

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

Civil Revision No. 241/2016

Mansoor Kamran Abbasi

*Versus*

Zafar Mehmood and another

Date of Hearing : 11.09.2020.  
Petitioner by : Mr. Muhammad Nazir Abbasi, Advocate.  
Respondent No.1 : Ex-parte vide order dated 24.08.2020.

**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant Civil Revision Petition, petitioner impugns judgments and decrees dated 08.02.2010 and 08.04.2014, passed by the learned Civil Judge 1<sup>st</sup> Class and the learned Additional District Judge-VII, Islamabad (West) respectively, whereby his suit for specific performance of agreement and permanent injunction, was dismissed while appeal met the same fate.

2. Precisely, relevant facts for the disposal of instant civil revision petition are that petitioner filed a suit for specific performance of agreement and permanent injunction with the averments that he entered into an agreement to sell with the respondent No.1 on 11.11.2004 regarding a plot situated in Bhaiker Fateh Bakhsh, Tehsil & District Islamabad for consideration of Rs.16,50,000/-; that Rs.13,70,000/- was paid as earnest amount while the rest had to be paid at the time of transfer of the suit plot; that respondent No.2/C.D.A issued offer letter for the allotment of the suit plot to respondent No.1 and requisitioned the relevant documents from the latter who delayed the matter on one pretext or the other which led to filing of the suit.

3. The respondent No.1 was proceeded against ex-parte on 09.4.2005 while the respondent No.2/C.D.A in its written statement besides raising preliminary objections on facts, asserted that the allotment of plot has not yet been made in favour of respondent No.1.

4. The learned Trial Court on 15.01.2009 framed necessary issues and then recorded evidence of the petitioner, who appeared as PW-1 and got examined Muhammad Iftikhar Abbasi as PW-2 and Raja Mushtaq as PW-3, respectively. The documentary evidence comprised of receipt of payment Ex.P-1, agreement to Sell Ex.P-2, offer letter Ex.P-3 and application filed to the Deputy Director Land CDA Mark-A. The learned Trial Court after hearing learned counsel for the petitioner, dismissed the suit vide judgment and decree dated 08.02.2010. The petitioner assailed the said judgment and decree in appeal but the same was dismissed vide judgment and decree dated 08.04.2014, hence the instant civil revision petition.

5. During the proceedings of the instant Civil Revision Petition, respondent No.1 refused to accept service, therefore, he was proceeded against ex-parte vide order dated 24.08.2020 while no relief is sought against the respondent No.2/C.D.A being proforma respondent.

6. Learned counsel for the petitioner contends that the instant petition is being pressed only to the extent of claim respecting return of double earnest amount as the respondent No.1 failed to perform his part of agreement and that the relief prayed for can be granted even without explicit prayer in the suit or in appeal. Learned counsel placed reliance upon case laws reported as PLJ 2003 S.C. 232 and 2002 YLR 2865.

7. Heard the learned counsel for the petitioner and perused the record with his able assistance.

8. In order to appreciate the stance of the learned counsel, it is necessary to go through the prayer clause of the plaint which reads as under:-

*“That a decree for specific performance of agreement to sell dated 11.11.2004 may kindly be passed in favour of the plaintiff and against the defendants. It is further prayed that a decree for permanent injunction restraining the defendants from transferring the suit plot to any other person except the plaintiff may kindly be passed in favour of the plaintiff.”*

9. It is evident from the prayer clause (supra) that relief respecting return of double earnest amount was not made by the petitioner. It is settled principle that the relief, in pursuit to the main claim is required to be mentioned with certainty. The petitioner in case of breach or non-fulfillment of the agreement in question, intends to have double earnest amount but the same was not sought as an alternate in the original prayer clause.

The statement of the petitioner as PW-1 is also silent in this respect. He did not utter even a single sentence either to direct the respondent No.1 to fulfill his part of obligation or to return the double earnest amount. Even he did not make alike request in the appeal. There are concurrent findings of the two learned Courts to this effect. The learned Appellate Court observed that the petitioner can only claim the return of earnest amount as the same was not claimed in the suit, therefore, the same relief was not granted. The plea of return of the double earnest amount would also flow on the same pattern being not claimed either in the suit, statement or in appeal.

10. Adverting to the status of the agreement in question, admittedly, at the time of its execution, as put

forth by the respondent No.2/CDA in its written statement, the suit plot was not allotted to the respondent No.1, therefore, the latter had no authority to enter into any contract against any right, which was not existing in his favour at the relevant time.

11. The mandate of revisional jurisdiction does not allow this Court to re-appreciate the evidence. The documents, Ex.P-1 to Ex.P-3 and Mark-A have been interpreted by the two learned Courts in one way. This Court is of the opinion that the same cannot be interpreted in a different way.

12. The question/submission that interpretation of the two courts below is against the law and facts and that the matter can be interpreted in favour of the petitioner, has no legal force because the Hon'ble Apex Court in recent judgment reported as **"Shahbaz Gul and others V. Muhammad Younas Khan and others (2020 SCMR 867)"** held that:-

*"Furthermore, where two different interpretations were possible of the evidence brought on record, as is the matter in the instant case, then appraisal of facts of lower courts should not have been overturned by the learned High Court in its revisional jurisdiction under Section 115, C.P.C. between two possible interpretations, the one adopted by the learned Trial and Appellate Court should have been maintained, keeping in mind the limited scope of revisional jurisdiction."*

13. No ground has been argued that the two learned Courts below were not possessed with the jurisdiction or that they failed to exercise jurisdiction vested in them. The case law relied upon by the learned counsel do not extend any help to the petitioner due to having distinct facts and circumstances.

**14. In view of above, no interference can be made in the concurrent findings of the facts and law arrived at by the two learned Courts. Consequently, the instant civil revision fails and is accordingly dismissed.**

**(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE**

A.R.Ansari