

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

FAO No. 44 of 2018

Muhammad Sardar

Versus

Multan, etc.

Appellant by: Sardar Muhammad Yaqoob Mastoi, Advocate.

Respondents by: Ch. Abdul Majeed, Advocate.
Jam Khurshid Ahmed, Advocate for CDA.

Date of Decision: 17.05.2019.

MOHSIN AKHTAR KAYANI, J:- Through this FAO, the appellant has assailed order dated 17.03.2018, passed by learned Civil Judge, 1st Class, (West), Islamabad, whereby application U/O XXXIX Rule 1 & 2 CPC filed by respondent No.1 in the suit for specific performance of agreement to sell dated 06.02.2009 was allowed.

2. Brief facts referred in the instant case are that respondent No.1 filed a suit for specific performance of agreement dated 06.02.2009 regarding plot No.357, measuring 30' x 70', Sector F-11/4, Islamabad against the present appellant with the contention that sale consideration was fixed @ Rs.5 Million out of which he has allegedly paid Rs.1 Million as earnest money and Rs.4 Million was left balance. However, appellant intends to sell the said plot to someone else. The present appellant contested the said suit by way of written statement and has also filed his own suit for declaration and cancellation of the agreement. Learned trial Court after hearing the parties allowed the application U/O XXXIX Rule 1 & 2 CPC and restrained the appellant from alienation of subject property.

3. Learned counsel for the appellant contends that Court below has not appreciated the law on the subject especially when the balance sale consideration

has not been paid and this aspect has not been taken into account; that suit was filed in the year 2015, whereas agreement was allegedly executed on 06.01.2005 and the delay factor has not been considered by the trial Court.

4. Conversely, learned counsel for respondent No.1 contends that respondent No.1 has deposited the balance sale consideration in the Court account, produced copy of challan and expressed his bonafide regarding performance of agreement; that direction may be issued to the learned trial Court for early conclusion of the trial and if the restraining order will be recalled, respondent No.1 would be exposed to irreparable loss and balance of convenience lies in his favour at this stage.

5. I have heard the arguments and gone through the record.

6. From the perusal of record, it reveals that appellant and respondent No.1 entered into agreement to sell regarding sale of plot No.357, measuring 30 x 70, Sector F-11/4, Islamabad against the alleged sale consideration of Rs.5 Million out of which Rs.1 Million was already paid and both the parties have conceded before this Court the terms & conditions of the agreement and payment made to the extent of earnest money, however, the balance sale consideration of Rs.4 Million was not paid by respondent No.1, who was directed to deposit the balance sale consideration of Rs.4 Million in the trial Court vide order dated 09.05.2019, in the compliance of said order amount has been deposited in the Court account on 16.05.2019 and copy of bank challan has been produced which is placed on record.

7. As such *prima-facie* case is visible from record in favour of respondent No.1 who has deposited the balance sale consideration in the Court account to show his bonafide and at this stage if application U/O XXXIX Rule 1 & 2 CPC is dismissed respondent No.1 might suffer irreparable loss, especially when balance of convenience lies in his favour, therefore, situation has rightly been settled by the trial Court by way of injunctive relief, therefore, instant appeal is

meritless and the same is hereby *dismissed*. Learned trial Court seized with the matter is directed to conclude the matter on or before 31.12.2019 under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid