

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE SARMAD JALAL OSMANY

MR. JUSTICE DOST MUHAMMAD KHAN

**Civil Appeal No.535/2015**

(On appeal from the judgment dated 13.6.2014 passed by the Peshawar High Court, Peshawar in Civil Revision No.509-P/2013).

Wasal Khan etc

...Appellants

VERSUS

Dr. Niaz Ali Khan

..Respondent

For the appellants:

Mr. Ahsan Hameed Lilla, ASC  
Syed Rifaqat Hussain Shah, AOR

For the respondent:

Mr. Mohsin Akhtar Kiyani, ASC

Date of hearing:

30.9.2015

**JUDGMENT**

**Dost Muhammad Khan, J.-** With the leave of the Court, through this appeal, the appellants have challenged the legality of the judgment dated 13.6.2014 of the learned Judge of the Peshawar High Court, Peshawar passed in Civil Revision No.509-P/2013.

Arguments of the learned ASC for the appellants as well as respondent heard and available record carefully perused.

2. The epitome of the controversy is that respondent/plaintiff instituted a suit claiming right of preemption over the suit property described in the plaint measuring *11 Marla 4 Sarsahi*.

3. In the plaint, as it appears, respondent/preemptor inadvertently mentioned the sale consideration allegedly paid by the vendee to the vendor as Rs.14,00,000/- (fourteen lac) while in fact the sale consideration mentioned in the mutation was Rs.14,40,000/-.

4. The trial Judge without fulfilling its legal obligation in a proper and fair manner passed an order under the provision of Section 24 of the NWFP Preemption Act, 1987 (now KPK) which reads as follows:-

**"ORDER#1**

09.06.2012

1. The instant suit file submitted today during the MOD. Entrusted to the Court of the learned Civil Judge-III, Lahor and plaintiff to attend the proceedings therein while he is directed to deposit 1/3<sup>rd</sup> of the pre-emption amount within three days starting from today.
2. On submission of summon forms the defendants be summoned for 20-06-2012.

Sd/-  
(Arbab Sohail Hamid)  
MOD/Civil Judge-II, Lahor"

5. The respondent/pre-emptor deposited 1/3<sup>rd</sup> of the preemption amount i.e. of the total amount shown in the plaint as Rs.1400,000/- (fourteen lac) within the time given by the Court.

6. The appellants/vendees with an attempt to get benefit of this bonafide error, took a plea of short deposit of 1/3<sup>rd</sup> of total amount both in the written statement as well as in the application submitted in the trial Court and prayed for dismissal of the suit because an amount of Rs.13330/- was the deferential amount which was less than the 1/3<sup>rd</sup> of the total amount of the sale consideration of Rs.14,40,000/- and because Section 24 of the Act leave no discretion with the Court but to dismiss the suit. The learned trial Judge dismissed the suit on 14.2.2013 for non-compliance with the Court order with regard to the deposit of 1/3<sup>rd</sup> of the preemption money, however, on appeal filed by the respondent/preemptor, the learned Additional District Judge, Lahor, District Swabi, for cogent reasons set aside the judgment and allowed the preemptor to make good the deficiency by depositing the remaining amount of Rs.13330/- and remanded the case to the lower Court for trial.

7. Aggrieved from this judgment, the appellant filed Revision Petition No.509-P/2013 in the Peshawar High Court, Peshawar which was dismissed through the impugned judgment.

8. It is unfortunate that the statutory words i.e. sale consideration has been given a misnomer describing the same preemption money and it is invariably used in the trial court and even in the District Appellate Court which is a wrong practice being misleading one and because it is distortion of the statutory phrase employed in the provision of section 24 of the Preemption Act "sale consideration". The same is thus, misconceived practice.

9. In the instant the case, due to mistake of fact the draftsman/lawyer inadvertently without any *malafide* intent has mentioned the sale consideration as Rs.14,00,000/- (fourteen lac), instead of Rs.14,40,000/-. For the correction of the same, the respondent/preemptor has also applied to the trial court for amendment of the plaint to rectify the same which fact would show his bonafide intention. The respondent/preemptor has not gained any undue benefit because he has sincerely and faithfully complied with the initial court order by depositing a huge amount of Rs.466670/- thus by not depositing the additional amount of Rs.13330/- could not be held to be a deliberate non-compliance with the court order. More so, when the trial Judge had not specifically directed him to deposit 1/3<sup>rd</sup> of the sale consideration mentioned in the mutation.

10. Courts are under obligation to facilitate the litigant to a maximum extent by passing a clear order, giving direction without any ambiguity to the litigant to act in a certain way and in a particular manner and when it comes to calculation of an exact amount requires to be deposited thus, it must be clearly laid down/shown in the order and the litigant should not be pushed into realm of guess work, where in a uncertain situation, he is unable how to proceed and in what manner to comply with the order of the court. Therefore, it is the duty of the court to tell the plaintiff/preemptor the exact amount he is required to

deposit i.e.  $\frac{1}{3}$ <sup>rd</sup> of the sale consideration. The word preemption money as stated earlier has been misconstrued in some cases by rustic villagers and when the provision of Section 24 of the Preemption Act, 1987 clearly contains the word sale consideration, then giving it another description like preemption money is patently wrong construction on the Statute. This practice invariably prevalent and always pressed into service must be stopped henceforth. It is also the duty of the court to clearly tell the plaintiff/preemptor that he is required to deposit  $\frac{1}{3}$ <sup>rd</sup> of the sale consideration shown in the sale deed or mutation etc. moreover, for the deposit of the said  $\frac{1}{3}$ <sup>rd</sup> of the sale consideration a reasonable time must be given because in the instant case the learned Civil Judge was acting as MOD and was not a trial Judge, thus, the respondent/preemptor was required to apply to the trial court getting permission to deposit the amount in the court. Therefore, giving three days time was absolutely marginal and harsh. The discretion vested in the court to give the time has not been exercised in a just and fair manner. This is no way of performing a judicial obligation in a judicious manner. The order for the deposit of the amount was passed in great haste and also in entire vacuum which certainly led the respondent/preemptor to a wrong conclusion. Once it is established that initial error was committed by the learned Civil Judge then the blame cannot be shifted to the respondent/preemptor, in view of the well embedded principle that an act of the court shall prejudice none.

11. From the facts and circumstances, and the subsequent conduct of preemptor by quickly moving an application for amendment of the plaint to show the correct amount of Rs.14,40,000/- instead of Rs.14,00,000/- (fourteen lac) and willing to deposit the balance amount of  $\frac{1}{3}$ <sup>rd</sup> at any time loudly speaks about his bonafide and once a wrong was committed by the trial court causing prejudice to the respondent/preemptor on the subject issue then, the respondent/preemptor could not be visited with penalty much less the harsh one by dismissing his suit on this account.

12. To avoid such unnecessary litigation on petty matters, it is directed that in future the trial court shall calculate the sale consideration mentioned in the registered sale deed or mutation or any other document and if these documents are not available then through other reliable source it has to calculate the same and then to direct the vendee/preemptor to deposit a specific amount within a stipulated period, however, the period for deposit must be reasonable. In future, the sale consideration given a misnomer as preemption money should not be used but the statutory phrase/words 1/3<sup>rd</sup> of the sale consideration should be invariably employed so that the responsibility of the vendee/preemptor is to be made more specific and clearer.

13. The new dispensation of justice in matter of preemption requiring the preemptor to deposit 1/3<sup>rd</sup> of the sale consideration in cash in the court and for the rest he has to furnish surety bond is with the object to ensure that the suit instituted by the preemptor is neither frivolous nor it is intended to exploit the vendee through the machinery of the court and the court has to satisfy itself about the bonafide of the preemptor that his case being genuine. Therefore, if a penalty like dismissal of suit on account of deposit of deficient amount is to be imposed then it should be clearly established that it was the preemptor who deliberately committed the default and not due to bonafide mistake. Similarly the trial court shall perform its legal obligation in a proper and fair manner by passing a clear order about the deposit of calculated amount of 1/3<sup>rd</sup> of the total sale consideration mentioned in the sale deed, mutation etc. In any case if the court commits a default in this regard, then the preemptor cannot be visited with such a penalty like dismissal of suit because the fault in such a case would lay with the court for which the preemptor in no manner can be blamed for depositing less amount.

14. Keeping in view the above facts and circumstances, we do not find any error much less a legal infirmity in the impugned judgment of the High Court

and that of the learned Additional District Judge, therefore, this appeal is found devoid of all legal merits and is dismissed. If due to the dismissal of the suit the preemptor/respondent has not deposited so far the remaining amount of Rs.13330/- as worked out on the basis of total sale consideration of Rs.14,40,000/-, then he is given a time of twenty days to deposit the remaining amount with the trial court from the date of receiving copy of this judgment to make good the deficiency and the trial of the case be held on merits.

Appeal dismissed.

Judge

Judge

Islamabad, the  
30<sup>th</sup> September, 2015  
Sarfraz /-

**‘APPROVED FOR REPORTING’**