

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C.R. No.9463 of 2022

Nasir Abbas Bhatti

Versus

Abid Hussain, etc.

J U D G M E N T

Date of Hearing	10.08.2023
For the petitioner	Ch. Fiaz Ahmad Singhairah, Advocate
For the respondents.	Mr. Shahbaz Ahmad Khan Yousafzai, Advocate.

Raheel Kamran J:- The petitioner has assailed the order dated 08.12.2020 and order & decree dated 12.01.2021 passed by the Civil Judge, Pindi Bhattian and judgment and decree dated 13.12.2021 passed by the Additional District Judge, Pindi Bhattian whereby suit of the petitioners for specific performance of agreement to sell was dismissed due to non-deposit of remaining sale consideration and appeal preferred there-against was also dismissed.

2. Brief facts of the case are that the petitioner instituted a suit for specific performance of agreement to sell dated 05.03.2013 against the respondents stating therein that he purchased the disputed property from the respondents against the consideration of Rs.8,000,000/- out of which Rs.400,000/- was paid as earnest money and it was agreed that after payment of remaining consideration of Rs.7,600,000/- on 25.06.2021 the disputed property would be transferred in the name of the petitioner. It was further averred in the plaint that despite

repeated efforts made on behalf of the petitioner, the respondents neither received the remaining consideration nor appeared before the Sub-Registrar on the agreed date. The respondents appeared and filed contesting written statement while controverting the execution of the agreement to sell. Out of the divergent pleadings of the parties, issues were framed and partial evidence was recorded. The trial Court vide order dated 08.12.2020 directed the petitioner to deposit the remaining sale consideration of Rs.7,600,000/-, which was not complied with, hence, the suit was dismissed vide order and decree dated 12.01.2021. Appeal preferred there-against by the petitioner was also dismissed by the Additional District Judge, Pindi Bhattian vide judgment and decree dated 13.12.2021.

3. Learned counsel for the petitioner contends that since the respondents have disputed the execution of agreement to sell in question, therefore, the petitioner was not liable to pay the remaining sale consideration and the impugned decisions are liable to be set aside on this score alone. In support of his contentions, he has placed reliance on the case of Professor Zia-ur-Rehman Khan and others v. Chairman, WAPDA, Lahore and others (2005 SCMR 1133) and Muhammad Asif Awan v. Dawood Khan and others (2021 SCMR 1270).

4. Conversely, learned counsel for the respondents has supported the impugned decisions for the reasons stated therein.

5. Heard. Record perused.

6. Undoubtedly, there is no provision in the Specific Relief Act, 1877 requiring the vendee to deposit the remaining sale consideration upon filing of the suit for specific performance of contract, however, as the relief of specific performance is discretionary in nature and cannot be claimed as

a matter of right, therefore, the vendee must state that he has performed all the conditions which under the agreement he was bound to perform and right from the date of execution of the agreement till filing of the suit he had been ready and willing to perform his part of the contract. He is not only required to state in the plaint his readiness and willingness to perform his part of the contract but also establish through supporting evidence like pay order, bank statement or other material, his ability to perform his part, leaving no doubt in the mind of the Court that the proceedings seeking specific performance have been initiated to cover up his default or to gain time to generate resources. It is in that context, the Court in order to weigh his capacity to perform and intention to purchase may direct the vendee to deposit the balance sale consideration. The readiness and willingness on the part of the vendee to perform his part of the obligation also *prima facie* demonstrates that non-completion of the contract was not the fault of the vendee and the contract would have been completed if it has not been renounced by the vendor.

7. In this case, after recording oral evidence of the plaintiff/petitioner, the trial Court in order to evaluate his *bona fide* and readiness, directed him to deposit the remaining sale consideration but he despite availing two opportunities remained fail to comply with the said order, rather he moved an application for extension of time till decision of the Banking Court wherein proceedings involving suit property were allegedly pending. There is no cavil to the proposition that any transfer of the property subject matter of proceedings before a Banking Court are subject to the provisions of section 23 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and principles governing equity of redemption, however, the

same does not absolve a plaintiff seeking specific performance of an agreement of his equitable burden to establish readiness and willingness to perform his part of the agreement.

8. There are many instances in which though there is nothing that actually amounts to fraud, there is nevertheless a want of equity and fairness in the contract which are essential in order that the Court may exercise its extraordinary jurisdiction in specific performance. In judging of the fairness of a contract the Court looks not merely on the terms of the contract but all the surrounding circumstances. Reliance in this regard is placed on judgments of the Supreme Court of Pakistan in the cases of *Rab Nawaz vs. Mustaqeem Khan* (1999 SCMR 1362) *Muhammad Abdul Rehman Qureshi vs. Sagheer Ahmad* (2017 SCMR 1696). The position that emerges here is that specific performance of an agreement dated 05.03.2013 for consideration of Rs.8,000,000/- is being sought only after paying an amount of Rs.400,000/- as earnest money when the value of the property in dispute has multiplied exponentially, as claimed by the learned counsel for the respondents while value of the Rupee has remarkably depreciated, and that too despite failure of the petitioner to deposit the remaining sale consideration vide order dated 08.12.2020. Conduct of the petitioner in the instant case manifestly shows non-seriousness and unwillingness on his part. Such exercise of jurisdiction may lead to miscarriage of justice and unfair advantage to the petitioner who, by merely paying a meager amount, had bound down the respondents for a number of years.

9. Reliance of the petitioner on the case of *Muhammad Asif Awan* supra is misconceived which is quite distinguishable on facts inasmuch as in that case the balance sale consideration was deposited in the Court by the vendee with the delay of

almost 18 days, however, in the instant case the remaining sale price has not been deposited at all. Moreover, in the aforementioned case, the order directing the deposit of remaining sale consideration had not provided penal consequences for non-compliance of the same whereas in the instant case the trial Court's order dated 23.12.2020 clearly specified that in case of failure to deposit the balance sale price, suit of the plaintiff would be dismissed. The impugned decisions of the Courts below are in line with letter and spirit of the law enunciated by the Supreme Court of Pakistan in the case of Anayat Ullah Khan and others vs. Shabbir Ahmad Khan (2021 SCMR 686) wherein it has been, *inter alia*, held in paragraph No.15:

“..... A person seeking the specific performance of a contract must first show that he is ready, able and willing to perform his obligations under the contract, but this the respondent had failed to do. The law does not require that the balance sale consideration must be tendered or deposited in court, but such tender/deposit helps establish that the buyer was not at fault. The respondent's learned counsel's contention that only after the court directs the deposit of the sale consideration, is it to be deposited, is misplaced. We may also take judicial notice of the fact that invariably the value of money depreciates over time and that of land appreciates. Courts adjudicating such cases should not be unmindful of this reality and should endeavor to secure the interest of both parties. In a suit for specific performance of land, if the seller/vendor has refused to receive the sale consideration, or any part thereof, it should be deposited in court and invested in some government protected security (such as Defence or National Savings Certificates); in case the suit is decreed the seller would receive the value of money which prevailed at the time of the contract and in case of the buyer loses he can similarly retrieve the deposited amount.”

10. In view of the foregoing, I do not find any illegality or material irregularity in the impugned order and judgment of both the Courts below warranting interference of this Court in

revisional jurisdiction and this civil revision being devoid of any merit is accordingly **dismissed**. There is no order as to the costs.

(RAHEEL KAMRAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

Saeed Akhtar