

Form No: HCJD/C

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No. 301 of 2019

Muhammad Wasi Zafar.

Versus

Muhammad Ashr Halim and another.

Petitioner's by : Petitioner in person.

**Respondent's by : M. Arif, Advocate for respondents
No.1&2.**

**Mr. Husnain Haider, Advocate
Capital Development Authority.**

Date of Decision : 14.10.2019

AAMER FAROOQ, J. - This order shall decide the instant petition as well as Civil Revision No.300 of 2019, as common questions of law and facts are involved.

2. The facts, in brief, are that the petitioner and respondents No.1&2 entered into an agreement to sell with respect to Plot No.12-E, measuring 16.5 Kanals, situated at Industrial Triangle, Kahuta Road, Humak, Islamabad; respondents No.1&2 agreed to purchase the said property from the petitioner. The total sale consideration settled between the parties was Rs. 10,15,00,000/- out of which sum of Rs. 325,00,000/- was paid and the remaining payment was not made in accordance with the terms of the agreement. The petitioner instituted a suit for cancellation of the agreement

between himself and respondents No.1&2, whereas, respondents No.1&2 filed a suit for Specific Performance of the agreement. Initially, one of the respondents namely respondent No.1 was ordered to be proceeded exparte, however, subsequently he entered appearance and filed a written statement; on the objection of the petitioner that written statement could not be filed without recalling of the order; an application was made which was allowed by the learned Trial Court vide order dated 14.06.2019. Moreover, alongwith the suit respondents No.1&2 filed an application for interim relief; the petitioner also filed an application under order VII Rule 11 CPC on the ground that alongwith the suit respondents No.1&2 had appended pay orders and they have encashed the same, hence they are not ready and willing to deposit the remaining consideration price. It was also stated in the application that respondents No.1&2 have failed to meet with the judgment of the Hon'ble Supreme Court of Pakistan in case reported as "**Hamood Mehmood vs. Mst. Shabana Ishaque**" (2017 SCMR 2022). Application under Order VII Rule 11 CPC filed by the petitioner was dismissed vide order dated 14.06.2019.

3. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

4. It is trite law that where a defendant has been ordered to be proceeded exparte he can join the proceedings at any stage

and participate henceforth in the trial; it is only where he wants the proceedings, which have taken place in his absence to be set aside he needs to move an application for setting aside of the exparte proceedings. Respondent No.1 since did not appear on the first date of hearing but subsequently appeared and filed a written statement nothing material had happened in his absence, hence he could have participated in the proceedings without even recalling of the exparte order. Reliance is placed on cases reported as **"Police Department through Deputy Inspector-General of Police and another vs. Javid Israr and 7 others" (1992 SCMR 1009)**, **"Messrs Landhi Industrial Trading Estates Ltd., Karachi vs. Government of West Pakistan through Excise and Taxation Officer, "N" Division, Karachi" (1970 SCMR 251)** and **"Muhammad Hayat Khan vs. Ali Akbar Khan" (1998 CLC 209)**.

5. In view of above case law and factual position, the order of setting aside exparte proceedings does not suffer from any jurisdictional error warranting interference. Moreover, since respondents No.1&2 have deposited the balance consideration amount as directed by the Court vide order dated 14.06.2019, the mere fact that respondents No.1&2 had encashed the bank drafts does not really warrant rejection of the plaint. Undoubtedly, in accordance with the judgment of the august Apex Court, in case reported as **"Hamood Mehmood vs. Mst. Shabana Ishaque" (2017 SCMR 2022)** the

plaintiff/respondents No.1&2 were required to deposit the balance consideration amount but the Court had to order the same. It is also an established position that no one is to be prejudiced by act of the Court. Since the purchasers have deposited balance consideration amount as and when directed by learned Trial Court the judgment of august Apex Court relied upon by the learned counsel for the petitioner is not attracted.

6. The impugned order does not suffer from any jurisdictional error calling for interference.

7. For the above reasons, the abovementioned Civil Revision petitions are dismissed.

(AAMER FAROOQ)
JUDGE

Shakeel Afzal