

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

F.A.O.No.14 of 2016

Mrs. Nazia Sohail  
***VERSUS***  
Mst. Iqbal Begum & another

**Date of Hearing:** 21.03.2016  
**Appellant by:** Syed Mastan Ali Zaidi, Advocate  
**Respondents by:** Mr. Muhammad Sajjad Ahmed Bangash,  
Advocate for respondent No.1,  
Mr. Jehangir Jadoon, Advocate for  
respondentNo.2

---

**MIANGUL HASSAN AURANGZEB, J:-** Through the instant appeal, the appellant, Nazia Sohail, impugns the Order dated 15.01.2016, passed by the Court of learned Civil Judge 1st Class (West), Islamabad, whereby respondent No.1's application under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908 ("C.P.C.") was allowed and the appellant was directed to maintain status quo regarding House No.1313, Street No.170, Sector G-11/1, Islamabad ("suit house"), for a period of six months or till the disposal of the suit, whichever, is earlier.

2. The facts necessary for the disposal of this appeal are that on 10.07.2012, an agreement to sell was executed between the appellant and respondent No.1, whereby the appellant agreed to sell the suit house to respondent No.1 for a total sale consideration of Rs.89,00,000/-, out of which Rs.20,00,000/- was paid in advance and the balance Rs.69,00,000/- was payable on or before 10.09.2012, with a grace period of one week. This sale could not be completed within the period stipulated in the said agreement to sell. The parties are at variance on the question of the execution of a 'continuation agreement to sell' allegedly executed on 27.09.2012 between the appellant and respondent No.1, whereby the period within which the sale of the said house was to be completed, was extended to 15.11.2012. Apparently, respondent No.1 had two pay orders for an amount

of Rs.6870,000/- and Rs.30,000/- (total Rs.69,00,000/-) made in favour of the appellant. These pay orders were made on 12.11.2012 through the National Bank of Pakistan.

3. As the sale transaction between the appellant and respondent No.1 did not materialize, respondent No.1 on 11.02.2013 filed a suit for specific performance, recovery of amount, permanent and mandatory injunction before the Court of the learned Civil Judge, Islamabad. In the said suit, respondent No.1 prayed for a decree for specific performance of the agreement to sell dated 10.07.2012 and the disputed agreement dated 27.09.2012. In addition to this, respondent No.1 also prayed for the recovery of Rs.20,00,000/- on account of damages for mental torture and Rs.15,000/- per month as compensation until vacant possession of the suit house is handed over. A decree for permanent injunction restraining the appellant from selling or transferring the suit house in favour of another party was also prayed for. Along with the said suit, respondent No.1 also filed an application for interim injunction under Order XXXIX Rules 1 & 2 CPC. The appellant contested this suit by filing a written statement, wherein the execution of the subsequent agreement dated 27.09.2012 was vehemently denied. The appellant, *inter-alia*, took the position that the time for completing the sale of the suit house was never extended.

4. Vide order dated 15.01.2016, the learned Civil Court allowed respondent No.1's application for interim relief and directed the appellant to maintain status quo regarding the suit house for a period of six months or until the disposal of the suit, whichever was earlier. Furthermore, vide the said order the learned Civil Court also framed the issues. Aggrieved by the grant of interim injunction in respondent No.1's favour, the appellant has filed the instant appeal.

5. Learned counsel for the appellant submitted that appellant had not, at any material stage, requested respondent No.1 to defer the completion of the sale; that the appellant had not executed the so called 'continuation agreement to sell' and that the same was a fabricated document; that it was respondent No.1, who failed to come up with the balance sale

consideration of Rs.69,00,000/- by 10.09.2012, which was the date stipulated in the agreement to sell dated 10.07.2012 for the completion of the sale; that as it was respondent No.1, who failed to comply with her obligations under the said agreement to sell, her conduct is such as to disentitle her from any discretionary relief under Section 56(j) of the Specific Relief Act, 1877; that even when respondent No.1 filed the civil suit, the balance sale consideration was not deposited in the Court; and that respondent No.1 has, thus, failed to establish her *bonafides*.

6. Learned counsel for the appellant further submitted that the impugned order dated 15.01.2016, ought to be set aside because the three essential ingredients for a grant of an interim injunction had not been satisfied. In making his submissions, the learned counsel for the appellant has placed reliance on the following cases:-

- (a) Jan Muhammad Vs. M.A. Sattar reported as 1980 SCMR 682, wherein it was held by the Hon'ble Supreme Court of Pakistan that a stay order which was conditional and granted on certain terms, could be withdrawn on account of non fulfillment of the terms on which it was granted.
- (b) Abdul Wahid Vs. Noor Muhammad reported as PLD 1993 Lahore 552, wherein it was held that the imposition of terms as to the deposit of the balance price, in a suit for specific performance of a contract, for the issuance of a temporary injunction binding the owner from dealing with his property agreed to be sold by him, was neither illegal nor unjust or unfair. Furthermore, it was held that injunctive relief was discretionary in nature, and that a court passing an order for temporary injunction could regulate the exercise of its discretion by imposing terms for protecting the legitimate rights of the parties.
- (c) Muhammad Sharif Vs. Nabi Bukhsh reported as 2012 SCMR 900, in which the trial court, in a suit for specific performance of an agreement to sell, had granted interim injunction to the plaintiff subject to the deposit of balance sale price in the Court within thirty days. The order of the

trial court, which had been set aside by the Hon'ble High Court, was restored by the Hon'ble Supreme Court of Pakistan. Furthermore, the Trial Court was directed to frame and decide a preliminary issue as to whether the plaintiff could be granted discretionary relief by way of specific performance of the agreement to sell.

7. On the other hand, the learned counsel for respondent No.1 submitted that respondent No.1 was ready, willing and able to perform her part of the agreement, but it was the appellant who wanted to delay the completion of the sale, because she wanted to go for Hajj; that to establish her *bonafides*, respondent No.1 had prepared pay orders for a total amount of Rs.69,00,000/- within the period stipulated for the completion of the sale under the 'continuation agreement to sell' dated 27.09.2012; that the continuation agreement to sell dated 27.09.2012, was duly executed by the appellant and also bears her thumb impression; that on 30.01.2013, the appellant had instituted a suit for permanent injunction against respondent No.1 praying for a permanent injunction restraining respondent No.1 from claiming or demanding excessive amount from the appellant, and restraining respondent No.1 and the police from harassing and pressurizing the appellant; that in this suit, the *factum* as to the execution of the 'continuation agreement to sell' dated 27.09.2012 has been clearly admitted; and that the impugned order dated 15.01.2016 is strictly in accordance with the law and should be maintained in appeal. In making his submissions, learned counsel for respondent No.1 placed reliance on the following cases:-

- (a) Muhammad Iqbal Vs. Mehboob Alam reported as 2015 SCMR 21, where in a suit for specific performance of an agreement to sell immovable property, the plaintiff had deposited the outstanding balance sale consideration in the Court, which had duly established his *bonafides*, promptness and willingness to perform the agreement. The defendant/seller had not sent any notice to the plaintiff demanding the balance sale consideration or notifying the cancellation of the agreement to sell.

Although, the plaintiff had withdrawn the balance sale consideration which had earlier been deposited in the trial court but the Hon'ble Supreme Court of Pakistan held that such withdrawal would have no reflection on the plaintiff's conduct to disentitle him from the relief of enforcement of the agreement to sell. Furthermore, it was held that the suit for specific performance of the agreement to sell had been rightly decreed, but the plaintiff was directed to deposit double amount of the balance sale consideration due to devaluation in currency and increase the price of the suit property.

- (b) Haji Abdul Qasim Vs. Builders Incorporated reported as 1990 MLD 712. The plaintiff, in a suit for specific performance of an agreement to sell, had *inter-alia* deposited the balance sale consideration of the property under the direction of the Court. This had shown that the plaintiff was ready and willing to perform his part of the agreement and thus had been able to make out a *prima facie* case for the grant of an injunction. Furthermore, it was held that the mere fact that plaintiff had also claimed damages in the suit could not give rise to the presumption that he was not interested in the performance of the contract as by virtue of Section 19 of the Specific Relief Act, 1877 a plaintiff could claim damages in addition to the relief of specific performance of the contract.
- (c) Match Minerals Enterprises Vs. United Minerals Company reported as 1994 PSC 84, where it was held by the Hon'ble Supreme Court of Pakistan that in deciding an application for an interim injunction, the Court has only to consider whether the plaintiff had succeeded in making out a *prima facie* case on the basis of the material on record. Furthermore, it was held that a *prima facie* case only meant that a serious question had been raised, which needed to be tried in the suit at the trial. The existence of a *prima facie* case does not mean that the plaintiff had to show that there was every possibility of his success at the trial of the suit.

- (d) Chief Administrator Auqaf Department Vs. Abdul Rauf reported as 2005 MLD 1219, wherein it was held by the Hon'ble Supreme Court of Azad Jammu & Kashmir that in deciding an application for an interim injunction it was sufficient if the applicant was able to establish an arguable case or show that the nature and difficulty of the question was such that an injunction should issue or in other words if the evidence was to remain as it was, the applicant should be able to show that he would get the decision in his favour.
- (e) Muhammad Taj Vs. Arsahd Mehmood reported as 2009 SCMR 114, where it was held that the question as to whether time was the essence of the contract had to be decided with reference to facts of each case. Furthermore, it was held that Section 55 of the Contract Act, 1872, which stipulates the contracts where time was of the essence, was generally not attracted to transactions involving sale of immovable property.
- (f) Molasses Export Company Ltd Vs. Consolidated Sugar Mills reported as 1990 CLC 609, where it was held by the Hon'ble High Court of Sindh that where in a suit for specific performance of an agreement the plaintiff seeking a temporary injunction, had proved that he would suffer irreparable loss in case the agreement was not specifically performed by the defendant, temporary injunction, could not be refused to the plaintiff merely for the reason that the plaintiff could be compensated by awarding damages, if the plaintiff ultimately would establish his case.

8. I have heard the arguments of learned counsel for the parties and have perused the record with their able assistance.

9. The contesting parties do not dispute that the agreement to sell dated 10.07.2012 was executed between the appellant and respondent No.1, and that an amount of Rs.20,00,000/- was paid in advance and Rs.69,00,000/- was to be paid on or before 10.09.2012 with the grace period of one week. The contesting parties blame each other for not performing the agreement

within the said stipulated date. The contesting parties, however, are at variance on the execution of the 'continuation agreement to sell' dated 27.09.2012. The appellant in her written statement has pleaded that respondent No.1 had *"maneuvered the agreement dated 27.09.2012"*.

10. To establish that the 'continuation agreement to sell' dated 27.09.2012 was indeed executed between the contesting parties, the learned counsel for respondent No.1 showed to the Court the certified copy of the suit for permanent injunction instituted by the appellant against respondent No.1, wherein the execution of the said agreement has been admitted by the appellant. This Court cannot take the contents of the said suit into consideration because it was not on the record of the learned Trial Court while deciding the application for interim injunction.

11. Whether or not the 'continuation agreement to sell' dated 27.09.2012 was executed between the contesting parties is yet to be determined by the learned Trial Court after the recording of evidence. Therefore, it was not appropriate for the learned Trial Court to have made the following observations in the impugned order dated 15.01.2016:-

*"Perusal of the continuation agreement dated 27.09.2012 show that the defendant No.1 had signed the same as well as thumb impressed on the agreement which was witnessed by the marginal witnesses. As per that agreement the time limit was extended till 15.12.2012 by mutual understanding."*

12. This observation has caused me to clarify that all observations made by the learned Trial Court in the said impugned order including the one reproduced herein above and the observations made in this order shall have no bearing on the learned Trial Court in deciding the suit for specific performance. It is by now well settled that findings or observations made by a Court including an appellate court while disposing of an application for interim injunction cannot have any bearing on the Court while deciding the main suit. Such observations are tentative in nature and cannot be termed as conclusive. Reference in this regard may be made to the cases of Sardar Vs. Islamia College Old Boys Cooperative

Housing Society Limited reported as 2002 SCMR 1298, Haji Muhammad Umar Vs. Asad Ali Shah & others reported as 1994 SCMR 506, Dr. Maqbool Ahmed Vs. Province of the Punjab through Collector, District Rahimyar Khan and others 2001 SCMR 737, Haji Amin Vs. Navaid Hussain & others reported as 2008 SCMR 133, Safdar Ahmad Vs. Malik Ahmad Khan reported as 2003 MLD 1337 & Ishtiaq Vs. Abida Parveen reported as 2006 YLR 20.

13. Although, respondent No.1 has filed copies of two pay orders dated 11.12.2012 for accumulative amount of Rs.69,00,000/- being the balance sale consideration, this amount has not been deposited in the trial Court by respondent No.1 to establish his *bonafides* and or his readiness, ability and willingness to perform the agreement to sell. According to the learned counsel for the appellant, these pay orders were never tendered or delivered to the appellant. Admittedly, these pay orders were not made within the period stipulated in the Agreement to Sell dated 10.07.2012 for the performance of the agreement.

14. In the judgment dated 08.03.2016 titled "Mrs. Nusrat Kausar Gillani Vs. Aftab Ahmad Khan etc" passed by the Division Bench of the Hon'ble Islamabad High Court in RFA No.53/2013, it has been held as follows:-

*"We have observed following reasons which are the key features in decision of any suit for specific performance to be made basis:-*

*(a) Plaintiff/purchaser had to prove his readiness to pay Balance Sale Consideration on record by means of deposit of balance amount in Court at the earliest i.e. at the time of filing of suit (if not paid earlier).*

*(b) All actions & efforts to pay balance sale consideration must be seen on record, even time is the essence or not or conditional with any other clause, obligation or terms of agreement. Reliance is placed on 1999 SCMR 1362, 2015 SCMR 828 and 2015 SCMR 21.*

*(c) If the Balance Sale Consideration has been paid on record at the time of filing of the suit by the plaintiff at his own, his conduct should be treated as bonafide, prompt, fair, confirming his readiness which entitles him for equitable relief of Specific Performance, even at the stage of decision of the application U/O 39, Rule 1 & 2 CPC. " (Emphasis added)*



15. Keeping in view the facts of the case and the case law relied upon by the learned counsel for the contesting parties, especially the cases of Muhammad Iqbal Vs. Mehboob Alam (supra), Haji Abdul Qasim Vs. Builders Incorporated (supra), Jan Muhammad Vs. M.A. Sattar (supra), Abdul Wahid Vs. Noor Muhammad (supra), and Muhammad Sharif Vs. Nabi Bukhsh (supra), I am inclined to modify the impugned order dated 15.01.2016 passed by the learned Trial Court only to the extent of making the interim relief granted by the learned Trial Court subject to the deposit of the balance sale consideration of Rs.69,00,000/- in the Trial Court within a period of two weeks from today failing which the interim relief granted vide the said impugned order shall be deemed to have been recalled. In the event respondent No.1 deposits the said amount in the learned Trial Court within the period stipulated above, the same shall be placed in an interest bearing account.

16. The instant appeal is disposed of in the foregoing terms.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2016

(JUDGE)

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan\*