Form No: HCJD/C.

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No.255 of 2013.

Abid Khan.
Vs.
Gul Zaman Khan Abbasi & four (4) others.

Petitioners by:	*Mohammad Nazir Javad, Advocate.*
Respondents by:	*M/s Tariq Aziz, Ghulam Shabbir Akbar & Syed Wosat ul Hassan Shah, Advocates.*
Date of hearing:	*24.06.2015*

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Aamer Farooq, J.- Through the instant civil revision, the petitioner has assailed judgement dated 24.06.2013 whereby the appeal filed by the petitioner against judgement and decree dated 22.12.2012 was dismissed.

2. The facts, in brief, are that the petitioner entered into an agreement to sell with respondent No.1 with respect to Plot No.4, Catetory-5, Street No.83, G-13/1, Islamabad (the Property) on 10.04.2002 and subsequently on 29.11.2002. Due to non-fulfillment of the agreement the petitioner filed a suit for specific performance of the referred agreement on

22.04.2003 against respondents No.1 to 4. In this behalf respondent No.2 was impleaded being the original allottee. The learned Trial Court on 22.04.2003 granted ad-interim injunction in favour of the petitioner whereby respondents were restrained from alienating the property; the order was not to have effect on lawful proceedings. Respondent No.1 contested the suit by filing written statement, however, respondents No.3 and 4 were proceeded exparte. On 22.04.2004, stay granted to the petitioner was confirmed and the issues were framed. Meanwhile respondent No.1 sold the property to one Shahid Mehmood who in turn on 10.11.2003 sold the same to respondent No.5. The property was transferred in the record of respondent No.3 on 23.12.2004. The referred respondent moved application in the suit filed by the petitioner requesting to be pleaded as a defendant. Since the petitioner did not object the application, therefore, respondent No.5 was impleaded as defendant in the proceedings vide order dated 12.04.2005. The petitioner filed amended plaint on 19.04.2005 and respondent No.5 filed written statement on 28.06.2005 raising defence that he is a bonafide purchaser without notice, therefore, is an absolute owner of the property. The learned Trial Court framed issued and the parties led their evidence. The learned Trial Court vide judgement and decree dated 22.12.2012 dismissed the suit vis-a-vis respondent No.5. Appeal was filed by the petitioner which was dismissed vide the impugned judgement dated 24.06.2013.

3. The learned counsel for the petitioner, inter alia, submitted that since the property was transferred during the pendency of the suit, therefore, the principle of 'lis pendens' shall apply as provided in section 52 of the Transfer of Property Act. It was further contended that it is trite law that where the property is transferred during the restraining order the same does not have any effect. In support of his contentions learned counsel placed reliance on cases reported as **2013 SCMR 1600, 2010 SCMR 286, PLD 2006 Karachi 278** and **PLD 1988 Lahore 717**. It was further contended that respondent No.5 failed to prove that he is a bonafide purchaser without notice, therefore, does not have the protection as provided in section 51 of the Transfer of Property Act. The learned counsel reiterated that the property is subject to outcome of the suit for specific performance filed by the petitioner; the petitioner had through cogent evidence proved the execution of the agreement by ousting marginal witnesses PW-2 & PW-3 and even payment of consideration, therefore, was entitled to decree for specific performance. In support of his submissions learned counsel placed reliance on cases titled "Industrial Development Bank of Pakistan vs. Saadi Asmatullah" (**2000 CLJ 335**), "Mukhtar Baig vs. Sardar Bagi"(**1999 SCJ 585**) "Mohammad Khan vs. Mohammad Nawaz"(**2001 MLD 844**), "Mohammad Mobeen vs. M/s Long Life Builders"(**PLD 2006 Karachi 278**), "Aman Enterprises vs. Rahim Industries"(**PLD 1988 Lahore 717**), "Mohammad Hussain vs. Dr. Zahoor

Alam"(**2010 SCMR 286**) and "Abbasi vs. Liaqat Ali"(**2013 SCMR 1600**).

4. The learned counsel for respondent No.5, inter alia, submitted that civil revision is not maintainable inasmuch as there is concurrent finding by the Courts below and there is no misreading or non-reading of evidence. Reliance was placed on "Mohammad Idrees vs. Mohammad Pervaiz"(**2010 SCMR 5**) and "Mandi Hassan vs. Mohammad Arif"(**PLD 2015 SC 137**). It was further contended that respondent No.5 in his written statement has taken categorical stance that he is bonafide purchaser for consideration without notice; in cross examination of the petitioner (**PW-1**) by respondent No.5 it was admitted that the petitioner did not inform respondent No.3 about the injunctive order dated 22.04.2003 and that he was not aware that on 26.01.2004 respondent No.3 was proceeded exparte. Petitioner also admitted that he did not inform respondent No.3 about **Ex.P/1** i.e. his agreement with respondent No.1. Moreover, the learned counsel also pointed out that **DW-1** i.e. respondent No.1 admitted in his cross-examination that he did not inform respondent No.5 about earlier agreement and even the pendency of the suit. It was further contended that respondent No.5 before purchasing the property checked the record of respondent No.3 to see if there is any restriction on the property and since there was no agreement to sell or stay order proceeded with the transaction; it was only when respondent No.5 wanted to transfer the property he came to know about the pendency of

the suit and the stay order granted by this Court. Respondent No.5 in his evidence conceded that if he knew about the earlier agreement and pendency of the suit he would not have purchased the property. The learned counsel submitted that in light of section 27(b) of Specific Relief Act, 1877 and the law laid down by the Apex Court in cases reported as "Covalnon vs. Fateh Khan"(**PLD 1983 SC 53**), "Khair-un-Nisa vs. Malik Mohamad Ishaq"(**PLD 1972 SC 25**), "Hafiz Tassadaq Hussain vs. Lal Khatoon"(**PLD 2011 SC 296**, "Mohammad Ashraf Butt vs. Mohammad Asif Bhatti"(**PLD 2011 SC 905**) and "Mohammad Iqbal vs. Khair-ud-Din"(**2014 SCMR 33**). The learned counsel also submitted that the petitioner did not produce the material documents; statement of PW-1 and PW-2 are contradictory, however, respondent No.1 admitted execution of the agreement to sell but also admitted that he did not inform neither respondent No.3 nor respondent No.5 about the agreement. Respondent No.1 also admitted that he had appeared in the suit and filed written statement before transfer of the property in the name of respondent No.5. Respondent No.1 also admitted that he used to work with the petitioner as Property Dealer and still works in the same Market. Lastly, learned counsel for respondent No.5 submitted that under section 22 the 'grant' or 'refusal' of relief of specific performance is discretionary in nature as provided under Section 22 of the Specific Relief Act, 1877. Reliance was placed on **2010 SCMR 1507**.

5. The learned counsel for respondent No.1 supported the contentions of learned counsel for respondent No.5.

6. The petitioner in the suit filed by him duly proved the agreement to sell dated 29.11.2002 with respect to the property. However, during the subsistence of the Civil Suit filed by the petitioner, the property changed hands and was purchased by respondent No.5 who claims to be bonafide purchaser for consideration without notice. The learned Trial Court as well as the Appellate Court accepted the plea of respondent No.5 and held since he is bonafide purchaser for value without notice, therefore, the principle of 'lis pendens' as provided under Section 52 of the Transfer of Property Act shall not apply to him. In the instant civil revision the petitioner is aggrieved of the referred conclusion by the Courts below. The law on the subject is provided in section 52 of the Transfer of Property Act and since 27(b) of the Specific Relief Act, 1877. In this behalf relevant provisions of law are reproduced below for the sake of brevity:

> "52. **Transfer of property pending suit relating thereto.** During the '2[pendency] in any Court having authority in [Pakistan], or established beyond the limits of [Pakistan] by "[the [Federal Government's"[any] suit or proceeding '8[which is not collusive and] in which any right to immovable property is directly and specifically in question, the property cannot be transferred to otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

'9[Explanation.--For the purpose of this section, the pen dency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction of discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

Section 27(b) any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract."

The Hon'ble Supreme Court of Pakistan in case titled "Hafiz Tassadaq Hussain vs. Lal Khatoon" (**PLD 2011 SC 296**) clinched the law on the subject and held as follows:

"The principles regarding the burden (onus) of proof, particularly in the civil litigation are elucidated by the provisions of Articles 117 to 120 of the Qanun-e-Shahadat Order, 1984, which for the facility of reference are reproduced as below:-

"117. Burden of proof.-- (1) Whoever desires any Court to give judgment as to, any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

118. On whom burden of proof lies.--The burden

of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

119. Burden of proof as to particular fact.--The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

120. Burden of proving fact to be proved to make evidence admissible.--The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

From the analysis and collective reading of the above provisions, it is manifest and un-ambiguously clear that in a dispute between the parties in a civil litigation, the resolution whereof is dependent upon the existence of certain facts which are not self evident, and a party to the lis wants the Court to believe about the existence of those and seek verdict in his favour, the onus to prove shall be on the shoulder of such litigant who asserts the existence of the fact. In the cases pertaining and relating to the protection under section 27(b) of the Specific Relief Act, 1877, undoubtedly, it is the subsequent vendee who asserts and avows in the defence that his case falls within the purview and parameter of the noted section i.e. he is a transferee for value; the money (consideration) has been paid in good faith; and that he had no notice of the original (earlier) contract between the plaintiff and the vendor. In other words that he is a bona tide purchaser without notice. Obviously the existence of the facts aforementioned and the ascertainment thereof is an issue between the parties which requires resolution from the Court. It is therefore in such like cases by applying the rules regarding burden of proof as emerging from the noted Articles, especially 117 and 118, the initial onus to prove the same is on the

shoulder of the subsequent vendee. It may be pertinent to point out that in civil disputes the onus to prove a fact however does not remain constant or stagnant, thus once the initial onus On a proposition of fact has been discharged by the side upon whom it was originally placed, it would shift over to the other party for the rebuttal thereof or for the proof otherwise.

5. Be that as it may, the subsequent vendee thus has to discharge the initial onus as follows:-

(1) that he acquired the property for due consideration and thus is a transferee for value, meaning thereby that his purchase is for the price paid to the vendor and not otherwise.

(2) there was no dishonesty of purpose or tainted intention to enter into the transaction which shall settle that he acted in good faith or with bona fide;

(3) he had no knowledge or the notice of the original sale agreement between the plaintiff and the vendor at the time of his transaction with the later.

From the above it is depicted that the section merely enacts the English equitable rule which allows later legal title to prevail over an equitable interest in case of bona fide purchaser for value without notice (emphases supplied). And this principle has to be kept in view by the Courts while analyzing and' appreciating the evidence on the record for the discharge of the requisite burden.

6. In the afore-noted context, it is thus required that a subsequent vendee should adduce in evidence his sale instrument or the mutation of his transaction, if not otherwise on the record having been brought by the plaintiff himself, or any other proof in this connection such as the receipt of payment 'made to the vendor or the bank record etc. or should lead credible oral

evidence in this behalf; these are some conceivable modes of proving the transfer for value and shall be a sufficient discharge of onus in this respect in ordinary cases. If however, a specific attack has been made in the plaint or the replication by the plaintiff that the subsequent transaction is without consideration, or the value given is colourable, understated, underpaid and illusionary, it becomes the bounden duty of the subsequent transferee to establish through positive evidence that adequate price was paid, because this factum shall also have a close nexus to the good faith and the bona fides of the said transferee as well; when it is so done, the onus shall switch over to the plaintiff to prove otherwise.

7. The second ingredient "good faith" is the term which reflects the state of mind and according to section 3(20) of the General Clauses Act, 1897 "a thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not". While interpreting this, it was held in Nannu Mal v. Rani Chander (AIR 1931 All 277 (FB)) that good faith as defined above is equivalent to honesty of dealing and does not entail upon the purchaser the necessity of searching the registry, even assuming that there were facts indicative of negligence in investigating title, that by itself was not predicative of a lack of bona tides. Therefore, the second condition shall stand settled if the subsequent vendee has acted as a man of ordinary prudence in making inquiries expected from a purchaser who wants to acquire a good title for the price/value he is paying. This may include the checking of the Revenue Record or obtain the copies thereof to verify about the title of the vendor or any third party in right, interest or charge over the property or any endorsement in such record about any pending litigation or an injunctive order etc; this may be a good and adequate exercise of investigative process, in case of rural/agriculture property. And for the same purpose, regarding urban property, the Excise and Taxation record may be examined coupled with the verification

and obtaining the original documents of title from the vendor, if those are available. However, the subsequent vendee is not obliged to run from the pillar to post in conducting rowing and fishing inquiries, to ascertain if a third party has any interest etc. in the property which otherwise is visibly lacking. But if there exist some overt, prominent and conspicuous indicators about the third party interest, which are so patently noticeable and manifest that those could not and should not be missed and ignored by a purchaser, such as the possession not with the vendor but some one else, who if approached or its nature investigated would lead to discover such interest, the purchaser is obliged to probe about it, otherwise he may not be able to take resort of the noted equitable rule.

If, therefore, a subsequent vendee has taken due care in the above manner and there are no indicators to put him to a notice of third party interest, he shall be said to have acted in good faith, thus satisfying the second condition of the rule.

8. The last and the utmost important ingredient of section 27(b) is the lack of knowledge or the notice of the subsequent vendee about the original contract between the plaintiff of the case and. the vendor. This undoubtedly is the negative fact which cannot be conclusively proved in positive terms, as it is inconceivable that such fact could be established by affirmative means. To illustrate the point; if the marriage between the parties is an admitted fact but due to the subsequent assertion of the husband that it has been terminated on account of divorce pronounced by him; the wife who refutes it and in order to safeguard her marital status and the rights flowing therefrom is constrained to institute a suit for jactitation, in which the man sets out (obviously) the defence of divorce; the factual proposition with reference to the noted facts which would emerge for the resolution and determination of the Court would be whether the plaintiffs is still the wife of the defendant and/or

whether the defendant has divorced the plaintiff? Viewing it from any angle the fact that the marriage on account of divorce by the husband stands dissolved is a negative fact for the wife to prove. Another example may further elucidate the point, in an ejectment petition, the landlord seeks the eviction of his tenant on the ground of default in the payment of rent, which fact is denied by the tenant, now it shall not be possible for the landlord to prove in the positive term that the rent has not been paid, which again is a negative proof of fact, thus the landlord shall be said to have discharged the initial burden of proof by making statement on oath about the lack of payment of rent, which shall be subject to cross-examination by the other side, thereafter, the onus shall be on the tenant to prove in positive terms that the rent has been paid. The above example shall also be true with reference to the first illustration, because if a wife makes a statement on oath about the subsistence of marriage between the parties and deny the divorce, she shall be considered in law to have discharged the initial onus, which shall switch over to the husband for the proof otherwise, by positive evidence. Because such a negative fact the law of evidence universally recognizes is not capable of proof positively.

9. Considering the above rule in context with the proposition' in hand in Lekh Singh v. Dwarka Nath and others (AIR 1929 Lahore 249) it has been held:--

> "The onus of proving that the subsequent purchaser had no notice of a prior claim lies on such purchaser; and the onus of such a negative issue is ordinarily discharged by a denial and by a negative evidence."

In Mst. Khair-ul-Nisa and 6 others v. Malik Muhammad Ishaque and 2 others (PLD 1972 SC 25) this Court ordained:--

> "Under section 27(b) of the Specific Relief Act negative is to be proved by the subsequent

transferee. If lie appears in Court and states on oath that he had no knowledge of the transfer that would be quite sufficient to discharge the burden and the onus will, then shift to the plaintiff to prove that the subsequent transferee had the notice of the original contract".

In Mst. Surraya Begum and others v. Mst. Suban Begum and others (1992 SCMR 652) while dilating on the proposition this Court laid down the law:--

> "Since in civil suits an issue is to be decided by preponderance of evidence, the initial burden would be on the plaintiff to prove his prior contract, which if discharged, the burden of proving the subsequent bona fide transfer for value without notice would be on the party alleging it. Very little evidence and in certain circumstances a mere denial regarding want of knowledge of the earlier contract would discharge this burden and shift the onus on the plaintiff to prove that the subsequent transferee had the notice of the earlier contract."

In the light of the noted authoritative pronouncements, it can be safely concluded that though the initial onus is on the subsequent vendee, however, it is light one, and once it is discharged by abiding by the criteria set out hereinabove, it shall be the burden and duty of the plaintiff to prove positively that the subsequent vendee had the notice of his sale agreement; besides, the subsequent transaction is without the passing of the due consideration; it is a colourable or a fraudulent transaction entered into with dishonesty of purpose by the vendor and the subsequent vendee in order to cause prejudice his rights under the sale agreement. This in our view to an extent should settle the law regarding the rule providing protection to bona fide purchaser for value without notice and the standards of proof thereof.

7. The above principle was reiterated by the Hon'ble Supreme Court in case titled "Mohammad Iqbal Vs. Khair Din"(2014 SCMR 33), it was observed as follows:

> 13. Section 52 of the Transfer of Property Act enshrines doctrine of lis pendens which means the jurisdiction or control which a court acquires over a property involved in a suit during its pendency. It is based on the common law maxim which mandates that nothing qua the subject matter of the suit can be changed while it is pending. This provides protection to the rights of a suiter/plaintiff when his suit is pending and he can have a transfer/transaction voided with regard to the suit property if the said transfer was made when the suit was pending. However, there is an exception to this principle which is contained in section 41 of the Transfer of Property Act which stipulates that "where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.
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> 14. The essential ingredients for invoking section 41 ibid can be described as (1) that the transferor was the ostensible owner, (2) that the transfer was made by consent of the real owner, (3) that such transfer was for a consideration, and (4) that the transferee while acting in good faith had taken reasonable care before entering into the transaction.

8. The principle that can be deduced from both the judgements is that principle of lis pendens as provided in section 52 ibid has an exception by way of transferee who

purchases the property during pendency of suit for consideration without notice. The referred exception is also provided in section 27(b) of Specific Relief Act, 1877 expressly and generally in section 41 of Transfer of Property Act.

9. The question whether respondent No.5 was able to establish the plea of bonafide purchaser for value without notice has been dealt with by Courts below and their findings in respect of the referred fact are concurrent. In this behalf, respondent No.5 produced agreement dated 10.11.2003 Ex.D/5 indicating agreement has been entered into between Shahid Mehmood and respondent No.5 wherein it was specifically provided that premises has changed hands. Transfer letter in favour of respondent No.5 was also exhibited in evidence. Since the onus to prove the plea of bonafide purchaser was on respondent No.5 he discharged the same through his statement as well as the referred exhibits. The petitioner did not either in the pleadings or through evidence has questioned the transaction in favour of respondent No.5 inasmuch as in the amended plaint nothing was stated vis-a-vis referred respondent and even no rejoinder was filed to the written statement submitted by respondent No.5. In oral testimony respondent No.5 appearing as DW-2 categorically submitted that he had paid entire consideration amount to respondent No.1. During cross examination no question has been put to him suggesting that he had not paid the consideration amount to the vendor. The test and standard approved laid down by the Hon'ble Supreme Court in case

reported as **PLD 2011 SC 296** supra has been duly fulfilled in the present case. Though no independent proof for consideration was produced, however, a categoric statement was made by respondent No.5 that payment was made and no question to him was asked for in respect to the said effect in cross examination even in the plaint no assertion was made regarding transaction being sham. No replication was filed by the petitioner.

10. It is an established principle that this Court in exercise of its jurisdiction under section 115 of Code of Civil Procedure, 1908 does not interfere with the findings of the Courts below unless these suffer from jurisdictional infirmity. In this behalf the case law relied upon by the learned counsel for respondent No.5 is instructive. In "Mandi Hassain vs. Mohammad Arif" (**PLD 2015 SC 137**) it was observed as follows:

> "There can hardly be two opinions on the nature of revisional jurisdiction. It is a supervisory jurisdiction, which is vested in a higher forum (subject to the pecuniary jurisdiction of the case either the learned District Court or the learned High Court) and is exercised and/or is invoked for scrutiny if a 'case decided' by the court subordinate to the higher court's jurisdiction, suffers from any defect in terms of exercise of its jurisdiction and/or on the ground(s) that the court subordinate has acted in exercise of such jurisdiction illegally and/or with material irregularity. On the basis of the law enunciated and settled by this Court, there is wee room for doubt that being a supervisory jurisdiction, the higher forum which is approached (i.e. the revisional court) is conferred with the power to ensure that the court subordinate thereto (to the revisional court) conforms to the parameters of its jurisdiction. In other words the revisional jurisdiction is

meant to rectify; to obviate, forefend and stave off the exercise of jurisdictional errors/defects and the illegalities and/or material irregularity committed by the subordinate court in that regard. But the "case decided" (order/judgment assailed) has to squarely fall within the scope and the purview of section 115 of the C.P.C. It may however be categorically and unequivocally mentioned here, that approaching a higher court in the revisional jurisdiction for the redressal of one's grievance, if the case is covered by section ibid (115, C.P.C.) is not a privilege, but is a valuable right of an aggrieved party. Obviously, such exercise of revisional jurisdiction shall be subject to the rules of discretion; but the matter of approaching the revisional court cannot be relegated to a mere privilege of the court and not a right. The above view is fortified by a five Members Bench judgment of this Court reported as Karamat Hussain and others v. Muhammad Zaman and others (PLD 1987 SC 139) which held that "True the exercise of this jurisdiction by the High Court is discretionary but that does not mean that a revision is not a right but only a privilege". In an another case Muhammad Yousaf and 3 others v. Khan Bahadur through Legal Heirs (1992 SCMR 2334), this Court concluded that "the exercise of revisional jurisdiction by the High Court is a matter exclusively between the High Court and the subordinate Courts, albeit the parties to the litigation have a right (emphasis supplied by us) to bring to their notice the jurisdictional/legal errors as envisaged in section 115 of the C.P.C." This is the apt, the conclusive and the final enunciation of law on the subject by this Court. And any view set out by certain dicta, of the various learned High Courts contrary to the above principle, which invariably comes to our notice, treating and considering the revisions to be a mere privilege and not a right carries no legal sanctity."

Similarly, in "Mohammad Idrees vs. Mohammad Pervaiz" (**2010 SCMR 5**) observed as follows:

"It is settled proposition of law that each and every case is to be decided on its own peculiar circumstances and facts as law laid down by this Court in Muhammad Saleem's case 1994 SCMR 2213. It is also settled law that findings on question of fact or law, erroneous the same may be, recorded by the Court of competent jurisdiction, cannot be interfered with by the High Court in exercise of its revisional jurisdiction under section 115, C.P.C. unless such findings suffer from controversial defects, illegality or material irregularity as law laid down by the Privy Council in Hindu Religious Endowments Board, Madras' case PLD 1949 PC 26. With regard to section 115, C.P.C. it is observed by the Privy Council as under:

> (i) This section empowers the High Court to satisfy itself upon three matters: -
>
> > (a) That the order of the subordinate Court is within its jurisdiction.
> >
> > (b) That the case is one in which the Court ought to exercise jurisdiction.
> >
> > (c) That in exercising jurisdiction, the Court has not acted illegally, that is in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however, profoundly, from the conclusion of the subordinate Court upon questions of fact or law.

11. The case law relied upon by the learned counsel for the petitioner elucidates the principle of **'lis pendens'** with which no exception can be taken, however, in so far as the rights of bonafide purchaser are concerned the referred case law is not relevant inasmuch as the law on the subject now is represented in the above mentioned two judgements of the Hon'ble Supreme Court of Pakistan and the bonafide purchaser for value without notice is recognized as an exception to the principle of **lis 'pendens'**. In so far as applicability of provisions of Transfer of Property Act, 1882 is concerned the same are not applicable to Islamabad Capital Territory, however, the principles thereof would apply by way of equity, justice and good conscience. Reliance is placed on case titled "MCB Bank vs. Duty Free Shop (Pvt.) Limited" **(PLD 2011 Karachi 586)**.

12. In view of above, the instant civil revision is without merit and is hereby dismissed.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 31st day of July, 2015.

JUDGE

Altaf Malik

Approved For Reporting