

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

CIVIL REVISION NO. 25 OF 2017

IFTIKHAR AHMED KHAN

Vs.

CAPITAL DEVELOPMENT AUTHORITY

Petitioner by : Mr. Mujib-Ur-Rehman Kiani, Advocate.

Respondents by : Mr. Muhammad Latif Saeedi, Advocate.

Date of hearing : 21.04.2020.

LUBNA SALEEM PERVEZ, J. Through instant revision petition, the petitioner has assailed judgment and decree dated 13.12.2016, passed by learned Additional District Judge (West), Islamabad, confirming the order and decree dated 07.09.2016, passed by learned Civil Judge 1st Class (West), Islamabad, whereby the petitioner's suit was rejected u/o VII Rule 11 CPC.

2. Facts as per record are that the petitioner was provisionally allotted a plot bearing No. 131-B, measuring 500 sq. yard (1 kanal), situated at CDA Park Enclave, Park Road, Islamabad, (*hereinafter referred as 'suit plot'*) through balloting against total sale consideration of Rs.17,500,000/-. As per schedule, the petitioner paid 10% down payment of Rs. 1,750,000/- as acknowledged vide provisional offer of allotment letter dated 23.02.2015. Thereafter, the said plot was cancelled for non-payment in accordance with provisional offer for allotment letter dated 23.02.2015. The Petitioner subsequently made payment of Rs. 7,00,000/- vide pay order dated 15.09.2015, furnished to the CDA through application No.585, dated 20.11.2015, for restoration of the suit plot. However, filed suit before the Senior Civil Judge, West-Islamabad, on 26.11.2015, for declaration and permanent injunction of the suit plot. The suit was dismissed by allowing application of the Respondent/CDA filed under Order VII Rule 11 CPC, vide Order and decree dated 07.09.2016, whereby, it was held that the petitioner/plaintiff got no cause of action to file the suit. Against the said order the petitioner filed appeal before the learned Additional District Judge-VIII (West), Islamabad, who, vide judgment and decree dated 13.12.2016, also

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dismissed the appeal affirming the order 07.09.2016. Hence present civil revision petition.

3. Learned counsel for the Petitioner argued that admittedly the plot was provisionally allotted, vide allotment offer letter dated 23.02.2015, by paying down payment of Rs. 1,750,000/- out of total sale consideration of Rs. 17,500,000/-; that he resides in Malaysia, as such, did not receive any cancellation letter, however, he has paid installment of Rs. 700,000/-, vide pay order No. 496188, dated 15.09.2015, in respect of the suit plot with application in prescribed form bearing No. 585, dated 20.11.2015; that upon receiving no response from the CDA, he filed suit for declaration and permanent injunction before the Senior Civil Judge; that a complaint was also filed before the Wafaqi Mohtasib, whereby, at the closure of the proceedings, the Hon'ble Ombudsman observed that the Respondent has also received bank draft of Rs. 700,000/-; that despite admitted receipt of Rs. 1,750,000/- and Rs. 700,000/- aggregating to Rs. 2,450,000/- neither the respondent has restored the suit plot nor has returned the amount paid for the suit plot; that the impugned judgment by the Appellate Court and dismissal of plaint under order VII rule 11 CPC is not sustainable as the Petitioner has been unlawfully deprived from availing the suit plot.

4. The averments made by the learned counsel for petitioner were strongly controverted by the learned counsel for the Respondent who submitted that all the requisite conditions for payments have been mentioned in provisional offer of allotment letter dated 23.02.2015, according to which the Petitioner was advised to pay 15% of the total sale price which comes to Rs. 2,650,000/- along with 2% CVT and 2% advance income tax within 30 days from the issuance of provisional allotment letter. He submitted that the receipt of this provisional allotment letter dated 23.02.2015, has not been denied by the Petitioner. In this letter it has been clearly mentioned that failing to pay Rs. 2,625,000/-, CVT and advance tax, the CDA reserved right to withdraw or cancel the suit plot by forfeiting the amount of Rs. 1,750,000/- paid as down payment. Learned counsel submitted that Rs. 7,00,000/- was paid on 20.11.2015, through pay order dated 15.09.2015, at one window operation counter; that soon thereafter the petitioner filed civil suit for declaration and permanent injunction on 26.11.2015, and during the pendency of the suit he also filed complaint before the Wafaqi Mohtasib on 02.12.2015, for the same cause; that the petitioner cannot claim equitable relief as he has not

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come to the Court with clean hands as he did not comply with the payment schedule as per provisional allotment letter dated 23.02.2015, and claimed the entitlement of the suit plot on the basis of payment of Rs. 700,000/- paid after cancellation of the suit plot; that he has concealed the fact of receiving letter dated 22.10.2015, in response to which through letter addressed to Director (Estate) CDA, Islamabad, he requested for restoration of the suit plot on payment of balance amount of Rs. 19,25,000/- with 2% CVT and 2% advance income tax duly appended with the record on page 56; that he referred to the prayer clause in the suit filed on 26.11.2015, whereby, he prayed for restraining the Respondent/CDA for allotting the suit plot to someone else; that there was no cause of action agitated in the suit filed by the Petitioner and in para No.8 of the suit it is stated that cause of action accrued on 23.02.2015, whereas, the suit plot was cancelled after nonpayment of balance sale consideration in respect of suit plot as per provisional allotment letter dated 23.02.2015, after stipulated time and thus he at the most could have filed either suit for restoration of the suit plot or recovery of the amount paid in respect of the suit plot; that the petitioner has neither challenged the cancellation of suit plot before the learned trial Court nor before the learned Appellate Court rather prayed for restraining the respondent from transferring the suit plot to someone else; that the suit has been rightly dismissed on the Respondent's application under Order VII Rule 11 CPC as there was no cause of action and the prayer sought for by the Court could not be granted. Learned counsel for respondent prayed dismissal of instant civil revision petition.

5. Arguments of the learned counsel for the parties have been heard and record filed with the case has also been examined with their able assistance.

6. The petitioner is aggrieved of the cancellation of plot bearing No. 131-B, measuring 500 sq. yard (01 kanal), situated at CDA Park Enclave, Park Road, Islamabad, for which he has paid Rs. 1,750,000/- as down payment and Rs. 700,000/- on 20.11.2015, claimed to be installment in respect of the suit plot which payment has not been denied by the Respondent. But, that amount does not corroborate with any of the terms & conditions regarding payment schedule mentioned in the provisional allotment letter. Rather through show-cause notice dated 20.08.2015, the petitioner was directed to deposit the amount of Rs. 26,25,000/- along with CVT and advance Tax within 30 days positively otherwise

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respondent reserved right to withdraw the provisional allotment of the petitioner. While arguing his case, learned counsel for the Petitioner has not denied receipt of the provisional allotment letter dated 23.02.2015, in which the Respondent has acknowledged the receipt of down payment and has further advised the petitioner to pay 15 % further payment amounting to Rs. 2,650,000/- with 2% CVT and 2% advance income tax within 30 days. The said provisional allotment letter also contained repercussions of failing to comply the above terms and conditions i.e. cancellation of plot without further notice and also forfeiture of the deposited amount of Rs. 1,750,000/-. The learned counsel was unable to satisfy this Court regarding nonpayment of the amount and government dues mentioned in the letter dated 23.02.2015. The argument of the learned counsel for the Petitioner that he proceeded to Malaysia, therefore, could not pay the dues and was not in receipt of cancellation order is not convincing as the payment of dues within stipulated time was his duty, when the dead line of 30 days with consequences in case of default was categorically mentioned in the letter. Learned counsel for the petitioner has further failed to satisfy the Court as to why at the time of payment of Rs. 7,00,000/- through pay order dated 15.09.2015, on 20.11.2015, at one window counter of Respondent, he did not file application for restoration of plot as he could have filed the same before the concerned authorities and could pursue his case accordingly.

7. Record reveals that petitioner filed civil suit for declaration and permanent injunction after short span of five days on 26.11.2015, after deposit of above said amount of Rs. 7,00,000/-, with the prayer to restrain the Respondent for allotting the suit plot to some other person and at the same time also availed forum of Wafaqi Mohtasib, by filing complaint on 02.12.2015, whereby, vide closure findings dated 18.01.2016, it has been observed that *“Moreover the bank draft of 7 lac was also received by the Agency. Representative of the Agency stated the a remedy was available to the complainant and there was possibility of restoration of such plots in line with the restoration policy of 2014 and that if the complainant applied to the Agency his case would be considered on merit as per rules”*. Further, the Petitioner has himself referred Restoration Policy, 2014, announced by Respondent but instead of availing the benefits of the said policy, he has indulged in unnecessary litigation. In this regard reliance is placed on case titled ***S.M. Sham Ahmad Zaidi vs. Malik Hassan Ali Khan (2002 SCMR 338)***,



whereby, their lordships have been pleased to observe that *“It is the requirement of law that incompetent suit shall be buried at its inception. It is in the interest of the litigation parties and the judicial institution itself. The parties are saved with their time and unnecessary expenses and the courts get more time to devote it for the genuine causes”*. Thus, the learned Trial Court has rightly dismissed the suit filed by the Petitioner while observing that the petitioner had got no cause of action to file the suit as suit plot was cancelled from his name by the Respondents as a result of his default to pay the requisite amount as per schedule mentioned in the provisional offer of allotment letter dated 23.02.2015, which findings have also been affirmed by the learned Appellate Court.

8. For what has been discussed above, I am of the considered view that the petitioner has failed to point out any irregularity or infirmity in the impugned judgment dated 13.12.2016, and Order dated 07.09.2016, passed by the learned Courts below, calling for interference by this Court. Hence, titled civil revision petition, being devoid of any merit, is hereby dismissed.



(LUBNA SALEEM PERVEZ)
JUDGE