

Form No: HCJD/C-121  
**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Civil Revision No. 143 of 2014**

Tariq Mehmood

**Versus**

Zulfiqar Khan Chaudhry and three others

Petitioners By : Sardar Tariq Mehmood Bashir,  
Advocate.

Respondents By : Mr. Wahid Iqbal and Mr. Husnain  
Haider Thaheem, Advocates.

Date of Decision : 03.02.2020.

**LUBNA SALEEM PERVEZ, J. -** Through instant Civil Revision Petition, the Petitioner has challenged the Judgment dated 21.01.2014, passed by learned Additional District Judge (West), Islamabad, whereby, Appeal of the Petitioner u/s 96 CPC was disposed of by modifying the judgment dated 11.01.2012, passed by the learned Civil Judge, Islamabad (West, wherein, directing the Respondent Nos. 1 & 2 to return the total received amount of Rs. 13,50,000/- to the Petitioner, and suit of the Petitioner for specific performance of sale agreement, permanent and mandatory injunction was dismissed, respectively.

**2.** The facts in brief are that Respondent No. 2 is the owner of plot No.119, Sector E-12/4, Islamabad, (suit plot) measuring 356 square yards, through inheritance from husband (the original allottee) which was transferred in her name vide transfer letter dated 15.07.1996. She appointed Respondent No. 1 as her General Attorney, vide registered General Power of Attorney dated 22.07.1996. Respondent No. 1 on the

basis of this Power of Attorney, vide sale agreement dated 02.12.2002, agreed to sell the plot to the Petitioner for total sale consideration of Rs. 13,50,000/- and received Rs. 1,00,000/- as earnest money/biyana. The balance amount to Rs.12,50,000/- was agreed to be paid on or before 15.01.2003. The Petitioner, as per terms 4 & 5 of the agreement, paid/deposited Rs. 2,31,400/- as development charges and amount of Rs.7,150/- as NOC fee with Federal Government Employees Housing Foundation (FGEHF) on 30.12.2002. As per contention of the Petitioner, he, after arranging balance sale consideration, approached Respondent No. 1, who deliberately delayed performance of his part of agreement on one pretext or the other. On 25.01.2003, Petitioner served a legal notice to Respondent No. 1 for payment of balance sale consideration and transfer the suit plot in his name, however, no response was received from him. Petitioner thus filed suit for specific performance of sale agreement dated 02.12.2002, before Senior Civil Judge, Islamabad, on 02.12.2003, and from the pleadings following issues were framed:

1. Whether the plaintiff is entitled to get decree for specific performance of sale agreement dated 02.12.2002 permanent and mandatory injunction as prayed for? OPP
2. Whether the suit is not maintainable in its present form and is liable to be dismissed? OPD
3. Whether the plaintiff has not come with clean hands? OPD
4. Whether the suit is false and frivolous and baseless and is liable to be dismissed? OPD
5. Relief.

However, said suit was dismissed, vide judgment and decree dated 11.01.2012, whereby the learned Civil Judge after taking into consideration the registered agreement, relevant record and evidence held that the Petitioner (plaintiff in the suit) failed to perform his part of agreement and he is not entitled for the decree of specific performance of the agreement thus the issue No. 1 was decided against the plaintiff (issue No.3 and 4

were decided against the Defendant/Respondent). Being aggrieved, of the judgment and decree dated 11.01.2012, the Petitioner filed an appeal under Section 96 CPC before the Additional District Judge (West), Islamabad, on the ground that the judgment passed by the learned Civil Judge was based on non-reading and misreading of evidence as written statements during the cross examination of Respondents No. 1 and 2 were not considered; express admission and correctness of P-1 and P-2 in written statement and cross examination in that regard were not considered and the learned Trial Court failed to consider that the Petitioner has performed his part of contract by paying entire sale consideration (deposited in the Court on 20.12.2010) along with dues to Respondent No.3. The Additional District Judge disposed of the appeal, vide judgment dated 21.01.2014, holding that the petitioner is not legally entitled for specific performance of the agreement, however, he is entitled to get back the amount of Rs. 2,31,400/- (development charges) and Rs. 7,140/- (NOC fee) paid to CDA and the balance sale consideration of Rs. 12,50,000/- which was deposited in the court.

3. The learned Counsel for the Petitioner while reiterating the contentions made before the learned Courts below submitted that the learned trial as well as appellate courts has not appreciated the evidence produced as exhibits P1 and P2 in its true perspective and dismissed the suit on sole statement of PW1; and that the trial court has failed to appreciate that the Petitioner contacted the Respondent for performing his part of obligation as per agreement and for the purpose had paid the outstanding dues of the CDA. Learned Counsel further submitted that the learned trial Court has erred in holding the statement of PW2 as hearsay evidence; that he has issued legal notice dated 25.01.2003 to the respondent for balance payment and transfer of suit plot before filing the

suit and both the learned Courts below have not decided the issues framed for determination and argued that the impugned judgments are arbitrary and passed in hasty manner thus liable to be set aside. In support of his contentions the learned Counsel relied on the case law reported as **(2012 SCMR 900), (PLD 2015 SC 187) and (PLD 2014 SC 506).**

4. On the other hand the learned Counsel for the Respondent No.1 opposed the arguments of the Petitioner and denied receipt of any legal notice and submitted that the learned Courts below have decided the suit as well as appeal on the basis of issues framed, after appreciating all the material, evidences and statements of witnesses as well as by taking into account every legal and factual aspect of the case and came to the same conclusion. Learned Counsel argued that the Petitioner has miserably failed to pay the sale consideration within the stipulated time given in the sale agreement dated 02.12.2002 thus is not entitled to specific relief.

5. Heard arguments of the rival parties and perused the impugned judgments as well as record of the case.

6. The main controversy involved in the matter is that whether the Petitioner could prove on the basis of substantial evidence that he has bonafidely made efforts to pay the balance sale consideration of Rs. 12,50,000/- to the Respondents within the stipulated time as per the sale agreement dated 02.12.2002 i.e. on or before 15.01.2003 with grace period of 10 days, and performed his part of obligation before filing the suit for specific performance. The record reveals that a pure factual controversy is involved in the instant case dependent upon the evidences and statements of witnesses produced before Trial Court who very ably dealt with each and every material evidence and has recorded its findings after discussing every aspect based on the statements of witnesses produced by

both the parties in the case and drawn the conclusion that the Petitioner has not been able to prove his honest intention regarding payment of balance consideration within the given time, thus held that Petitioner is not entitled for decree of specific performance in his favour. The learned Appellate Court after re-considering all the material on record, confirmed the findings of the Trial Court. The Petitioner before us has strongly relied on the legal notice dated 25.01.2003 to establish the intention of making payment in time but it is pertinent to mention here that this legal notice shows that its copy has been sent to (i) Syed Amir Hussain (Estate Advisor/witness), (ii) Muhammad Fayyaz, (iii) Director General FGEHF and (iv) Director, Estate Management, CDA. Syed Amir Hussain and Muhammad Fayyaz who were also marginal witnesses denied the receipt of copy of legal notice in their statements recorded before the learned trial Court and the Petitioner admitted before this Court that no copy of the said notice has been sent to FGEHF & CDA. The Petitioner also could not produce the postal receipt of the notice to the Respondent No. 1 before this Court. Furthermore, the Petitioner could not identify any legal defect in the impugned judgments dated 21.01.2014 and 11.01.2012.

7. For the forgoing reasons, it is held that the concurrent findings of the Courts below are based on proper appreciation of facts on sound reasoning; hence do not call for any interference. The Civil Revision Petition is accordingly dismissed.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

Announced in open court on 11.02.2020.

**JUDGE**