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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.57749 of 2023

Saima Batool **Versus** Additional District Judge, etc.

J U D G M E N T

Dates of Hearing:	30.04.2024
Petitioner by:	Barrister Hassan Anwaar Pannun, Advocate. Amir Riaz Bhullar, Advocate. Barrister Hasnain Younas, Advocate. Mian Aqeel, Advocate. Mr. Jawad Gul, Advocate. Mr. Zahid Randhawa, Advocate.
Province of Punjab by:	Mr. Muhammad Saad Bin Ghazi, Assistant Advocate General along with Sabahat Ashfaq and Asad Rasheed, Treasury Officers.
Respondent No.3 by:	Ms. Hina Bandealy, Advocate.

Anwaar Hussain, J. The petitioner before this Court filed a suit for specific performance of contract against respondent No.3, M/s. Defence Raya Golf and Country Club Fairways Commercial (“**the respondent**”) on the basis of an agreement-cum-allotment dated 21.06.2016 (“**the agreement**”) in respect of commercial plaza, which was to be constructed by the respondent. The agreement was executed/issued pursuant to a balloting. Total sale consideration was agreed by the parties as Rs.156,000,000/-. An amount of Rs.500,000/- was paid to participate in the ballot and 5% of total amount as the booking price i.e., Rs.7,800,000/-, was to be paid within 14-days of the ballot result announced on DRGCC Website of the respondent. The petitioner made payments through Pay Order Nos. CHQ/995914/16006 and CHQ/995913/16005, Bank Islami Pakistan Limited

Johar Town Branch, Lahore dated 29.06.2016 amounting to Rs.3,200,000/- and Rs.4,600,000/-, respectively. It was one of the agreed terms between the parties that another 15% of remaining down payment was to be paid within next 14-days, failing which the allotment was to be cancelled.

2. The petitioner in her suit averred that after lapse of 2 ½ months from the stipulated period of time, the petitioner was advised to deposit an amount of Rs.22,910,000/- out of total outstanding sale consideration, which was unwarranted and against the terms of the agreement and the petitioner, being a widow of Shaheed raising her minor daughter, is being coerced to pay the amount beyond and in violation of the terms of the agreement, therefore, she was constrained to institute the suit for specific performance so that the respondent be directed to strictly adhere to the payment schedule envisaged under the agreement. When the suit was filed, *vide* order dated 28.07.2021, notices were issued by the learned Trial Court to the respondent and the petitioner was directed to submit Court fee of Rs.15,000/- and also the remaining consideration amount till the next date. On 04.11.2021, the petitioner was again directed to pay the remaining consideration as also the Court fee. Through order dated 24.03.2022, the plaint of the suit instituted by petitioner was rejected, under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“CPC”) due to non-submission of the Court Fee as also the remaining consideration amount and reliance was placed upon the case reported as “Irfan Rasheed v. Muhammad Muazim and others” (PLD 2022 Lahore 372). This order was not challenged. Thereafter, an application was filed by the petitioner for refund of Rs.22,910,000/- deposited in the Treasury, *vide* order dated 03.09.2021 through Challan Form No.32-A as partial payment out of total outstanding sale consideration. The said application was dismissed by the learned Trial Court on the ground that no such order whereby the petitioner was allowed to deposit the amount of balance consideration exists on the case file. The matter ended up before this Court in W.P. No.80627/2022 titled “Saima Batool v. Defense Raya Golf and Country Fairways Commercial, etc.”, and the matter was remanded to the learned Trial Court with the observation that if the said amount is found

to be deposited in compliance/furtherance of order of the Court and not required in any other matter, the learned Trial Court shall refund the said amount to the petitioner after due process. On remand, the learned Trial Court again rejected the application, *vide* order dated 29.04.2023 impugned in the present petition, *inter alia*, on the ground that since the petitioner did not lay challenge to order dated 24.03.2022, the same had attained finality, therefore nothing is left for the Trial Court to adjudicate. A revision petition was filed against order dated 29.04.2023, however, the same was also dismissed on the ground that the appeal is not maintainable for want of pecuniary jurisdiction, hence, the present constitutional petition.

3. Learned counsel for the petitioner submits that the petitioner instituted a suit for specific performance of contract based on the agreement in which, by the order of the Court, an amount of Rs.22,910,000/-, was deposited after the Challan was issued by the learned Trial Court, attested copy whereof is available on record, which clearly depicts that the said amount was deposited in relation to the suit instituted by the petitioner against the respondent titled “Saima Batool v. Public at Large etc.”, however, later on, the suit was dismissed on account of non-deposit of the Court fee and non-deposit of balance price consideration and when the petitioner’s application for return of said amount was filed, the same has been merely dismissed on the ground that the factum of deposit of said amount, pursuant to the order of the learned Trial Court, is not recorded in the order sheet, which fault cannot be attributed to the petitioner.

4. Learned counsel for the respondent while acknowledging the factual matrix of the case, clarifies that the learned Trial directed to deposit complete balance sale consideration but the petitioner deposited lesser amount and therefore, the suit was dismissed. She further submits that since the suit instituted against the respondent has been dismissed, therefore, the respondent has no objection if the said amount is disbursed in favour of the petitioner, in accordance with law, as the respondent has no claim over the same. Fair stance taken by learned Counsel for the respondent is appreciated.

5. Learned Law Officer was directed to seek report from the Treasury Officer, Lahore. The needful was done and it was verified that the disputed amount had been deposited through Challan Form No.32-A, duly verified by the Court of Mubashar Hussain Awan, Civil Judge 1st Class, Lahore, under case titled “*Saima Batool v. Public at Large, etc.*” and the payment voucher can only be issued by the said Court, for release of the payment.

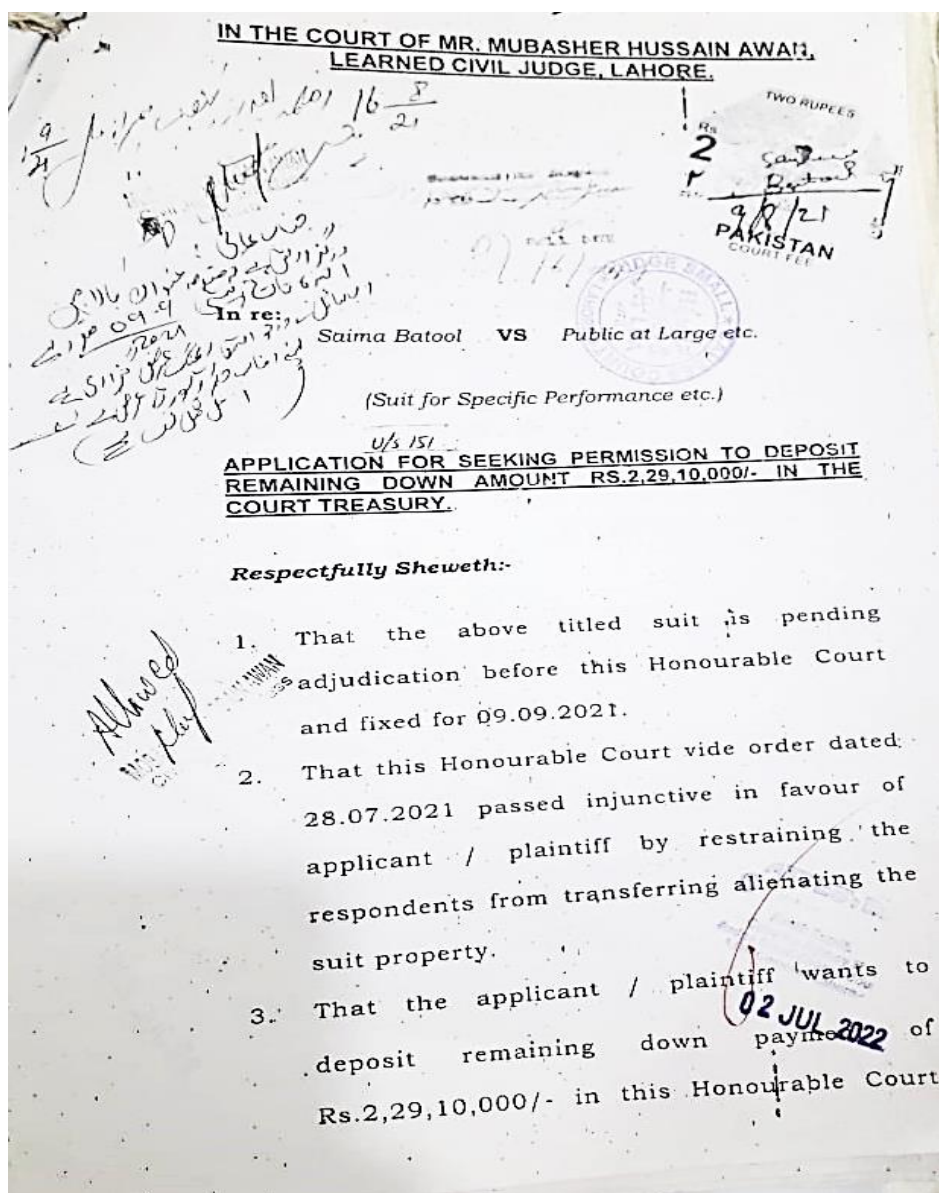
6. Arguments heard. Record perused.

7. At the outset, it would be essential to state that the Courts, as a repository of justice and in exercise of judicial power of the State, are obligated to dispense and administer justice and in the performance of this sacrosanct obligation, can neither cause nor become instrumental to perpetuate the injustice. Any act of Court perpetuating injustice would amount to undermining the sacrosanct existence of the Courts of law.

8. Having observed so, this Court proceeds to determine whether the Trial Court was justified in declining the request of the petitioner and dismissing the application of the petitioner for return of the amount deposited in the Treasury, on the ground that the suit of the petitioner was dismissed for non-compliance of the order of the Trial Court to deposit the balance sale consideration and that the factum of deposit is not reflected in the order of the Trial Court even though deposit of the partial amount of sale consideration is duly depicted by the record such as the Challan Form. Even the Treasury Office, Lahore admitted in the report submitted before this Court that the said amount was deposited. Therefore, if the factum of allowing the application of the petitioner to deposit balance sale consideration has not been recorded in the order sheet of the Trial Court, said mistake cannot be attributed to the petitioner. It is settled principle of law that a litigant is not to be affected by mistake of the Court and if the petitioner’s application is not allowed, it will certainly be a case where the act and/or omission of the court would result in grave injustice to the petitioner who is being made to suffer for no mistake of her as is evident from the fact that her suit was dismissed on 24.03.2022 and ever since then

her valuable money is being retained and not being returned to her and in the process, not only her money has depreciated over the period coupled with her deprivation from being able to invest the same and/or use the same as per her fundamental right. What added to her agony is that she was constrained twice to reach this Court by filing the present as well as earlier petition which in itself involves a financial as well as psychological ordeal that must have had accentuated effect considering the fact that she is widow of shaheed and raising her minor daughter as single parent.

9. There is no denial that the Trial Court directed the petitioner to deposit the balance sale consideration. An application was filed by the petitioner to deposit an amount of Rs. 22,910,000/- and it was "allowed" through an endorsement at the side margins of the said application, scanned copy whereof is pasted as under:



10. As noted above, learned Law Officer was directed to produce the original record from Treasury Office, Lahore, which is available that has been seen and returned. Attested copy of the Challan as also of the relevant register are annexed with the report. It is admitted feature of the case that the Challan was issued against which the payment was made and said payment is available in the Treasury and not needed for any other purpose. Attested copy of Challan Form indicates that a unique number i.e., 1518 was allotted in case of the petitioner and against which entry is duly recorded in the relevant register. Scanned copies of the Challan Form (with the unique number) and the extract from the relevant register are pasted hereunder:

FORM NO. 32-A

Provisional / Control
Treasury (Sub-Treasury)
National Bank of Pakistan
State Bank of Pakistan

To Be Filled In By The Remitter

Name or designation and address of the Person on whose behalf money is Paid

Full particulars of the remittances and the authority (if any)

AMOUNT

Head of Account

Order to the Bank

Signature

Ruppes (in word)

Received Payment

03 SEP 2021

CASH RECEIVED

1518

Attested

Treasury Office, Lahore

DATE	SL NO	NAME OF THE PERSON	AMOUNT	REMARKS
26.02.2021	1506	AYAZ HUSSAIN VS ZUBAIDA NASEEM	PAID	Rs. 25,000/-
26.02.2021	1509	KH USMAN ASLAM VS TARIQ MASOOD	PAID	Rs. 25,000/-
26.02.2021	1510	ABDUL QAYYUM VS SABA BABAR	PAID	Rs. 25,000/-
26.02.2021	1511	HAZ AHMAD VS MUHAMMAD ASLAM	PAID	Rs. 25,000/-
26.02.2021	1512	MUHAMMAD HABIB VS MIRZA MUNAWAR BI	PAID	Rs. 25,000/-
26.02.2021	1513	AROOSA NASEER VS MUHAMMAD WAHEED	PAID	Rs. 25,000/-
26.02.2021	1514	FARKHANDA KULSOOM VS MIAN ASGHAR	PAID	Rs. 25,000/-
26.02.2021	1515	MAZHAR HUSSAIN RAMAY SENIOR CIVIL J	PAID	Rs. 25,000/-
26.02.2021	1516	NAHEED AKHTAR VS SHAKEEL AHMAD	PAID	Rs. 25,000/-
26.02.2021	1517	SHABDUR REHMAN VS SAFDAR ALI	PAID	Rs. 25,000/-
26.02.2021	1518	SAIMA BATTOOL VS AYMAN NAAZ ETC	PAID	Rs. 25,000/-
26.02.2021	1519	FALIZA ZAKIR VS MIRZA MUBASHIR BAIG	PAID	Rs. 25,000/-
26.02.2021	1520	LALBA NADEEM ETC VS MUHAMMAD NADEEM	PAID	Rs. 25,000/-
26.02.2021	1521	MUHAMMAD NADEEM VS AYESHA IQEAL	PAID	Rs. 25,000/-
26.02.2021	1522	ADEEL MUSHTAQ VS HARIZA NIDA FAYYAZ	PAID	Rs. 25,000/-
26.02.2021	1523	HAJIRA ETC VS AMANULLAH	PAID	Rs. 25,000/-

Payment Register
of Revenue Deposit
Attested
Treasurer
Lahore
30-04-2024

The above referred two documents clearly indicated that the payment was deposited by the petitioner in relation to the suit instituted by her against the respondent. There is also consensus between learned Law Officer along with learned counsel for respondent that neither the State nor the respondent has any right over this amount.

11. The panacea to the present controversy lies in the doctrine of unjust enrichment¹ coupled with the principle of restitution. The remedy for unjust enrichment is restitution: the restoration of what was conferred to the claimant-the petitioner in the present case. The doctrine of unjust enrichment aims at correction of the injustice that occurred when the claimant suffered a subtraction of wealth and some other individual, generally a defendant in a case, received a corresponding benefit. The doctrine of unjust enrichment has been well-developed in all systems of civil jurisprudence including France,² Canada³, English⁴ and American⁵. In Pakistan and India, this doctrine is embodied in the Contract Act, 1872.⁶ The basis of the doctrine is that if a person has received any property or benefit from another, it is just that he should make restitution as otherwise he would be unjustly enriched at the expense of the other.

12. Keeping these principles in mind, if the facts of this case are examined, it reveals that the petitioner did apply for permission to deposit the balance amount of consideration as per direction of the Trial Court *albeit* lesser amount and on side margins of the said application, it has been recorded that the application is “allowed” and duly signed by the then Presiding Officer of the Court. This Court is of the opinion that the Courts

¹ “Nul ne doit s'enrichir aux dépens des autres”, which means “No one ought to enrich himself at the expense of others”.

² Law Quarterly Review, No. CCXVII, volume LV, 1939, at page 50p.

³ Canadian Bar Review, volume 16 (1938) at page 254; Winfield The Law of Torts (1931) Ch. 7).

⁴ Cheshire and Fifoot Law of Contracts, Fourth edition (1956 at page 548); Chitty on Contracts, Twenty-first edition (1955), volume I, at pages 78-79; Anson's Law of Contract, Twentieth edition (1952), Chapter XXI, page 422

⁵ “Moses v. Macferlan (1760) 2 Burr. 1005; “Towers v. Barrett 1 T.R. 133”; “Sinclair v. Brougham L.R. (1914) A.C. 398”

⁶ See Sections 68-72 of the Act.

are not to act mechanically. It is surprising that the Trial Court has simply ignored that there is no adverse claimant of the amount. The Trial Court repeatedly fell in error in not appreciating its own record to become instrumental in perpetuating injustice. If the Trial Court after allowing the application of the petitioner to deposit the amount did not record the same in the order sheet, the same is inaction on part of the Court, which cannot be made basis of harm to the petitioner. This is trite and established law and forms the philosophical and jurisprudential basis of the established principle that no one can be prejudiced by the act of the Court based on maxim “actus curiae neminem gravabit” (the act of the Court harms no one).

13. In view of the fact that the record of the Trial Court as also Treasury Office, Lahore clearly substantiate the contention of the petitioner that she deposited the amount of Rs.22,910,000/-in suit instituted by her for specific performance of contract, against the respondent and even if the suit has been dismissed, the respondent is not laying any claim on the same, therefore, it is unjust not to allow the refund on the basis of technicalities resulting into unjust enrichment of the State, which cannot be approved by this Court in exercise of its equitable jurisdiction.

14. Sequel to the above discussion, the impugned order is set aside and the application of the petitioner to seek refund of the amount of Rs.22,910,000/- is accepted and the Trial Court is directed to proceed in the matter enabling the petitioner to seek refund, after meeting codal formalities.

15. Allowed in above terms.

(ANWAAR HUSSAIN)

Judge

Approved for reporting

Judge