JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No.138 of 2014
Mst. Maroof Begum Ahmed and another
Versus.
Ijaz-ul-Haq and another

Date of Hearing: 17.04.2018
Appellants by: M/s Zulfiqar Ali Abbasi, Usama Malik and Shahid Munir, Advocates.
Respondents by: Ch. Mushtaq Hussain, Advocate for respondent No.1.

MIANGUL HASSAN AURANGZEB, J:- Through the instant regular first appeal, Begum Maroof Ahmad (appellant No.1) and her daughter, Zahida Perveen Ahmad (appellant No.2), impugn the judgment and decree dated 29.11.2014, passed by the Court of the learned Civil Judge, Islamabad, whereby the suit for specific performance and permanent injunction instituted by Ijaz-ul-Haq (respondent No.1), was decreed. In the said suit, respondent No.1 had prayed for a decree for specific performance of agreement to sell dated 18.12.2002 regarding industrial plot No.88 (along with the building constructed thereon) measuring 2,444.41 square yards, Industrial Area, I-9, Islamabad ("the suit property"). Furthermore, respondent No.1 had prayed for the grant of permanent injunction restraining the appellants from transferring/alienating the suit property.

2. The facts essential for the disposal of this appeal are that vide transfer letter dated 02.01.1998 (Exh.D/2) issued by the Capital Development Authority ("C.D.A."), the suit property was transferred to appellant No.2. On 18.12.2002, appellant No.2 through her general attorney, appellant No.1, executed an agreement to sell (Exh.P/3) the suit property to respondent No.1 for a total sale consideration of Rs.71,00,000/-. Respondent No.1 had paid Rs.2,50,000/- as earnest money, whereas Rs.68,50,000/- had to be paid on or before 18.03.2003 *"subject to the registration/completion of transfer documents of the said plot by the Seller in favour of Purchaser"*. Under the terms of the said agreement to sell, the seller was responsible to get the suit property transferred in the purchaser's favour at the time of the final payment. Physical possession of the suit property was to be handed over by the

seller to the purchaser at the time of the final payment and the execution of the documents for the transfer of the said property. Furthermore, it was agreed that if the seller backed out from the deal she would have to pay double the amount of the earnest money received by her; and if the purchaser backed out, the seller would forfeit the earnest money and the agreement would be treated as cancelled.

3. It is an admitted position that the suit property was not transferred by appellant No.2 in respondent No.1's favour. The position taken by appellant No.2 was that respondent No.1 did not come up with the balance sale consideration within the period stipulated in the said agreement to sell (i.e., by 18.03.2003), whereas respondent No.1's position was that appellant No.2 did not obtain the necessary documents, especially the completion certificate, for the transfer of the suit property in respondent No.1's favour by the said date.

4. After disputes and differences developed between the parties to the said agreement to sell, respondent No.2, on 15.09.2003 instituted a suit for specific performance of the said agreement before the learned Civil Court. Vide order dated 15.09.2003, the learned Civil Court directed summons to be issued to the defendants in the said suit. Furthermore, respondent No.1 was directed to deposit in the Court Rs.10,00,000/- by the next date of hearing i.e., 27.09.2003. It is an admitted position that the said amount was deposited by respondent No.1's special attorney, Tasawar Hussain, on 29.09.2003 (i.e., with the delay of two days). Along with the said suit, respondent No.1 had also filed an application for interim injunction. Vide order dated 24.01.2004, the learned Civil Court allowed the said application subject to the payment of the remaining sale consideration within a period of ten days i.e., by 03.02.2004. Admittedly, an amount of Rs.58,50,000/- was deposited by Tasawar Hussain on 07.02.2004 through pay order dated 30.01.2004 drawn on Muslim Commercial Bank.

5. Appellant No.1 was impleaded as defendant No.1, whereas the Capital Development Authority ("C.D.A.") was impleaded as defendant No.2 in the said suit. It was not until 11.10.2007 when respondent No.1 filed an application under Order I, Rule 10, C.P.C. for appellant No.2's impleadment as a defendant in the said suit. In the said application, it has been pleaded *inter-alia* that respondent No.1 wants to implead appellant No.2 as a party so that no technical deficiency (تکنیکی نقص) remains for

deciding the said suit on merits. Vide order dated 25.10.2007, the said application was allowed by the learned Civil Court with the consent of the learned counsel for appellant No.1. On 30.10.2007, respondent No.1 filed an amended plaint, whereafter notices were directed to be issued to the newly impleaded defendant i.e., appellant No.2. On 24.11.2007, appellant No.2's counsel filed a memo of appearance before the learned Civil Court. As per the contents of the said memo of appearance, appellant No.2 resided in England and required some time to submit a duly attested power of attorney.

6. Since appellant No.2 did not file a written statement despite being given three opportunities to do so, the learned Civil Court vide order dated 15.01.2008 struck off appellant No.2's defence and decided to proceed *ex-parte* against her. Appellant No.1 had contested the said suit by filing a written statement. From the divergent pleadings of the contesting parties, on 24.01.2004, the learned Civil Court framed the following issues:-

"1) Whether the plaintiff is entitled to the decree for specific performance of the contract, as prayed in the plaint? OPP
2) Whether the plaintiff is entitled to decree for permanent injunction, as prayed in the plaint? OPP
3) Whether the suit is not maintainable under the law? OPD
4) Whether the plaintiff has no cause of action or locus standi, hence suit is liable to be rejected U/O 7 Rule 11 CPC? OPD
5) Whether the plaintiff has not paid the remaining sale price according to the agreement to sell, if so, its effects? OPD
6) Whether the suit is false, frivolous and defendant is entitled for special costs U/S 35-A CPC? OPD
7) Whether the plaintiff has not come to the court with clean hands? OPD
8) Relief."

7. Respondent No.1's special attorney, Tasawar Hussain, gave evidence as PW-2, whereas Abdur Rauf, Upper Division Clerk in the Estate Management Directorate of the C.D.A., as PW-3. The agreement to sell dated 18.12.2002 was produced as Exh.P/3; the special power of attorney dated 04.09.2003 as Exh.P/2; and receipts for payment of Rs.10,00,000/- and Rs.58,50,000/- as Exh.P/4 and Exh.P/5, respectively. PW-3 produced the completion certificate dated 31.10.2003 as Exh.P/6. Appellant No.1's special attorney, Attiq-ur-Rehman, appeared as DW-1 and produced the special power of attorney dated 15.05.2014 as Exh.D/2. The learned counsel for respondent No.2/C.D.A. produced transfer letter dated 02.01.1998 as Exh.D/2; clearance certificate dated 12.03.2003 as Exh.D/3; power of attorney as Exh.D/4; and C.D.A.'s

acceptance letter dated 19.04.2003 as Exh.D/5.

8. Vide judgment and decree dated 29.11.2014, the learned Civil Court decreed the suit. The said judgment and decree has been assailed by the appellants in the instant appeal filed through their special attorney, Attiq-ur-Rehman.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE APPELLANTS:

9. Messrs Osama Malik and Zulfiqar Ali Abbasi, learned counsel for the appellants after narrating the facts leading to the filing of the instant appeal, submitted that since the learned Civil Court vide order dated 25.10.2007 allowed respondent No.1's application dated 11.10.2007 for appellant No.2's impleadment as a defendant in the suit for specific performance, the said suit was liable to be dismissed as time-barred; that initially when the suit was filed, appellant No.2 was not impleaded as a defendant therein; that the owner of the suit property was appellant No.2, and not appellant No.1; that the said suit as against appellant No.1, who was appellant No.2's general attorney, was not competent since appellant No.1 was neither the owner nor the seller of the suit property; that in terms of Section 22 of the Limitation Act, 1908, the said suit is to be considered as instituted against appellant No.2 with effect from the date when she was impleaded as a party; that since the amended plaint was filed on 30.10.2007, the suit is to be considered as having been instituted against appellant No.2 on the said date; that Article 113 of the Schedule to the Limitation Act, 1940 provides a limitation period of three years for a suit for specific performance of an agreement to sell; and that even if it is assumed that the cause of action accrued to respondent No.1 on the date when the suit was filed (i.e., on 15.09.2003), the suit to the extent as against appellant No.2 was barred by 13 months.

10. Learned counsel for the appellants further submitted that appellant No.2 was ready, willing and able to perform her part of the bargain under the agreement to sell, but respondent No.1 was not able to come up with the remaining sale consideration within the period stipulated in the said agreement (i.e., by 18.03.2003); that appellant No.2 had taken all the steps necessary for the transfer of the suit property in accordance with the terms of the said agreement to sell; that the building on the suit property was completed on 01.05.1988; that letter dated 01.05.1988 (Exh.D/2) from the Estate Management Directorate of C.D.A. shows that

the notice of completion was issued by the C.D.A.; that letter dated 12.03.2003 (Exh.D/1) from the Estate Management Directorate of C.D.A. shows that appellant No.2 had paid all the outstanding dues for the issuance of the completion certificate; that time was of the essence as regards the said agreement to sell, which clearly provided that if the purchaser fails to pay the remaining sale consideration, the earnest money would be forfeited and the agreement would be treated as cancelled; that respondent No.1 was a property dealer, and tried to re-sell the suit property within the time period agreed for the performance of the said agreement to sell; and that on account of respondent No.1's inability to pay the remaining sale consideration by 18.03.2003, the said agreement to sell stood cancelled and the earnest money forfeited.

11. Furthermore, it was submitted that respondent No.1 never appeared before the learned Civil Court to give evidence; that evidence on behalf of respondent No.1 was given by his special attorney, Tasawar Hussain, who appeared as PW.2; that Tasawar Hussain was not present when the agreement to sell dated 18.12.2002 was executed; that the special power of attorney was executed by respondent No.1 in favour of Tasawar Hussain on 04.09.2003 i.e., about a week before the institution of the suit for specific performance, etc.; that PW.3 in his examination-in-chief produced the completion certificate dated 31.10.2003 as Exh.P/6; that Atiq-ur-Rehman, who was appellant No.1's special attorney, gave evidence as DW.1 and in his examination-in-chief he deposed *inter-alia* that after obtaining the completion certificate from the C.D.A. on 12.03.2003, respondent No.1 was contacted and repeatedly asked to pay the balance sale consideration for the transfer of the suit property, but respondent No.1 did not pay the same by 18.03.2003; that DW.1 was not cross-examined on the said portion of his examination-in-chief; and that respondent No.1's *bonafides* are lacking and is therefore, not entitled to the discretionary relief of specific performance. Learned counsel for the appellants prayed for the appeal to be allowed and for the suit to be dismissed.

CONTENTIONS OF THE LEARNED COUNSEL FOR RESPONDENT NO.1:

12. On the other hand, Chaudhary Mushtaq Hussain, Advocate, learned counsel for respondent No.1, submitted that the agreement to

sell was executed by appellant No.2 through her special attorney, appellant No.1; that appellant No.2, being appellant No.1's daughter, was well aware about the institution of the suit; that time was not the essence of the agreement; that the payment of the balance sale consideration of Rs.68,50,000/- was conditional on the completion of the transfer documents; that a completion certificate was essential for the transfer of the suit property in the C.D.A. records; that the completion certificate (Exh.P/6) with respect to the suit property was issued by the C.D.A. on 31.10.2003 i.e., several months after the agreed date by which the suit property was to be transferred; that Exh.P/3 was produced by Abdur Rauf, Upper Division Clerk in the Estate Management Directorate of the C.D.A.; that the mere fact that the completion certificate was not issued prior to 18.03.2003 shows that the appellants were not in a position to transfer the suit property to respondent No.1 by the said date; that letter dated 12.03.2003 (Exh.D/1) from the Estate Management Directorate of C.D.A. is not a completion certificate, and is not even addressed to the appellants; and that respondent No.1 was ready, willing and able to perform his part of the obligations under the said agreement to sell but the appellants failed to obtain the completion certificate without which the suit property could not be transferred.

13. Furthermore, it was submitted that the plea taken by appellant No.1 in her written statement was that she had already cancelled the agreement to sell dated 18.12.2002 and that the earnest money had already been forfeited; that the appellants did not file any suit for the cancellation of the agreement to sell at any stage; that in compliance with the order dated 15.09.2003, an amount of Rs.10,00,000/- was deposited on 27.09.2003; that the said amount had been deposited through a pay order; that on 25.09.2003, the learned Civil Court had granted respondent No.1 permission to deposit the said amount through a pay order; and that respondent No.1 had not committed any default in showing compliance with orders of the learned Civil Court for the deposit of any amount in the Court.

14. Learned counsel for respondent No.1 further submitted that respondent No.1 had filed an application for appellant No.2's impleadment as a party to the suit on 11.10.2007; that vide order dated 25.10.2007, the said application was allowed with the consent of appellant No.1; that even after her impleadment as a party to the suit,

appellant No.2 did not appear in the learned Civil Court; that Order III C.P.C. permits the filing of a suit for specific performance against an attorney of the owner/seller; that it is well settled that a principal can do all that an attorney can do; that the principal can also be served through an attorney; that the suit instituted by respondent No.1 on 15.09.2003 was in fact against appellant No.2; that since appellant No.1 was appellant No.2's attorney, limitation would not run separately against appellant No.2; that at no material stage was any notice given by the appellants to respondent No.1 for the performance of the agreement to sell; and that the impugned judgment and decree is strictly in accordance with the law and facts of the case, and does not suffer from any legal infirmity. Learned counsel for respondent No.1 prayed for the appeal to be dismissed.

15. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

16. The facts leading to the filing of the instant appeal are set out in sufficient detail in paragraphs 2 to 8 above and need not to be recapitulated.

17. We first propose to decide the question as to whether the suit for specific performance of the agreement to sell dated 18.02.2003 instituted by respondent No.1 was barred by limitation as against appellant No.2. The owner of the suit property was appellant No.2. The said agreement to sell was signed by Appellant No.1 as appellant No.2's attorney. When the said suit was instituted on 15.09.2003, appellant No.2 had not been made a party to the suit. An application for appellant No.2's impleadment was filed on 11.10.2007, which was allowed by the learned Civil Court vide order dated 25.10.2007. Now, Section 22 of the Limitation Act, 1908 provides that where, after the institution of the suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. For the purposes of clarity, the said Section is reproduced hereinbelow:-

> ***"Effect of substitution or adding new plaintiff or defendant:*** *(1) where, after the institution of suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him be deemed to have been instituted when he was so made a party.*
> ***(2) Nothing in sub****-section (1) shall apply to a case where a party is added or substituted owning to an assignment or devolution of any interest during*

the pendency of suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."

18. It is quite clear from the wording of Section 22 of the Limitation Act, 1908 that when a wrong defendant is sued, and a right defendant is afterwards added or substituted, the suit must be regarded as instituted as on the date of such addition or substitution. If a necessary party is not impleaded, the suit is bad for non-joinder and the addition of such a party after the period of limitation will necessitate the dismissal of the suit. It goes without saying that the owner of a property who executes an agreement to sell his property or on whose behalf such an agreement is executed by an attorney, is a necessary party to a suit for specific performance of the agreement.

19. Since appellant No.2 was the owner of the suit property, and the said agreement to sell had been executed on her behalf, she was most certainly a necessary party as regards the suit for specific performance instituted by respondent No.1. Appellant No.2 was a party necessary for the constitution of the suit i.e., a party in whose absence no effective decree for specific performance could be passed. It is not disputed that appellant No.2's interest was likely to be affected by the suit. Appellant No.2 being the owner of the suit property should have been made a party to the suit for specific performance when it was instituted on 15.09.2003.

20. Respondent No.1, being the plaintiff, was the *dominus litis.* The general rule as regards impleadment of parties to a suit is that the plaintiff in the suit being *dominus litis* may choose the persons against whom he wishes to litigate. Since respondent No.1 did not implead appellant No.2 as a party to the suit when it was instituted, the former must live with the legal consequences that flow from such an omission. The suit for specific performance of the agreement to sell dated 18.02.2003 as against appellant No.2 would be deemed to have been instituted on 11.10.2007 when the application for her impleadment was filed by respondent No.1. For the purposes of limitation, the suit for specific performance against appellant No.2 would be deemed to have been instituted on the date on which the application for her impleadment as a party to the suit was filed by respondent No.1 i.e. on 11.10.2007. Reference in this regard may be made to the law laid down in the cases of Hayat Vs. Amir (PLD 1982 SC 167) and Waseem Haroon Vs. Abdul Shakoor Tabbani (2006 MLD 605). On 11.10.2007, the said suit as against

appellant No.2 was barred by time. The learned Civil Court did not advert to this crucial aspect of the case.

21. It is obligatory on the Court to decide the question of limitation first, and only thereafter proceed to decide the matter on merits. A Court is bound to notice the question of limitation, irrespective of the fact whether it was agitated or not. A time barred suit should be dismissed even if nobody has pointed out such lacuna. If the proceedings brought before a court are barred by time, the court cannot assume jurisdiction and shall have no jurisdiction in the matter, unless the delay is condoned first. Disposal of the suit on merits alone is not sufficient to presume that the delay was condoned. The relief of specific performance to which respondent No.1 claimed to be entitled to against appellant No.1 was subject to the law of limitation. Vested rights were created in favour of appellant No.2 due to the expiry of limitation period for filing a suit for specific performance against her. Although an issue regarding the maintainability of the suit had been framed, it was nonetheless incumbent upon the learned Civil Court to have dismissed the suit on the ground of limitation since the suit was clearly time barred as against appellant No.2. Reference in this regard may be made to the law laid down in the cases of Muhammad Sami Vs. Additional District Judge, Sargodha (2007 SCMR 621), Commissioner of Income Tax, Companies Zone-IV, Karachi Vs. Hakim Ali Zardari (2006 SCMR 170), Haji Ghulam Rasul Vs. Government of the Punjab (2003 SCMR 1815), Hakim Muhammad Buta Vs. Habib Ahmad (PLD 1985 S.C. 153), Fazal Muhammad Vs. Nabi Bakhsh (1969 SCMR 531), and Ahsan Ali Vs. District Judge (PLD 1969 S.C. 167).

22. Article 113 of the Schedule to the Limitation Act, 1908 provides for a limitation period of three years for a suit for specific performance of an agreement. The said limitation period is to commence from the date fixed for the performance of the agreement or, if no date was fixed, then from the date when the plaintiff had noticed that performance was refused. In the case at hand, it is not disputed that in the agreement to sell dated 18.12.2002 the parties had fixed 18.03.2003 as the date for the performance of the said agreement. Therefore, the limitation period for filing a suit for specific performance of the said agreement would come to an end on 18.02.2006. Since respondent No.1 filed an application for the impleadment of appellant No.2/vendor as a party to the suit for

specific performance on 11.10.2007, the said suit as against appellant No.2 was clearly time-barred, and therefore, liable to be dismissed as such. The learned Trial Court erred by not appreciating the import of section 22 of the Limitation Act, 1908 while decreeing the suit. In holding so we derive guidance from the law laid down in the following cases:-

(i) In the case of Hayat Vs. Amir (PLD 1982 SC 167) the Hon'ble Supreme Court interpreted section 22 of the Limitation Act, 1908, in the following terms:-

> *"Now according to this section, when a new person is substituted or added as a party in a suit already pending, then the suit as regard him shall be deemed to have been instituted only from the point of time when he is so made a party. In other words for purposes of determining whether the suit qua him is barred by limitation, the time shall be computed as if the suit has been filed by him (if he is a plaintiff), or against him (if he is a defendant), on the date on which he was "so made a party". The word "so" used here evidently refers to his being made a party by 'substitution' in place of another party or by 'addition' as a new party."*

(ii) In the case of Muhammad Khan Vs. Abdul Khaliq Khan (PLD 1981 S.C. 153), it was held *inter-alia* that if in a pre-emption suit a necessary party is added after the relevant period of limitation, then the whole suit being time barred will have to be dismissed. Furthermore, it was held that the omission to implead a necessary party in a suit was fatal.

(iii) In the case of *Chand Oil Mills Vs. Muhammad Zakria & Co. (PLD 1958 (W.P.) Karachi 510)*, it was held *inter-alia* that a suit against a party joined at a later stage can be deemed to have been filed on the date when he was so made as a party to the suit.

(iv) Law to the said effect has also been laid down in the cases of Shahnawaz Shah Vs. Younis-ur-Rehman (2002 CLC 418), Muhammad Aslam Vs. Muhammad Haq (2002 CLC 1875), Dilawar Ali Khan Vs. Zohra Javaid (1997 CLC 152), and National Insurance Corporation Vs. Kuwait National Petroleum Co. (1988 MLD 1024).

23. As regards the contention of the learned counsel for respondent No.1 that the suit instituted by respondent No.1 on 15.09.2003 was in fact against appellant No.2, suffice it to say that if that were so then the occasion for filing an application by respondent No.1 for appellant No.2's impleadment would not have arisen. A similar argument was made by the learned counsel for the plaintiff in the case of *Chand Oil Mills Vs.*

Muhammad Zakria & Co. (supra). **The said contention was spurned by the Hon'ble High Court of Sindh in the following terms:-**

> ***"The opponents' counsel, however, urged that the applicant was already on the record through their partner opponent No.3 and they were formally brought on record as a party to the suit. This contention has at all impressed me. If this was the position, there was no need to implead the applicant as a party to the suit."***

24. In the said case, the necessary party was joined as a party to the suit after the claim against him had become time barred. Consequently, on the strength of section 22 of the Limitation Act, 1908, it was held that the learned Trial Court was not justified in decreeing the suit against such a party. Furthermore, it was held that a suit against a party joined at a later stage can be deemed to have been filed on the date when he was so made as a party to the suit.

25. Respondent No.1 added appellant No.2 as a party to the suit in order to agitate his rights which were in conflict with and antagonistic to those of appellant No.2. It is not disputed that appellant No.2's addition as a defendant in the suit was made since it was necessary for the determination of the real matter in dispute. No authority has been brought to our notice which shows that if a defendant is added with a claim which is antagonistic to the claim of the plaintiff in the suit, as has happened here, that would still be a case where the original suit should be deemed to have been continued even as against the newly impleaded defendant.

26. It is well settled that an attorney cannot be held to be personally liable for the principal's debts unless there is a specific provision to that effect in the power of attorney. In the case at hand, even though appellant No.1/attorney was the mother of appellant No.2/principal, respondent No.1 could not enforce his rights against appellant No.2 by suing appellant No.1 only. Appellant No.2 was owner of the suit property in her own right. A decree obtained by respondent No.1 against appellant No.2 could not be enforced against appellant No.1 or her assets.

27. Even otherwise, there is nothing on the record to prove that respondent No.1 was in a position to pay the entire balance sale consideration for the suit property on 18.03.2003. Before 18.03.2003 (i.e. the date agreed between the parties for the performance of the agreement to sell) or even before the institution of the suit on

15.09.2003, respondent No.1 did not issue any notice to the appellants requiring them to perform their obligations under the said agreement to sell. There is no mention of such a notice in the plaint. Learned counsel for respondent No.1 did not come up with any explanation as to why respondent No.1 waited for almost one and a half years from 18.03.2003 for instituting the suit against appellant No.1 and the C.D.A. All these factors cast a doubt on respondent No.1's *bonafides*, disentitling him from the discretionary relief of specific performance.

28. Clearance certificate dated 12.03.2003 (Exh.D1) from the Estate Management Directorate of C.D.A. shows that appellant No.2 had paid all her outstanding dues to the said Directorate, and the Building Control Section of the C.D.A. was asked to issue a completion certificate in accordance with the rules. This shows that appellant No.2 had done all that was required of her for the issuance of a completion certificate. Abdur Rauf, Upper Division Clerk in the Estate Management Directorate of the C.D.A., appeared as PW.3 and in his cross-examination he deposed *inter-alia* that there was no failure of any nature on the part of the appellants regarding the suit property. Although the completion certificate (Exh.P6) was issued by the Building Control Section of the C.D.A. on 31.10.2003, there is nothing on the record to show that respondent No.1 was ready and able to pay the entire balance sale consideration for the transfer of the suit property. Respondent No.1 did not even bother to issue a notice to appellant No.2 or her attorney requiring the issuance of a completion certificate. Even after the issuance of the said completion certificate, respondent No.1 did not call upon appellant No.2 to perform her obligations under the agreement. Not a single letter was addressed by respondent No.1 between the execution of the agreement to sell dated 18.12.2002 and the institution of the suit on 15.09.2003 expressing his readiness and ability to pay the remaining sale consideration. True, in compliance with the orders dated 15.09.2003 and 24.01.2004, passed by the learned Civil Court, Tasawar Hussain deposited an amount of Rs.10,00,000/- and Rs.58,50,000/-, respectively, *albeit* with a slight delay, but for almost one and a half years after the date agreed between the parties for the performance of the said agreement to sell, respondent No.1 brought nothing on record to show that he was ready and willing to pay the remaining sale consideration.

29. By reason of the aforementioned, the instant appeal is allowed. The impugned judgment and decree dated 29.11.2014 is set aside, and the suit instituted by respondent No.1 is dismissed. However, since respondent No.1 had paid Rs.2,50,000/- to appellant No.2 on 18.12.2002; and since the appellants did not issue any notice to respondent No.1 requiring him to pay the balance sale consideration by 18.03.2003 or to put him on notice that the failure in the payment of the balance sale consideration by the said date would result in the forfeiture of the earnest money; and since the value of real estate has increased many folds, we direct that appellant No.2 shall compensate respondent No.1 by forthwith paying an amount equal to the present value of the quantity of gold which could be purchased with Rs.2,50,000/- on 18.12.2002. Such compensation was awarded by the Hon'ble Division Bench of the Hon'ble Lahore High Court in the case of Haji Zahoor-ud-Din Vs. Khalid Latif (2016 MLD 1623). As regards the payment made on behalf of respondent No.1 in the Court, it was for respondent No.1 to have applied to the Court to have placed the said amount in a profit bearing account. Respondent No.1 is at liberty to withdraw the said amount with accrued profit, if any. Appellant No.2 cannot be burdened with paying any compensation to respondent No.1 as regards the said payment made in Court. There shall be no order as to costs.

(ATHAR MINALLAH)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____-2018.

JUDGE **JUDGE**

APPROVED FOR REPORTING.

*Sultan**