

FORM NO. HCJDC/C-121
JUDGMENT SHEET

**IN THE LAHORE HIGH COURT, LAHORE,
JUDICIAL DEPARTMENT**

JUDGMENT

Civil Revision No.42583 of 2022

Dr .Asghar Ali

Vs

Muhammad Ali

Date of Hearing : 10.05.2023

Petitioner by: Mian Zulfiqar Ali, Advocate.

Respondent by: Mr. Rizwan Hayat Bajwa, Advocate.

MASUD ABID NAQVI, J. Brief facts of this civil revision are that the plaintiff/petitioner filed a suit for specific performance of an agreement to sell with the averments that he entered into an agreement dated 01.03.2017 with respondent/defendants for purchase of land properly mentioned in plaint, situated in Chak No.6/GB Faisalabad for a sale consideration of Rs.70,00,000/- per acre and paid Rs.40,00,000/- as an earnest amount. The date for completion of agreement was settled as 01.03.2018. The plaintiff arranged the balance sale consideration amount of Rs.1,28,72,865/- and contacted the defendants/respondent to comply with the terms of agreement, however, the respondent/defendants refused, which necessitated filing of instant suit.

The defendants/respondent contested the suit by raising preliminary objections. The learned trial Court vide order dated 23.11.2021 directed the plaintiff/ petitioner to deposit the remaining sale consideration amount but the plaintiff/ petitioner failed to comply with the court's order and ultimately on 19.02.2022 learned trial Court dismissed the suit due to non-deposit of remaining consideration amount in the court. Against that order, the plaintiff/petitioner filed an appeal and the same was dismissed vide ex-parte judgment and decree dated 24.05.2022. Feeling aggrieved, the petitioner/plaintiff has filed the instant civil revision and challenged the validity of the judgments and decree passed by the learned courts below.

2. I have heard the arguments of the learned counsel for the parties and perused the available record as well as have minutely gone through the impugned judgments and decree of learned courts below.

3. Perusal of record reveals that plaintiff/petitioner filed a suit for specific performance of an agreement to sell against the defendants No.1 and 2 and learned trial court directed the plaintiff/petitioner on 23.11.2021 to deposit balance sale consideration amount but the plaintiff/ petitioner failed to deposit the same till 19.02.2022. On 19.02.2022, learned counsel for plaintiff/petitioner recorded statement and withdrew the suit to the extent of defendant No.1 namely Shaukat Ali but the learned trial court passed the impugned

judgment and decree dated 19.02.2022 and dismissed plaintiff's suit for non-deposit of balance total sale consideration amount of Rs.1,28,72,865/-. After the statement of learned counsel of plaintiff/petitioner for withdrawal of suit to the extent of defendant No.1, the learned trial court was under the legal obligation to deduct the amount as is attributed to defendant No.1 and should have directed the plaintiff/petitioner to deposit the specific amount to the extent of share of defendant No.2/respondent namely Muhammad Ali and with assistance of both the learned counsels for the parties, said amount is computed as Rs.80,93,750/-. Instead of passing any order to clarify the specific balance sale consideration amount by deducting the amount to the extent of share of defendant No.1, learned trial court passed the judgment for not depositing the total consideration amount of Rs.1,28,72,865/-. It is also important to mention here that learned trial court failed to pass an order for deposit of specific remaining amount alongwith the consequences of non-compliance of the order with clarity in advance before passing the impugned judgment and decree dated 19.02.022 and learned appellate court has also failed to appreciate the above mentioned facts while dismissing the plaintiff/petitioner's appeal. The order passed by the learned civil judge as discussed above clearly indicates that neither the learned civil judge computed the correct balance sale consideration to be deposited by the plaintiff/petitioner nor passed any order alongwith

consequences of non-compliance of the order with clarity in advance before passing the impugned judgment and decree. In this regard, guidance is provided in recent judgment of the Hon'ble Supreme Court of Pakistan reported as Messrs DW Pakistan (Private) Limited Lahore Vs Begum Anisa Fazl-I-Mahmood (2023 SCMR 555), wherein the August Supreme Court, after discussing plethora of judgments of the Hon'ble Superior Courts has held as under:-

“While passing the order for deposit of sale consideration or balance sale consideration by the trial court, some reasonable time to deposit the money in court should also be afforded for compliance of the order alongwith the consequences of non-compliance of the order with clarity in advance.”

4. In view of the above discussion, this civil revision is **accepted** and the impugned judgments and decrees of the learned courts below are **set-aside** and the lis is remanded back to the learned trial court for decision afresh. The petitioner/plaintiff is also directed to deposit balance sale consideration amount of Rs.80,93,750/- before the learned trial court within 03-Weeks and in case of failure of plaintiff/petitioner to deposit the said balance sale consideration amount, within specified period, suit of the plaintiff/petitioner shall be dismissed due to non-deposit of remaining consideration in court. The contesting parties are directed to appear before the learned Senior Civil Judge (civil

jurisdiction) Faisalabad on 18.05.2023, who will either himself adjudicate upon the matter or entrust the same to a court of competent jurisdiction for adjudication.

(MASUD ABID NAQVI)
JUDGE

Approved for reporting.

JUDGE

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