Fatima vs. Muhammad Yamin and 2 others (PLD 2006 Supreme Court 214), Bank Al-Falah Ltd. vs. Mrs. Shahzadi Zarfashan Sohail (2016 YLR 2528) and Muhammad Abdur Rehman Qureshi vs. Sagheer Ahmad (2017 SCMR 1696).

10. We have heard the learned counsel for the parties, examined the impugned judgment, the pleadings, the evidence recorded through the Commissioner, the documents available on record, the written arguments filed on behalf of the appellant and the orders passed during the pendency of the suit. The controversy essentially revolves around the interpretation and enforcement of the admitted agreement of sale, the respective

obligations of the parties thereunder, the question of readiness and willingness on the part of the appellant and the legal effect of the amount deposited by him pursuant to the order dated 31.08.2004.

Points for determination:

11. In view of the controversy involved, the following points arise for determination:

(i) Whether the stipulation of sixty days for payment of the balance sale consideration rendered time the essence of the agreement dated 13.07.2000, so as to entitle the respondent to treat the agreement as terminated upon expiry of that period?

(ii) Whether the respondent established that the agreement had been rescinded or cancelled before institution of the suit?

(iii) Whether, on the basis of the evidence and subsequent conduct of the parties, the appellant established his readiness and willingness to perform his part of the agreement?

(iv) Whether the appellant is entitled to a decree for specific performance of the agreement dated 13.07.2000?

Discussion and findings:

12. We have carefully examined the sale agreement dated 13.07.2000. The execution of the agreement is not disputed by either party. The respondent has also admitted receipt of the initial amount of US$15,000/- and the subsequent payments made by the appellant. The learned Single Judge has specifically held that the respondent failed to establish her plea that the sale consideration had been enhanced from US$120,000/- to US$175,000/-. Similarly, the alleged extension of time upon revised terms was also not established through any independent documentary or oral evidence. Consequently, the agreement dated 13.07.2000, providing for a total sale consideration of US$120,000/-, remains the admitted and established contractual document governing the rights and obligations of the parties.

13. The first question requiring consideration is whether the period of sixty days mentioned in the agreement was intended by

the parties to be the essence of the contract. In this regard, section 55 of the Contract Act, 1872, provides that where a party fails to perform an obligation within the specified time, the contract becomes voidable at the option of the promisee only where the intention of the parties was that time should be of the essence of the contract. Conversely, where time was not intended to be of the essence, failure to perform within the specified period does not, by itself, render the contract voidable.

14. It is a settled principle of law that, in transactions relating to the sale of immovable property, time is ordinarily not treated as the essence of the contract unless such intention is clearly manifested through the express terms of the agreement or the surrounding circumstances. Mere incorporation of a particular period for payment or completion of the transaction does not, in every case, establish that the parties intended the agreement to stand automatically extinguished upon expiry of that period. The intention must be gathered from the contract as a whole and the subsequent conduct of the parties.

15. In this regard, guidance may be drawn from the judgment of the Honourable Supreme Court in ***Mst. Jaiwanti Bai v. Messrs Amir Corporation and others (PLD 2021 SC 434)***, wherein the Honourable Supreme Court considered the effect of sections 12 of the Specific Relief Act, 1877, and 55 of the Contract Act, 1872, in the context of an agreement to sell immovable property. The principle emerging therefrom is that time is not ordinarily regarded as the essence of an agreement for sale of immovable property and that a party who has performed or is ready and willing to perform his contractual obligations may seek specific performance, subject to the requirements of law.

16. Similarly, in ***Messrs Tee Jays Exclusive (Pvt.) Ltd. v. Muhammad Naveed (PLD 2017 Sindh 88)***, this Court considered the applicability of section 55 of the Contract Act, 1872, and reiterated that the mere stipulation of a period in an agreement concerning immovable property does not necessarily make time the essence of the contract. The nature of the

obligations undertaken by the parties, their reciprocal character and the surrounding circumstances must also be considered.

17. Applying the aforesaid principles to the facts before us, we find that the sale agreement dated 13.07.2000 does not contain any clause expressly declaring that time shall be the essence of the contract. Nor does it provide that upon failure to pay the balance consideration within sixty days, the agreement shall automatically stand cancelled, or that the amount already received by the respondent shall stand forfeited. There is also no stipulation authorizing the respondent to unilaterally increase the sale consideration upon expiry of the said period. The agreement merely records the total sale consideration, acknowledges receipt of US$15,000/- and stipulates that the balance amount shall be paid within sixty calendar days.

18. We are conscious that the period of sixty days was expressly mentioned and cannot be treated as meaningless. However, the mere existence of such a stipulation, without anything further in the agreement demonstrating an intention to make time the essence, would not justify the conclusion that the contract automatically came to an end upon expiry of sixty days. The learned Single Judge, therefore, fell into error by treating the expiry of the stipulated period as decisive against the appellant without examining the intention of the parties in the light of section 55 of the Contract Act, 1872, and their subsequent conduct.

19. There is another significant aspect of the matter. The respondent admittedly received the initial amount of US$15,000/- under the tenancy agreement, which, according to its express terms, was to be adjusted towards the sale consideration in the event of purchase of the property by the appellant. Thereafter, further payments aggregating to US$26,500/- were made through demand drafts and other payments. The respondent did not dispute the execution of the sale agreement or the receipt of the aforesaid payments. Thus, the total amount acknowledged and established to have been

paid towards the transaction was US$41,500/-, leaving a balance of US$78,500/-.

20. The learned Single Judge, while deciding the controversy, proceeded substantially on the basis that the appellant had paid only US$23,500/- within the stipulated period. In doing so, the learned Single Judge did not give due effect to the admitted initial payment of US$15,000/- and the contractual stipulation under the tenancy agreement that the said amount would be adjusted towards the sale price if the appellant purchased the property. The additional amount of US$3,000/- claimed on account of exchange-rate difference was also required to be considered in determining the total amount paid. The calculation of the outstanding consideration could not, therefore, be made by disregarding the contractual adjustment of US$15,000/-.

21. It is also relevant that the respondent's own case regarding the alleged subsequent arrangement was that the appellant had requested an extension of time and that, in consideration thereof, the sale price was increased to US$175,000/-. The respondent, therefore, sought to rely upon an alleged subsequent arrangement to explain the continued subsistence of the transaction beyond the original sixty-day period. However, having failed to establish the alleged enhancement of the sale consideration and the terms of the alleged extension, the respondent could not simultaneously rely upon the expiry of the original period as an absolute ground for treating the agreement as terminated. The learned Single Judge rightly rejected the respondent's plea of enhancement and alleged revised agreement, but failed to give its proper legal effect while deciding the question of termination.

22. The next important circumstance is the letter dated 11.03.2003, issued through the respondent's counsel and received by the appellant through fax on 24.03.2003. The said communication is of considerable significance. The respondent, instead of asserting that the agreement had already been cancelled and demanding possession of the property, called upon the appellant to pay the remaining sale consideration in respect

of the property which, according to the appellant's written arguments, had already been sold to him. The respondent's own conduct, therefore, indicates that the transaction was being treated as subsisting and that the outstanding amount was still being demanded under the sale arrangement.

23. More importantly, the respondent, during her cross-examination, specifically stated*: "I did not write any letter to the appellant informing him that I have cancelled the agreement of sale. It is correct Mr. Kwan did not write any letter that the agreement of sale was cancelled. I did not write any letter to the appellant informing him that the sale price of the house in dispute enhanced to U.S. Dollar 1,75,000/-."*

24. The above admission assumes significance because the respondent's plea of cancellation was founded upon the alleged default of the appellant. If the respondent genuinely intended to rescind the agreement on account of such default, she was required to establish that the right of rescission had been exercised and that such rescission had been communicated to the appellant. No prior written notice of cancellation has been brought on record. On the contrary, the communication dated 11.03.2003 demanded the outstanding consideration without communicating that the agreement had already been rescinded.

25. In this context, section 66 of the Contract Act, 1872, dealing with the communication or revocation of rescission of a voidable contract, is also relevant. The respondent's assertion that the agreement had been cancelled cannot be accepted merely on the basis of a subsequent plea in the written statement when her own admission and the contemporaneous correspondence indicate otherwise. The alleged cancellation was raised in the written statement filed after institution of the suit. Such a subsequent plea, in the circumstances of the present case, cannot retrospectively establish that the agreement had been validly rescinded and communicated to the appellant before filing of the suit.

26. We may now advert to the finding of the learned Single Judge on the question of readiness and willingness. The learned

Single Judge placed considerable emphasis upon the admission of the appellant that he had not obtained a demand draft for the entire balance amount within the original sixty-day period and that he did not possess any written document showing that he had tendered the amount to the respondent. No doubt, readiness and willingness on the part of a plaintiff seeking specific performance must be established through convincing evidence and cannot rest merely upon a general assertion in the plaint. However, such readiness and willingness is not to be determined by isolating one answer from the cross-examination or by requiring production of a particular form of document in every case. The entire conduct of the parties, the terms of the agreement, the payments made, the correspondence exchanged and the steps taken during the proceedings must be considered cumulatively.

27. In the present case, the appellant had already paid US$41,500/- towards the agreed sale consideration of US$120,000/-. He remained in possession of the property pursuant to the transaction, and the respondent did not dispute the execution of the sale agreement. When the respondent, through her counsel, demanded the remaining consideration in March 2003, the appellant instituted the suit within a few days, asserting his readiness to pay the outstanding amount and seeking enforcement of the agreement. He did not seek to avoid payment of the balance consideration; rather, he offered to pay the exact outstanding amount of US$78,500/- and sought execution of the sale deed in his favour.

28. Most importantly, the subsequent conduct of the appellant is borne out by an order of the Court itself. On 31.08.2004, in the presence of both parties and their respective learned counsel, the interim injunction was confirmed by consent, subject to deposit of US$78,500/- by the appellant within two weeks. The learned Single Judge specifically observed that the dispute regarding the sale consideration would be determined after recording evidence. The appellant complied with that direction

and deposited the entire amount through Bank Alfalah Pay Order No.FD-000130/127/04 dated 09.09.2004.

29. The aforesaid order was not passed behind the back of the respondent. It was passed by consent, and the respondent was represented through counsel. The appellant, accordingly, complied with the condition imposed by the Court and placed the entire outstanding consideration beyond his own control, in the custody of the Nazir, for investment in a government scheme. Such deposit is a material circumstance which the learned Single Judge was required to take into account while examining the appellant's readiness and willingness to perform his part of the agreement.

30. We are not unmindful of the fact that deposit of the balance consideration during the pendency of the suit would not, by itself, cure every previous default or automatically entitle a plaintiff to specific performance. Nevertheless, where the agreement is admitted, a substantial portion of the consideration has already been paid, the vendor subsequently demands the outstanding amount without communicating cancellation of the transaction, and the vendee, pursuant to a consensual judicial order, deposits the entire balance consideration within the stipulated period, such conduct cannot be disregarded while determining whether the vendee was genuinely willing to complete the transaction.

31. We also find that the learned Single Judge did not properly appreciate the legal effect of the letter dated 30.05.2001, marked as Exhibit P-5/3, attributed to the respondent's son. The said communication indicated that final payment and transfer of title were to take place in Pakistan in the presence of the parties and that the relevant documents were to be completed before the Registrar. The respondent, during her cross-examination, acknowledged that whatever was required for completion of the sale transaction was to be done by her son. This evidence assumes importance because the respondent's contention was that the balance payment was required to be made in the United

States before execution of any transfer document or power of attorney.

32. The written sale agreement, however, does not stipulate that the balance consideration must necessarily be paid in the United States. Nor does it contain any term requiring the appellant to pay the balance amount before the respondent could take steps for execution of the conveyance in Pakistan. The suit property is situated in Karachi, and the agreement concerns the transfer of an immovable property situated within the territorial jurisdiction of this Court. In the absence of an express contractual stipulation regarding the place of payment, the respondent's unilateral assertion that the entire balance amount was payable in the United States, as a precondition to any step towards transfer, could not be imported into the written agreement.

33. The learned Single Judge appears to have accepted the respondent's version that the appellant was obliged to pay the entire balance consideration in the United States within sixty days and that the respondent was under no corresponding obligation to take any step for completion of the transaction. This approach overlooks the circumstances surrounding the agreement and the subsequent correspondence. While the appellant was certainly under an obligation to pay the agreed consideration, the respondent was equally bound to act in accordance with the agreement and complete the transaction upon receipt of the agreed price. The respondent could not retain the substantial payments, continue to demand the balance consideration in March 2003, and thereafter contend that the agreement had already come to an end in September 2000.

34. The principle of reciprocal promises, embodied in sections 51 and 52 of the Contract Act, 1872, also requires consideration in this regard. Where promises are to be performed simultaneously, neither party is obliged to perform unless the other is ready and willing to perform his reciprocal promise. Even where the agreement does not expressly prescribe simultaneous performance, the nature and circumstances of the transaction

may require the parties to cooperate in completing the conveyance. In the present case, the respondent was required to execute the necessary transfer documents in respect of the suit property, whereas the appellant was required to pay the balance consideration. The respondent's obligation to complete the transaction could not be ignored altogether while examining the appellant's alleged default.

35. Another aspect requiring consideration is the subsequent judicial determination concerning the character of the appellant's possession. It has been brought to our notice through the written arguments that during pendency of the present appeal, proceedings arose between the parties concerning the appellant's possession of the suit property. In C.P. No.S-513 of 2019, this Court, through judgment dated 18.12.2020, considered the admitted sale agreement and the subsequent conduct of the parties and held that the tenancy stood terminated by conduct upon execution of the sale agreement and that the appellant's possession was in his capacity as a purchaser and not as a tenant.

36. The aforesaid judgment is relevant to the limited extent that it reinforces the conclusion that the original relationship of landlord and tenant did not continue independently of the admitted sale transaction. Consequently, the finding of the learned Single Judge under Issue No.8, whereby the initial amount of US$15,000/- was treated as an amount liable to be adjusted towards rent following the alleged termination of the sale agreement, cannot be sustained in the manner recorded. The amount was expressly made adjustable towards the sale consideration under clause 2 of the tenancy agreement, and the respondent admitted the execution of the subsequent sale agreement. In the absence of a legally established rescission of the sale transaction, the amount cannot simply be reverted to its original character of advance rent.

37. We may clarify that the judgment dated 18.12.2020 in C.P. No.S-513 of 2019 is not being treated as a substitute for adjudication of the merits of the present appeal. The issue of

specific performance must be decided on the evidence and contractual obligations arising in Suit No.312 of 2003. Nevertheless, the findings recorded therein regarding the character of possession and termination of the tenancy are relevant circumstances which cannot be ignored when examining the impugned judgment.

38. We further find that the impugned judgment suffers from an inconsistency in its treatment of the alleged termination of the agreement and the amounts paid by the appellant. On the one hand, the respondent's plea of enhancement of the sale consideration and extension of time was rejected for want of evidence; on the other hand, the learned Single Judge accepted the respondent's plea of termination without identifying any prior notice or other act communicating rescission to the appellant. Furthermore, while dismissing the suit, the learned Single Judge directed that the amount of US$78,500/- deposited by the appellant be returned to him and that the amount of US$23,500/- paid to the respondent be refunded after adjustment of dues against tenancy and the property. Such a direction was made without determining the precise amount of any outstanding rent or other recoverable dues and without properly accounting for the admitted initial payment of US$15,000/- and the additional amount claimed as exchange-rate difference.

39. The relief of specific performance is discretionary under the Specific Relief Act, 1877, but such discretion is judicial and must be exercised on settled principles. It cannot be denied on a merely technical consideration where the agreement is established, the material payments are admitted, the vendor has not established a valid rescission, and the purchaser has demonstrated his willingness to pay the balance consideration. At the same time, a plaintiff seeking specific performance must establish that he has performed or has always been ready and willing to perform the essential terms of the contract required to be performed by him. In the present case, the cumulative circumstances, particularly the admitted payments, the demand

for the balance amount in March 2003, the immediate institution of the suit thereafter and the deposit of the entire outstanding consideration in September 2004 pursuant to a consent order, sufficiently establish the appellant's willingness to complete the transaction.

40. It is also pertinent that the respondent did not establish that the appellant had refused to pay the balance amount when called upon to complete the transaction in March 2003. Rather, the appellant approached this Court within three days of receipt of the demand and offered to pay the outstanding consideration against execution of the necessary transfer documents. The respondent's own conduct in demanding the balance amount without first communicating cancellation of the agreement lends support to the appellant's contention that the transaction remained subsisting. In these circumstances, the appellant cannot be deprived of the contractual remedy merely because he did not produce a separate demand draft prepared within the original sixty-day period, particularly when the respondent's obligation to complete the conveyance and the place and manner of payment were themselves matters of dispute between the parties.

41. For the foregoing reasons, we are of the considered view that, on an overall appraisal of the material available on record and the circumstances attending the matter, the conclusion drawn by the learned Single Judge dismissing the suit cannot be sustained. The findings recorded by the learned Single Judge with regard to the agreed sale consideration of US$120,000/- and rejection of the respondent’s plea regarding enhancement of the sale price are maintained. However, the conclusion that the agreement stood terminated and that the appellant was not entitled to its specific performance, as well as the treatment of the initial payment of US$15,000/- as rent, do not find support from the record and cannot be upheld. The material on record establishes that the agreement to sell the suit property for a consideration of US$120,000/- continued to subsist; that the appellant had paid US$41,500/- towards the sale consideration;

and that the remaining amount of US$78,500/- was deposited with the Nazir of this Court pursuant to the order passed during the pendency of the proceedings. In these circumstances, the appellant has made out a case for enforcement of the agreement, subject to the consequential directions set out hereinbelow.

Conclusion and order:

42. In view of the foregoing discussion, we answer the points for determination in favour of the appellant. We hold that the stipulation of sixty days in the sale agreement dated 13.07.2000 did not, in the circumstances of the present case, render time the essence of the contract so as to bring about its automatic termination. The respondent failed to establish any valid prior rescission or cancellation of the agreement, or the alleged enhancement of the sale consideration to US$175,000/-. The appellant, on the other hand, established payment of US$41,500/- towards the agreed sale consideration and deposited the remaining US$78,500/- with the Nazir of this Court pursuant to the order dated 31.08.2004. The appellant has, therefore, established his entitlement to the relief of specific performance.

43. Consequently, **High Court Appeal No.364 of 2006 is allowed**. The impugned judgment and decree dated 14.09.2006 passed by the learned Single Judge in Suit No.312 of 2003, *Younus Billoo v. Mst. Piyari Begum*, are hereby set aside. The suit filed by the appellant is decreed in the following terms:

(i) The respondents, being the legal heirs and successors of the original defendant, shall execute and register a proper sale deed in favour of the appellant in respect of property bearing Plot No.13-C, Block-6, P.E.C.H.S., Karachi, in accordance with the sale agreement dated 13.07.2000, for the total sale consideration of US$120,000/-.

(ii) It is declared that the appellant has already paid US$41,500/- towards the agreed sale consideration and that the remaining amount of US$78,500/- stands deposited with the Nazir of this Court pursuant to the order dated 31.08.2004. Accordingly, no further amount towards the sale consideration shall be recoverable from the appellant.

(iii) The respondents shall execute the requisite sale deed and complete all necessary formalities for transfer and registration of the suit property in favour of the appellant within sixty days from the date of this judgment, subject to payment by the appellant of the requisite stamp duty, registration charges and other statutory expenses incidental to the execution and registration of the conveyance.

(iv) In the event of failure or refusal on the part of the respondents to execute the sale deed within the aforesaid period, the appellant shall be at liberty to approach the learned Single Judge/trial Court or having jurisdiction on the original side for execution of the conveyance through the Nazir of this Court in accordance with the procedure prescribed under Order XXI Rule 34, C.P.C., and other applicable provisions of law.

(v) Upon execution and registration of the sale deed, the Nazir shall release the deposited amount of US$78,500/- to the respondents, or their duly established legal representatives, in accordance with law, together with any profit accrued thereon, if any, after completion of the necessary formalities.

(vi) The respondents are permanently restrained from selling, transferring, alienating, encumbering or creating any third-party interest in the suit property in a manner inconsistent with the appellant's rights under the decree.

44. Needless to observe that the directions contained herein shall be carried out after verification of the identity and legal entitlement of the persons claiming through the deceased respondent, and the conveyance shall be executed in favour of the appellant in accordance with the applicable registration and property laws.

45. The appeal is allowed in the above terms, with no order as to costs.

JUDGE

JUDGE

KAMRAN/PS