

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No.1162/2010

Mazhar Iqbal Qureshi

Versus

Allah Ditta etc.

Petitioner by : Mr.Muhammad Mehboob Alam, Advocate.

Respondent No.3/CDA by : Mr. Intizar Hussain Advocate and
Mr. Khizar Hayat Satti, Director Estate
Management, CDA.

Date of decision : 15.11.2019.

MOHSIN AKHTAR KAYANI J. Facts in brief are that the petitioner filed a suit for specific performance of sale agreement dated 19-02-1995 against Respondents No. 1 to 3 stating therein that Respondent No.1, being bonafide allottee, owner and occupant of the Plot No.309, I-10/2, Islamabad, measuring 25 x 60 with structure, entered into an agreement to sell dated 19-02-1995 with the petitioner for a total consideration of Rs.8,00,000/-, out of which Rs.6,00,000/- was paid by the plaintiff as earnest money and remaining amount was agreed to be paid on or before 15-04-1995 or at the time of further transfer of the suit property to any other person nominated by the purchaser. The said suit was decreed vide judgment and decree dated 19-09-2002, subject to payment of remaining amount of Rs.2,00,000/- by the petitioner within a period of 30 days and on failure in payment would render the suit as rejected U/O 7 Rule 11 CPC. Petitioner could not deposit the said amount within the stipulated period. Subsequently, he filed an application for enlargement of time for depositing the remaining amount on 08-11-2002, which was dismissed by the learned Civil Judge, Islamabad vide order dated 11-06-2009. Appeal filed by the petitioner against the said order also met the same fate vide judgment dated 31-07-2010 passed by the learned District Judge, Islamabad; hence this Civil Revision.

2. Learned counsel for the petitioner contends that concurrent findings of the Courts below are based on erroneous observations and petition has been dismissed on technical grounds; that petitioner was informed by Reader of the Court that suit has

been decreed in favour of the petitioner whereby condition of deposit of balance sale consideration of Rs.200,000/- within 30 days was not intimated; that petitioner is now ready to deposit the said amount. Learned counsel further contends that it is a settled law that when specific performance of sale has not been affected within the period laid down by the decree, it is open to the purchaser to apply for extension of time.

3. Respondent No.1 (1-A to 1-E) was summoned through all modes of service including publication of proclamation in the daily Nawe-e-Waqt and The News but no one put appearance on behalf of respondent No.1 (1-A to 1-E) legal heirs, therefore, they have been proceeded ex-parte vide order dated 18.04.2018.

4. Learned counsel for respondent No.3/CDA in attendance contends that suit plot No.309, Sector I-10/2, Islamabad was originally allotted to Allah Ditta i.e. Respondent No.1 on 11-03-1986, which was transferred in the name of Haji Rashid Ahmed i.e. Respondent No.2 on 22-09-1996 in the CDA record.

5. Arguments heard. Record perused.

6. After hearing learned counsel for the parties and going through the record it appears that the claim of the petitioner is only to the extent of Rs.2,00,000/- which was not deposited by him in compliance of judgment and decree dated 19-09-2002, passed in his favour. Although, he filed an application for enlargement of time for depositing the remaining sale consideration amount of Rs.2,00,000/-, however, same was dismissed by the learned trial Court as well as by the learned Appellate Court.

7. I have also gone through the date and time, which has been consumed by the petitioner in filing of the application for enlargement of time for deposit of the remaining amount, whereas the suit was decreed vide judgment and decree dated 19.09.2002 and the petitioner was directed to deposit remaining amount of Rs. 200,000/- in the Court within thirty (30) days, however, as per record of the learned Appellate Court, copy of the said judgment was obtained by the petitioner after the period of thirty (30) days and even the application for enlargement of time was filed on 08.11.2002 at least 20 days after the expiry of thirty (30) days time period. This aspect shows that the petitioner himself is negligent in performance of his obligation, despite a decree in his favour.

8. I have also attended the application filed by the petitioner for enlargement of time, which was filed on 08.11.2002, wherein no specific reason has been placed on record as to why the direction passed by the learned Trial Court for deposit of balance of sale consideration has not been complied with, although the petitioner has referred the reason in Para-2 of the said application, same is hereby reproduced:-

“That on the above said date petitioner/decree holder contacted to the reader of this honorable court and ask about the decision of the suit, on which he replied that suit has been decreed in favour of the plaintiff, and did not told other details of the judgment/decree.”

9. The above reason is just an afterthought and is not considered to be true as the petitioner being a decree holder is well aware of the fact that he has not paid balance sale consideration to respondent, even otherwise, he was under obligation to deposit the same at the first instance, failing which, he is not entitled for decree of specific performance as held in 2017 SCMR 2022 (Hamood Mehmood Vs. Mst. Shabana Ishaque and others). The petitioner has also not explained the delay of each day regarding non-compliance of the direction of the learned Trial Court qua the deposit of remaining sale consideration of plot, therefore, he is not entitled for any discretionary relief. The learned Trial Court as well as learned Appellate Court have not committed any illegality and the orders impugned were in conformity with the legal principles. The learned trial Court became functus officio after passing of decree and time could not be enlarged in terms of Section 148 CPC due to the admission made by the decree holder in his pleadings that he was always ready to perform his part of contract although enlargement of time is discretionary, but it is trite law that discretion could be exercised in favour of party, which is not negligent or always willing to perform their prescribed act bonafidely. The reasons in Para-2 of the application are merely an afterthought and even no affidavit of fact has been attached on behalf of petitioner regarding any misinformation by the reader of the Court.

10. I am of the considered view that this Court is not in a position to grant enlargement of time to deposit the amount especially when suit for specific performance has been filed by the petitioner after transfer of the suit plot in the name of Respondent No.2. This court would not interfere in the judgment of the learned

trial Court whereby the ground raised by the petitioner in the said application for enlargement of time is not justiciable, as petitioner did not deposit the remaining sale consideration and remained in deep slumber for a considerable period, therefore, his negligence cannot be condoned at this stage.

11. I have also gone through the Section 35 of the Specific Relief Act, 1877, wherein rescission may be adjudged, whereby the purchaser makes a default of payment, which the Court has ordered him to pay, as in this case the decree itself provides the consequences of automatic dismissal of the suit, in case of failure of decree holder to pay the purchase price within time specified in the decree as held in **PLD 1966 SC 983 (Shah Wali Vs. Ghulam Din alias Gaman and another)** whereas it has been held as under:-

“For these reasons, therefore, I too am in the present case of the view that there was no power left in the executing Court after the dismissal of the revision in limine, to extend the time fixed by the decree of the District Judge, because, (i) Section 148 does not apply in the case of time fixed under a final decree, (ii) the decree in the present case having been couched in words which gave the default clause automatic operation without any further order from the Court it was a final decree, which rendered the Court which passed the decree functus officio thereafter and (iii) the executing Court had, in any event, no jurisdiction to go behind that decree.”

12. In order to allow the application of enlargement of time under section 148 CPC, the petitioner has to justify on record that;

- a) He was not negligent in performance of his obligation.
- b) Act which was ordered to be performed within stipulated time could not be done due to any reason beyond the control of the applicant.
- c) Applicant was restrained from performing his obligation due to any other legal order of any other Court; and,
- d) The matter is still subjudice and it has not yet been finalized qua the rights of the parties.

13. Whereas in this case, no such reason has been demonstrated from the record, even otherwise the entire issue raised through application under section 148 CPC

demonstrate that petitioner is negligent in performance of his obligation and no valid ground, reason has been justified by him, hence his application under section 148 CPC has rightly been rejected by the Courts below.

14. However, the earnest money of Rs.600,000/- which was paid by the petitioner to Respondent No.1, could be recovered from the legal heirs of Respondent No.1/Allah Ditta, who died during the pendency of the proceedings, subject to law, if so advised.

15. In view of above, instant Civil Revision is without merits, hence the same is hereby **dismissed.**

(MOH̄SIN AKHTAR KAYANI)
JUDGE

M.S.ZAKI