

Form No:HCJD/C-121

ORDER SHEET

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

Case No: F.A.O. No. 54 of 2023

**Shariq Builders and Property Versus Dr. Muhammad Faisal Murad etc.
/Advisors**

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary.
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09.10.2023 M/s Muhammad Junaid Akhtar Khokhar and Chaudhary Muhammad Aamir Naeem, Advocates for the Appellant.
Agha Muhammad Ali Khan, Advocate for Respondent No.1.
M/s Mudassar Bashir Awan and Raja Zahid Ahmad Raja, Advocates for Respondents No.2 and 3.

This Appeal preferred in terms of Order XLIII of the Code of Civil Procedure (V of 1908) arises out of the order dated 20.05.2023, whereby learned Civil Judge, Ist Class, Rawalpindi proceeded to decline the ad interim injunction to the Appellant in the suit for specific performance, permanent and mandatory injunction.

2. Brief facts as per contents of this Appeal are that the Appellant entered into an agreement to sell dated 15.04.2021 with Respondent No.1 (*an owner and Attorney of respondents No. 2 and 3*) qua 230-kanal suit-land situated in Mouza Daghla and Gorakhpur, District Rawalpindi against the total sale consideration of rupees twenty-two crore forty-two lacs and fifty thousand (Rs.22,42,50,000/-). The Appellant paid amounts of Rs.2000,000/- (rupees two crore) as an earnest

money through Pay Order dated 603018 dated 13.04.2021 and, thereafter; an amount of Rs.20,00,0000/- (rupees two crore) at the time of execution of agreement dated 15.04.2021. That an amount of Rs.2,000,0000/- (rupees tow crore) was to be paid by the Appellant within two months and the remaining amount was to be paid till 15.08.2021, when the suit-land was stipulated to be transferred in the name of the Appellant by Respondents No.1 to 3, but it could not be done by them despite repeatedly made requests; nor *Fard* of the suit land was provided to the Appellant for verification of the suit land, hence; the suit for specific performance, permanent and Mandatory injunction praying for issuance of a decree against Respondents No.1 to 3 along with an application under Order XXXIX Rules 1 and 2 CPC for restraining them not to further sell/alienate/transfer the suit land was filed. The learned Civil Judge, Ist Class, Rawalpindi, vide order dated 20.05.2023 rejected the request of the Appellant for grant of ad interim injunction made in the suit whilst directing them to pay/deposit remaining consideration of Rs.20,42,50,000/- till adjourned date otherwise extending warning that the suit will be dismissed due to non-deposit/payment of remaining consideration. However, the main application seeking interim injunction is yet pending.

3. It is contended by learned counsel for the Appellant that while passing the impugned order, the trial court did not take into account that Respondents No.1 to 3 under the agreement to sell

dated 05.04.2021 were bound to transfer the suit land in favour of the Appellant especially when appellant has deposited the remaining consideration amount of Rs.20,42,50,000/- in compliance or order dated 06.06.2023, passed by this Court. Lastly, prays for setting aside of impugned order dated 20.05.2023, passed by learned trial court.

4. On the other hand, learned counsel for Respondents No. 1 to 3 raises question qua maintainability of this Appeal by stating that the Appellant has not come to this Court with clean hands, as the suit filed by him for specific performance, permanent and Mandatory injunction is still sub judice, as mere the relief regarding grant of ad interim relief has been declined therein. Besides, the main application filed under Order XXXIX Rules 1 and 2 CPC is yet pending adjudication with the trial court and in this very situation, filing of this Appeal under Order XLIII of the Code of Civil Procedure (V of 1908) is not maintainable and is liable to be dismissed on this score only. Adds that even otherwise, aforesaid agreement to sell dated 05.04.2021 was actually executed by Respondent No.1 (*Dr. Faisal Murad/defendant No.1 one of the Respondents' brothers*) with one Kamran Rafique Raja while Muzaffar Zaman/Defendant No.3 is not signatory thereof. However, Respondents No.2 and 3 were apprised by Respondent No.1 about the agreement and a consensus was developed amongst the brothers/Respondents that if further payment of Rs.2000,0000/- (two crore) was made within the

specified time in the agreement to sell i.e. till 30th of June 2021, then they would abide by the deal but not otherwise. Further adds that admittedly the Appellant had failed to fulfill its commitment within the stipulated time in accordance with the chalked-out agreement to sell and he did not ever contacted with them (Respondents) for transfer of the property, as he had not made payment as per agreement. In this regard, the learned counsel referrers Clause 11 of the agreement which reads under:-

"یہ کہ اقرارنامہ حداکی تکمیل کے لیے چار ماہ کا وقت مقرر کیا گیا ہے اور اس کے بعد یہ اقرارنامہ منسوخ تصور ہو گا اور فریق اول کو اختیار ہو گا کہ وہ کسی بھی شخص / ادارہ کے ساتھ نیا اقرارنامہ معابدہ کر لے فریق دوئم کو اس پر کوئی اعتراض نہ ہو گا اور نہ فریق دوئم اس کے خلاف کسی قسم کی قانونی چارہ جوئی کا حق رکھتا ہے۔"

In view of the above, as the Appellant has not fulfilled terms of the agreement to sell, therefore, the subject suit filed by him and the instant Appeal filed against an interim order is not maintainable, thus, is liable to be dismissed.

5. Heard.

6. Perusal of the record reveals that admittedly the agreement to sell dated 05.04.2021 has been executed between the parties, though there are certain apparent shortfalls in fulfilment of terms thereof, yet the considerable fact rests in field that only ad-interim injunction sought for in the suit filed by the Appellant has been declined while a date has been stated to be fixed for arguments of the parties upon point of maintainability of said suit. Besides, the main Application filed under Order XXXIX Rules 1 and 2 CPC is still pending adjudication as well with trial court. It has already

been elaborated in case *Exceed (SMC Pvt. Ltd.) through President and Chief Executive Vs. ZTAF ZHONGXING Telecom Pakistan (Pvt.) Ltd. through Executive Director and another (2007 CLC 348)* that “*The word "ad interim" is distinguishable than the word "temporary" "ad interim" would mean for the meantime (to make the interim gap) while the word "temporary" means for a certain fixed period, therefore, refusal of the "ad interim" injunction would not amount to a case 'decided'.*” Moreover, it cannot be denied or brushed aside that the Appellant has deposited the remaining above-mentioned consideration amount in compliance of order dated 06.06.2023 passed by this Court.

7. Since the matter before this Court is regarding ad interim injunction and trial court is seized with matter, hence without touching merits of the case instant Appeal is **disposed of** with direction to the trial court to finally decide the application under Order XXXIX Rules 1&2 CPC **within ten days** from the date of receipt of certified copy of this order after affording an opportunity of hearing to the parties and without being influenced with instant order. Parties are directed to appear before the trial court on **30.10.2023**.

**(JAWAD HASSAN)
JUDGE**

*Manzoor