

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

**Civil Revision No. 174/2018**

Allah Din

Versus

Qamar-ul-Haq etc.

Petitioner : In person.

Respondent No. 1 by: Syed Wusat ul Hassan Shah, Advocate

Date of Decision: 10.06.2019

**MOHSIN AKHTAR KAYANI J.** Through this Civil Revision, petitioner has assailed the judgment dated 07.06.2017, passed by learned Additional District Judge-VIII (West), Islamabad, whereby appeal filed by the respondent No.1 has been accepted and the order dated 08.03.2017, passed by learned Civil Judge, 1<sup>st</sup> Class (West), Islamabad under order XXXIX, Rule 1 & 2 CPC was set-aside.

2. Petitioner in person contends that respondent No. 1 entered into agreement to sell dated 04.02.2016 regarding plot measuring 07 Marlas situated at Mouza Nothia, Islamabad against sale consideration of Rs. 28,00,000/- and Rs. 500,000/- has been paid by him as earnest money to respondent No. 1. He further contends that while hearing the application under Order XXXIX Rule 1 & 2 CPC, learned Trial Court has passed the direction to the petitioner for deposit of balance sale consideration within thirty (30) days and accepted the application under Order XXXIX Rule 1 & 2 CPC, whereas the said order was set-aside by the learned First Appellate Court without considering the law on the subject as the petitioner has a good prima facie case and in case of non-issuance of injunctive order, the petitioner shall suffer irreparable loss and it will further create multiplicity

of the litigations. He further contends that he has deposited the balance amount of sale consideration in the Court Account.

3. Conversely, learned counsel for the respondent No. 1 contends that petitioner did not perform his part of contract within the cut-off date and time is the essence of the contract, therefore, petitioner cannot be given protection in terms of Order XXXIX Rule 1 & 2 CPC. He further contends that learned First Appellate Court has rightly set-aside the restraining order.

4. Arguments heard, record perused.

5. From the perusal of record, it has been observed that petitioner has entered into sale agreement with respondent No. 1 regarding plot measuring 07 Marlas situated at Mouza Nothia, Islamabad dated 04.02.2016, whereby suit property was sold to the petitioner/Allah Din against total sale consideration of Rs. 28,00,000/- and he has paid Rs. 500,000/- as earnest money to respondent No. 1 through cross cheque of National Bank of Pakistan, whereas remaining balance of Rs. 23,00,000/- was to be paid on or before 20.02.2016 at the time of transfer of suit plot.

6. Perusal of record further reveals that the petitioner has filed a suit for Specific Performance of Agreement dated 04.02.2016, whereby respondent No. 1/Qamar ul Haq has acknowledged the execution of agreement to sell in para 1 of the written statement, however, dispute arose when the cheque of earnest money has been returned by the bank. The respondent has taken a specific stance that agreement was cancelled, which is mentioned in para 3 of the written statement.

7. Keeping in view the above background, the learned Trial Court has rightly allowed the application under Order XXXIX Rule 1 & 2 CPC to protect the rights of the petitioner/plaintiff as the suit plot if further alienate will create the multiplicity of litigation.

8. I have gone through the judgment of the learned First Appellate Court, whereby reasons have not been explained as to why the injunctive order passed by the learned Trial Court, is contrary to law despite the fact that the agreement executed between the parties has been acknowledged whereby the terms and conditions have not been denied.

9. In view of above background, instant civil revision is **Allowed**, the impugned judgment dated 07.06.2017, passed by learned Additional District Judge-VIII (West), Islamabad is hereby **Set-aside** and the order dated 08.03.2017, passed by learned Civil Judge, 1<sup>st</sup> Class (West), Islamabad is **Restored** subject to condition that the petitioner shall submit the proof of payment of sale consideration in compliance of the order of learned Trial Court on the next date of hearing before learned Trial Court.

10. It is expected from the learned Trial Court to conclude the matter on or before 31.12.2019 under intimation to this Court.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Ramzan