

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 423/2019.

Akhter Mahmood Bhatti

Versus

Fayyaz Ahmad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	15.11.2019.	Sardar Yasir Baig, Advocate for petitioner.

Through this Civil Revision, the petitioner has assailed the order dated 29.04.2019, passed by learned Civil Judge 1st Class (West), Islamabad, whereby application filed by the petitioner for deposit of balance sale consideration has been dismissed.

2. Learned counsel for the petitioner contends that petitioner filed a suit for possession through specific performance, declaration, cancellation, permanent and mandatory injunction against respondents, which was decreed vide ex-parte judgment & decree dated 30.10.2018, whereby petitioner was directed to deposit balance sale consideration of Rs.50,00,000/- within one month; that respondents were on watching brief who entered into negotiation with the petitioner and settled the matter outside the Court and after considerable time when the matter was not patched up they backed out from settlement and petitioner applied for grant of permission to deposit balance sale consideration on 03.04.2019 but the said application was dismissed by the

learned trial Court without considering the intervening efforts of reconciliation whereby there is no fault of petitioner in submission of balance sale consideration and as of today petitioner is still ready to deposit the balance sale consideration, if same is allowed.

3. Arguments heard, record perused.

4. Perusal of record reveals that petitioner has prayed for specific performance of agreement to sell dated 24.08.2015, executed between petitioner and respondent No.1 for the sale of Unit No.9, Plot No.3-O, Sector I/9 Markaz Islamabad known as Mehmood Plaza comprising of one shop in basement, one shop on ground floor and one flat on first floor against the total sale consideration of Rs.70,00,000/-. The suit was decided ex-parte vide ex-parte judgment & decree dated 30.10.2018 on the basis of evidence got recorded by the petitioner, whereby his own claim before the trial Court reveals that he had only paid an amount of Rs.20,00,000/- as earnest money whereas remaining amount of Rs.50,00,000/- was to be paid at the time of transfer and as per ex-parte judgment & decree, the petitioner was directed to deposit the remaining sale consideration within one month.

5. The petitioner after passing of the said decree has submitted an application on 30.04.2019 on record and sought permission from the trial Court for the deposit of balance sale consideration. The contents of

application reveals that petitioner himself acknowledged that he has failed to deposit the balance sale consideration within 30 days only due to engagement with respondents' side in Jirga proceedings. The application filed by the petitioner was dismissed by the learned trial Court through impugned order dated 29.04.2019. The grounds on which application for deposit of balance sale consideration in the Court account has been moved, are not justifiable from any record, even the petitioner was under lawful obligation from his own evidence and pleadings to justify his readiness for the payment of balance sale consideration. Any person who is not willing to submit his evidence as per his own commitment, the same has been declared as contemptuous omission by the Apex Court in case reported as 2017 SCMR 2022 (Hamood Mahmood Vs. Mst. Shabana Ishaque). As such, the Apex Court has declared that such conduct entails dismissal of the suit, therefore, impugned order passed by learned trial Court is well within four corners of law and no illegality has been observed. Hence, instant civil revision is misconceived and the same is hereby dismissed in limine.

(MOHSIN AKHTAR KAYANI)
JUDGE