

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.1368 of 2020

Muhammad Ashraf Rajpoot
Vs
Civil Judge 1st Class (West), Islamabad & others

Date of Hearing: 13.08.2020

Petitioner By: Mr. Tariq Khalid Mehmood
Advocate.

Respondents 1 & 2 By: Muzammil Din Chaudhary
Advocate.

Respondents 3 & 4: Ms. Ayesha Siddique Khan
Advocate.

Ghulam Azam Qambrani, J: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has invoked the jurisdiction of this Court with the following prayer;-

“ It is most humbly prayed that, the both impugned orders dated 27.01.2020 and 17.02.2020, passed by the lower Court/Trial Court may please be declared without jurisdiction, illegal, void, without applying of judicial mind, against the constitutional rights of the petitioner/defendant No.1, against the laws of the land and facts on the file of the case, which are liable to be set aside and after accepting this petition, the suit filed by the plaintiff/respondent No.1 may please be dismissed against the present petitioner/defendant No.1 with costs of both Courts and with special costs, in the best interest of real, speedy and natural justice.

The proceedings in case at lower/trial Court may please be stayed till final disposal of this writ petition. Separate application for this purpose is also attached with this writ petition.

Any other relief which this Hon'ble Court deems proper may also be awarded to the petitioner/defendant.”

2. Brief facts of the instant petition are that the petitioner/defendant No.1 is legal and lawful owner in possession of Plot No. 1442, Sector I-14/3, Islamabad. The respondent No.2/

plaintiff approached the petitioner/ defendant No.1 and intended to purchase the suit plot for his own, resultantly the petitioner/ defendant No.1 entered into an agreement to sell dated 06.05.2017 with the respondent/plaintiff regarding the suit plot and the sale consideration was fixed at Rs.5,900,000/- and at the time of execution of the said agreement to sell dated 06.05.2017, the respondent No.2/plaintiff paid an amount of Rs.500,000/- as earnest money and remaining sale consideration of Rs.54,00,000/- was to be paid on or before 06.07.2017. The petitioner/defendant No.1 prepared all the required documents for the purpose of transfer of the above mentioned plot in the name of respondent No.2/plaintiff. In consequence thereof, respondent No.3/CDA issued an application form for transfer of plot to the respondent/ plaintiff on 28.07.2017 with TAF No.19337, therefore the petitioner/ defendant No.1 repeatedly contacted the respondent/ plaintiff to pay the remaining sale consideration of the suit plot and requested him to perform his obligations in terms of the said agreement to sell within stipulated time, but respondent No.2/ plaintiff responded to the petitioner/ defendant No.1 that he is not present at Islamabad, therefore, he could not reach the office of CDA, but thereafter, when the petitioner/ defendant No.1 again contacted respondent No.2/ plaintiff, he again extended lame excuses. The petitioner/ defendant No.1 repeatedly approached respondent No.2/ plaintiff in person as well as telephonically and asked him to perform his contractual obligations by paying the remaining sale consideration, but respondent No.2/ plaintiff failed to fulfil his legal and moral obligation towards the deal. After failing to perform contractual obligations, the respondent No.2/ plaintiff started to claim the right over the suit plot, and the act of respondent No.2/ plaintiff for claiming the right over the suit plot after failing to fulfil his legal and moral obligations in terms of the agreement to sell dated 06.05.2017 is illegal, unlawful, unjust and against the legal and lawful rights of the petitioner/defendant No.1. The respondent No.2/ plaintiff is doing the business of Property Dealer and he is trying to usurp the valuable plot of the petitioner/defendant No.1 illegally and unlawfully. The defendant filed an application under Order VII Rule 11 CPC before

the learned Trial Court, which was dismissed vide order dated 27.01.2020. The plaintiff also filed another application for appropriate orders on the ground that he was directed to deposit the pay order with the Nazir Civil Courts, but the said Pay Orders were got prepared for its payment at the time of transfer of registered sale-deed, which had become expired, due to that reason the plaintiff got the said Pay Orders cancelled. Through the said application, the petitioner requested that he be allowed to deposit remaining amount of sale consideration instead of pay orders, which was allowed vide order dated 17.02.2020. The petitioner seeks setting aside of both the impugned orders dated 27.01.2020 and 17.02.2020 passed by the learned Trial Court.

3. Learned counsel for the petitioner has contended that the plaintiff has no cause of action and locus standi to file the instant suit; that the suit of the plaintiff is not maintainable and plaint is liable to be rejected under Order 7 Rule 11 CPC. Further contended that the suit in present form is not maintainable under Sections 12, 21, 24 & 52 to 56 of the Specific Relief Act, 1877; that no proper Court fee was filed in the Court at the time of filing the suit. Lastly contended that the suit is false, frivolous and vexatious which has been filed with malafide intention just to harass and blackmail the petitioner/defendant No.1 and the plaint is liable to be dismissed with special costs under Section 35-A of CPC.

4. Conversely, learned counsel for respondent No.2/plaintiff has opposed the contentions of learned counsel for petitioner/defendant No.1 and contended that without recording of evidence, disputed facts cannot be decided; that the respondent had been waiting for the petitioner for execution of the registered sale-deed, but he failed to appear; that the respondent has also filed an application under Order 148 CPC with the prayer to grant him two months' time for deposit of remaining sale consideration, which is still pending adjudication. Lastly prayed for dismissal of the instant writ petition.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record reveals that respondent No.2 entered into an agreement to sell regarding plot No.1442 measuring (30X60)

Sector I-14/3 on 06.05.2017 and two months' time was agreed between the parties for completion of the said agreement. As per record the petitioner got "No Demand Certificate" from the office of the C.D.A. on 26.07.2017 and respondent No.2 was asked by the petitioner that for transfer of the suit plot, the C.D.A. authorities have given the date as 15.08.2017. Respondent No.2 got prepared two Pay Orders for payment of the balance consideration amount to the petitioner for the said date, which are annexed with the file. Respondent No.2 filed a suit for specific performance of the agreement to sell dated 06.05.2017. The petitioner contested the suit by filing written statement along with an application under Order VII Rule 11 CPC for rejection of the plaint on the ground that the plaintiff/ respondent No.2 has no cause of action or locus standi to file the instant suit; that the suit is not maintainable under Sections 12, 21, 24 and 52 to 56 of the Specific Relief Act, 1877; that no proper court fee was filed; that no remaining amount was deposited in the court; that the suit is not maintainable and the plaint is liable to be rejected under Order VII Rule 11 (a), (c) and (d) because the same has been filed without any cause of action and proper court fee. In response to the said application, respondent No.2 filed reply with the contention that the said application is not maintainable; that the petitioner/ defendant is estopped by his words and conduct and that factual controversies are involved in the matter, which cannot be resolved without framing issues and recording of evidence by both the parties and prayed for dismissal of the application.

7. Provisions of Order VII Rule 11 CPC will only be attracted if the following grounds are proved:-

"11. Rejection of plaint. The plaint shall be rejected in the following cases:--

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being

required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law."

In the instant case, respondent No.2/ plaintiff has valued the suit for the purposes of Court fee and jurisdiction at Rs.59,00,000/- and he has already supplied the requisite stamp paper; as such, Sub-Rules (b) and (c) are not attracted in the case in hand. As regards Sub-Rule (a) is concerned, execution of the agreement to sell is admitted between the parties but the claim of the petitioner is that respondent No.2 failed to perform his part, as per clause 3 of the agreement. Perusal of the record shows that respondent No.2/ plaintiff has paid an amount of Rs.5,00,000/- as earnest money to the petitioner and with regard to the balance sale consideration, he had got prepared two Pay Orders valuing Rs.20,00,000/- and Rs.30,00,000/-, which had later on expired but copies of the same are attached with the suit. Further, there are disputed questions of law and facts that whether the plaintiff/ respondent No.2 failed to perform his part of the agreement or the defendant/ petitioner avoided the same, which cannot be resolved without framing of proper issues and recording evidence of both the parties. This is settled law that in case of controversial questions of fact and law, the provisions of Order VII Rule 11 CPC cannot be invoked, rather proper course for the learned trial Court in such cases is to frame issues on such questions and decide the same on merits after recording evidence of the parties. In this regard reliance is placed upon the case reported as **Mrs. Anis Haider and others Vs. S. Amir Haider and others** (2008 SCMR 236) wherein it has been held as under:-

"The very terminology used in Order VII, rule 11, C.P.C. is indicative of the fact that it pertains to suits and plaints in particular. The Court should have realized the difference between a regular suit and an application. Section 141, C.P.C. cannot be attracted as it pertains to the ordinary procedure laid down in Civil Procedure Code that may be followed in deciding an application but a substantial requirement of recording of evidence on pure and serious

question of fact could not be by-passed by unjustifiable invoking of Order VII, rule 11, C.P.C. It appears that even the implication of Order VII, rule 11, C.P.C. were not properly appreciated and applied. The order can be attracted only when a plaint by itself does not disclose any cause of action. It cannot be rejected on the basis of written statement because the initial burden remains on the plaintiff/petitioner to prove his case on the basis of assertions made in the pleadings. If the principle in hand adopted by the Courts below is endorsed, it would be the easiest thing to dismiss any civil suit simply and merely on the basis of written statement."

8. The object and principle of Order VII Rule 11 CPC is that a frivolous litigation should be laid to rest at the earliest and bona fide parties should be saved from rigors of such a litigation. The plaint can only be rejected if the statement therein does not disclose any cause of action or the suit is improperly valued for the purpose of court fee and jurisdiction or the suit is barred by law and while considering applicability of the provisions of Order VII Rule 11 CPC, the Court has to confine itself to averments in plaint, which need to be accepted as gospel truth unless proved otherwise after recording of evidence of both the parties.

9. The other objection of the petitioner/ defendant is that the plaintiff/ respondent No.2 has not deposited the balance sale consideration amount in the Court. In the case in hand, the parties have entered into a valid agreement of sale and respondent No.2 had already paid an amount of Rs.5,00,000/- to the petitioner as earnest money/ advance money and for the remaining amount of consideration he had annexed the Pay Order valuing Rs.20,00,000/- and Rs.30,00,000/-, which had later on expired but copies of the same are attached with the suit, which shows the bonafide of the plaintiff/ respondent No.2 with regard to the execution of the registered sale deed in his favour. Record further transpires that the plaintiff had also filed an application under Section 148 CPC for extension of time for deposit of balance sale consideration, which is still pending adjudication before the learned trial Court. Rejection of

plaint on technical grounds would amount to depriving the plaintiff/ respondent No.2 from his legitimate right. The Court in exceptional cases, may consider the legal objection in the light of the averments of the written statement but the pleadings as a whole cannot be taken into consideration for rejection of plaint.

10. The other objection of the learned counsel for the petitioner that the suit is not maintainable under Sections 12, 21, 24 and 52 to 56 of the Specific Relief Act, 1877, this contention of the petitioner also requires recording of evidence as the disputed questions of facts and law are involved, which cannot be decided without recording evidence of both the parties. In this regard, reliance is placed upon the case reported as Saleem Malik Vs. Pakistan Cricket Board (PCB) and 2 others (PLD 2008 Supreme Court 650).

11. As far as to order dated 17.02.2020 is concerned, the same has been passed in presence of learned counsel for the parties whereby application of the plaintiff/ respondent No.2 was allowed to deposit the balance sale consideration instead of Pay Orders, which had been expired.

12. For the foregoing reasons and circumstances, this Court does not find any illegality or irregularity in the impugned orders dated 27.01.2020 and 17.02.2020, passed by the learned Civil Judge Ist Class, Islamabad (West), calling for interference by this Court. This petition having no force, is hereby dismissed.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on this 21st day of August, 2020./

Judge