

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

F.A.O. No. 30/2020
Zaheer Manzoor Chatha
Versus
Nabi Ahmed Cheema, etc.

Appellant by: Mr. Amir Latif Gill, Advocate,
Respondent No.1 by: Malik Babar Hameed, Advocate,
Respondent No.3 by: Mr. Usman Rasool Ghuman, Advocate,
Date of Decision: 07.10.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant appeal, appellant impugns order dated 19.11.2019 passed by the learned Civil Judge 1st Class, Islamabad-West, whereby application under Order XXXIX Rule 1&2 C.P.C was accepted **subject to deposit of balance sale consideration within thirty days and in the case the same is not paid within the stipulated period, the application shall be deemed to have been dismissed.**

2. Facts relevant for the disposal of instant appeal are that on 08.10.2013, respondent 1&2 filed suit for declaration, possession through specific performance of oral sale agreement dated 24.01.2013, regarding plot No.562, Sector E-12/3, Islamabad. Along with the suit an application under Order XXXIX Rules 1&2 C.P.C had also been filed. The appellant/defendant contested the suit as well as application by filing written statement and written reply. The learned trial Court after hearing the parties, accepted the application in terms noted in para-1 above, vide impugned order dated 09.11.2019, hence, the instant appeal.

3. Learned counsel for the appellant contends that the suit was filed in the year 2013 while direction for the deposit of remaining sale consideration had been passed after inordinate delay of six years which is not warranted

under the law as it is incumbent upon the party seeking decree for specific performance of an agreement, to apply to the court for permission to deposit the balance sale consideration at inception of the institution of suit; that omission in this regard would entail dismissal of the suit; that the learned trial Court directed the respondent after lapse of more than six years and accepted the stay application which amounts to afford an opportunity to the respondent/plaintiff to establish his claim against the sale agreement, therefore, the impugned order is liable to be set aside. Learned counsel placed reliance upon case laws reported as 2017 SCMR 2022, 2018 CLC Note 130 Islamabad, 2018 CLC 1409, 2018 CLC 1505 Islamabad, 2018 YLR 713.

4. On the other hand, learned counsel for respondents 1&2/plaintiffs contends that since filing of the suit till the date of impugned order, not a single direction has been issued by the learned trial Court for doing the needful; that the appellant also did not file any application seeking any such direction against the respondents to deposit the remaining sale consideration and that mere pendency of the suit without any direction is not fatal to the case of the respondents, therefore, appeal is liable to be dismissed.

5. Heard the learned counsels for the parties and perused the record with their able assistance.

6. It is settled principle that a party seeking specific performance of an agreement to sell is bound to deposit the sale consideration amount in the Court in order to demonstrate its capacity, readiness and willingness to perform its part of agreement.

7. The object of passing ad-interim injunction subject to deposit of balance sale consideration in the Court is to see the *bonafide* of a purchaser and to keep intact the corpus

of the dispute which could be transferred to a successful party in litigation at the conclusion of trial.

8. By applying the principle *ibid* to the facts of the instant case, it emerged that after filing of the suit by the respondents 1&2, the appellant did not file any application requiring the respondents/plaintiffs to deposit the remaining sale consideration. It is also matter of record that before passing of the impugned direction, no such order was passed by the learned trial Court, therefore, in such an eventuality, it cannot be said that the impugned direction is uncalled for as the main object of the same is to gauge the *bonafide* of the plaintiffs/respondents.

9. In the cases of “*Hamood Mahmood V. Mst. Shabana Ishaque and others*” (2017 SCMR 2022), “*Muhammad Hafeez V. Saif ur Rehman*” (2018 CLC Note 130 Islamabad) “*Shaikh Muhammad Asghar V. Muhammad Abdullah and another*” (2018 CLC 1409), “*Hamood Mahmood V. Mst. Shabana Ishaque and 3 others*” (2018 YLR 713), *Ch. Muhammad Khan and another V. Civil Judge 1st Class, Islamabad-East and another* (2018 CLC 1505), penal action was taken against the plaintiffs as they failed to deposit the sale consideration despite direction of the Court, while it is not the case of appellant herein that the respondents /plaintiffs failed to abide by the impugned direction, therefore, the referred case law do not extend any help to the appellant due to having distinct facts and proposition of law. In these cases, final adjudication of the suit for specific performance was made by the Court wherein evidence was recorded on issues framed by the Court while in the case in hand, appeal against interim injunction granted by the Court subject to deposit of balance sale consideration and so fact of final adjudication of case could not be applied in a matter where application for temporary injunction is granted.

10. In view of above, the impugned order in the backdrop of the facts highlighted above appears to be well reasoned and do not call for any interference. Consequently, the instant appeal fails and accordingly **dismissed.**

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran