

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O No.02 of 2025

Haider Waheed

Versus

Bahria Town (Private) Limited and others

Appellant by: Barrister Muhammad Usama
Rauf, Advocate.

Respondents 1 & 2 by: M/s Mustafa Tanvir Sufwat and
Hafiz Muhammad Akram Awan,
Advocates.

Respondent No.3 Ex-parte.

Date of Decision: 13.05.2025.

INAAM AMEEN MINHAS, J:- Through the instant appeal, the appellant has called in question the order dated 05.12.2024 (“**Impugned Order**”), passed by the learned Civil Judge, 1st Class, Islamabad-West (“**Trial Court**”), whereby application filed by the appellant for grant of interim relief was dismissed.

2. Brief facts of the case are that the appellant filed a suit for declaration, mandatory and perpetual injunction and damages against the respondents due to their refusal to transfer possession of the allotted apartment bearing Unit No./Floor A-1705/17, measuring 1280 square feet, known as “Mall of Islamabad”, situated at Mall of Islamabad 56-N Jinnah Avenue, Blue Area, Islamabad (“**Suit Apartment**”), in which the stay was granted on the application of the petitioner u/o XXXIX,

Rule 1 & 2, CPC filed along with the suit. During the proceedings the appellant filed another application u/s XXXIX, Rule 1 & 2, CPC for grant of interim relief by directing the respondents to transfer the Suit Apartment and hand over its possession to the appellant, which was dismissed by the learned Trial Court through the Impugned Order after hearing the learned counsel for the parties, hence, this appeal.

3. On the last date of hearing i.e. 09.05.2025, the respondents were proceeded against ex-parte. However, today the learned counsel for respondents No.1 & 2 have entered appearance, therefore, the said order to the extent of respondents No.1 & 2 is recalled.

4. The learned counsel for the appellant contended that the Impugned Order is against the law and facts of the case; that the appellant made the full payment of the Suit Apartment; that the appellant secured the right of possession of the Suit Apartment upon payment of the final installment in the year 2019; that respondent No.1 is merely claiming charges for parking, utility connections and possession charges, which were contingent upon the timely completion of the project, which was not completed on time; that the appellant has already performed his part of the contract, whereas the respondents are reluctant to fulfill their contractual obligation and that the appellant is ready to deposit the surety equal to the amount of outstanding dues. In support of his case, the learned counsel for the appellant has relied upon *Dewan Mushtaq Motor Co. (Pvt.) Ltd. vs. Umair Bin Zahid and 7 others, 2015 MLD 1251 [Sindh], order dated 02.07.2019 passed by High Court of Sindh at Karachi in suit No.1929 of 2018, Porsche*

Middle East and Africa Fze and another vs. Akbar Adamjee and others, PLD 2020 Sindh 415 and Bank Al-Falah Limited vs. Shahid Riaz and another, 2021 CLD 823 [Lahore (Multan Bench)].

5. Conversely, the learned counsel for respondents No.1 & 2 contended that relief sought by the appellant is not an interim relief rather the same amounts to final relief; that the learned Trial Court has passed the order in accordance with law.

6. I have heard the arguments and perused the record.

7. The appellant filed the application for interim relief with the following prayer:-

“i. *Direct the Defendant to transfer Unit No.Floor A-1705/17, measuring 1280 square feet, situated at Mall of Islamabad 56-N Jinnah Avenue, Blue Area, Islamabad, in the name of the Plaintiff as the Plaintiff;*

ii. *Direct the Defendant to hand-over peaceful and vacant possession of Unit No.Floor A-1705/17, measuring 1280 square feet, situated at Mall of Islamabad 56-N Jinnah Avenue, Blue Area, Islamabad, to the Plaintiff.”*

8. The appellant filed the suit for declaration, mandatory & perpetual injunction and damages regarding the Suit Apartment. Prima facie, the dispute between the parties is of outstanding dues in respect of the Suit Apartment, which shall be decided by the learned Trial Court after recording of evidence. The interim relief sought by the petitioner seems to be in the nature of final relief and cannot be granted at this stage. It is settled law that while deciding the application for interim relief, final relief cannot be granted. The offer to deposit the

surety equal to the amount of outstanding charges is outside the terms and conditions of the agreement/allotment letter. Neither such condition is available nor can be added by way of interpretation into already settled terms and conditions of the agreement. The judgments and order relied upon by the learned counsel for the appellant are in respect of moveable property i.e. vehicles, which are distinguishable from the present case as the present matter involves possessory and property rights.

9. In view of the above discussion, the Impugned Order has been passed by the learned Trial Court in accordance with law, which does not require interference by this Court. The instant appeal bears no merits, therefore, is **dismissed**. No order as to costs.

(INAAM AMEEN MINHAS)
JUDGE