

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A.No.778 of 2021
Multan
Versus
Mst. Noreen Gul and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
02.	17.01.2024	Mr. Khurram Muhammad Qureshi, Advocate for the applicant / respondent No.1.

C.M.No.55/2024

Through the instant application, the applicant, Syed Razi-Ul-Hassan Kazmi, who is attorney of respondent No.1, Mst. Noreen Gul, seeks return of original document admitted in evidence by the learned trial Court and exhibited as DW-12/2.

Learned counsel for the applicant submitted that the appellant, Multan, instituted a suit for specific performance *inter alia* against respondent No.1 which was decreed vide judgment and decree dated 29.10.2021 in terms that the appellant was held entitled to receive from respondent No.1 and Muhammad Iqbal an amount of Rs.20,000,000/-; that the said Muhammad Iqbal assailed the judgment and decree dated 29.10.2021 in an appeal before this Court which is pending; and that this Court summoned original record from the learned trial Court which necessitated filing of the instant application before this Court for return of the document admitted in evidence in original as Exh.DW-12/2.

Learned counsel for the applicant after making reference to Order XIII Rule 9 of the Code

of Civil Procedure, 1908 (“CPC”) and Rule 21 (Volume-I, Chapter 1, Part-G) of the Lahore High Court Rules and Orders further submitted that a certified copy of the document has been annexed with the application to be used for replacement of original; that the applicant is ready to execute receipt and swear undertaking for production of the original document when required by the Court.

The document, which is sought to be returned is letter dated 21.01.1991 issued by the Capital Development Authority in favour of respondent No.1, for allotment of plot No. 292, Sector F-11/2, Islamabad (“suit plot”). Paragraph 13 of the judgment and decree dated 29.10.2021 shows that at the stage of evidence recorded by the learned Civil Court, one Syed Dastar Hussain, who appeared as attorney of respondent No.1, produced Exh.DW-12/2 in original.

The applicant claims that respondent No.1 is residing abroad and on 27.10.2023 at the Consulate of Pakistan, Birmingham, she had executed general power of attorney (“GPA”) dated 27.10.2023 in the applicant’s favour which GPA authorizes him to receive the document sought to be returned.

The record shows that on 11.06.2010, the appellant instituted a suit for specific performance of agreement dated 07.04.2003 (Sale Agreement). As per the judgment and decree dated 29.10.2021, the appellant *inter alia* claims that respondent No.1 sold the suit plot to one Muhammad Iqbal vide agreement dated 16.06.1996 and also executed in Muhammad

Iqbal's favour a GPA dated 16.06.1996. Furthermore, the appellant's claim is that on the basis of said GPA dated 16.06.1996, Muhammad Iqbal executed the sale agreement dated 07.04.2003 in the appellant's favour. This goes on to show that power of attorney issued in favour of the applicant is subsequent to similar documents issued by respondent No.1 earlier which aspect requires consideration.

Keeping the above position in view and bearing in mind that power exercised under proviso to Rule 9 of the Order XIII C.P.C. for return of a document before disposal of appeal is discretionary, I deem it appropriate to issue notice to the parties in the main appeal.

Office shall issue notice of the instant application to the appellant and the respondents in the main appeal.

Relist in the first week of March, 2024.

C.M.No.56/2024

Exemption sought for is allowed subject to all just and legal exceptions.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**