

ORDER SHEET  
ISLAMABAD HIGH COURT  
ISLAMABAD

**Civil Revision No.405/2018**

Irfan Ali  
VERSUS  
Mst.Rehana etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
	01.7.2019.	Mian Ahmed Khan, Advocate for the Petitioner. Mr.M.Kassim Mir Jat, Advocate for respondents No.1 to 4.

Through this Civil Revision, the Petitioner has assailed the judgment and decree dated 29.11.2018 passed by the Court of Civil Judge Ist Class (West) Islamabad, whereby suit for Specific Performance, mandatory and permanent injunction has been dismissed. The Petitioner has also assailed the judgment and decree dated 10.12.2018 passed by the learned District Judge (West), Islamabad whereby Regular First Appeal against the judgment of Civil Judge has also been dismissed.

2. Learned counsel for the petitioner contends that both the Courts below have not appreciated the law on the subject as the trial Court had passed the direction to the Petitioner for depositing of balance sale consideration of Rs.12,09,000/- with the Nazir of the Court, however, Petitioner could not deposit the said amount due to circumstances beyond his control, resultantly, judgment and decree dated 29.11.2018 was passed. Learned counsel for the appellant further contends that the petitioner has filed the appeal before the learned District Judge whereby a direction was issued for the deposit of balance sale consideration amount within a period of five days i.e on or before 05.12.2018, however, his application for submission of the balance sale consideration was allowed on 05.12.2018 and amount was deposited in compliance of the said order on 06.12.2018 with delay of one day which is beyond the control of the petitioner and as such both the Courts

below have not granted ample opportunities and time for compliance of the order.

3. Conversely, learned counsel for the respondents contends that the petitioner was directed to deposit the balance sale consideration before the trial Court vide order dated 16.11.2018 but he has failed to deposit the same before the Court and in consequences to same the Court below dismissed the suit and appeal was also dismissed due to non compliance and as such the Petitioner is not entitled for any relief.

4. Arguments heard. Record perused.

5. Perusal of record reveals that the petitioner has filed suit for specific performance for agreement dated 19.12.2014 regarding the suit property which was allotted to Respondent No.1 and at the time of filing of the suit the trial Court has passed the status quo order subject to deposit of balance sale consideration amounting to Rs.12,09,000/- with the Nazir of the Court before the next date of hearing even the consequences have been referred in categorical terms that *"failing which the instant suit shall deemed to be dismissed"*

The above referred order dated 16.11.2018 for depositing the balance sale consideration was not complied till 29.11.2018 and in consequence to same the suit has been dismissed vide judgment and decree dated 29.11.2018. The petitioner filed a Regular first Appeal on 1.12.2018 against the dismissal of his suit whereby the first Appellate Court has given time of five days to the Petitioner for submission of the balance sale consideration before the said Court till 5.12.2018 which is a conditional order as word *"subject to deposit of remaining sale consideration"* has been used by the District Judge (West) Islamabad in the said order, however, the

said order has not been complied with by the petitioner and in case of non submission of the balance sale consideration learned appellate Court specifically mentioned that:-

***“It is made clear that in case of non deposit of sale consideration till target date, this appeal shall be deemed to be dismissed in limine”***

The above referred order is self executory and as such petitioner has been confronted regarding deposit of balance sale consideration whereby he has drawn the attention of this court towards deposit slip of the balance sale consideration issued by Nazir of the District & Sessions Court (West) Islamabad dated 6.12.2018. The said receipt itself reveals that the amount was deposited on 6.12.2018 whereby the order passed by the District Judge was not complied with in letter and spirit and in such eventuality the petitioner is not entitled for any relief. Even otherwise the law relating to depositing balance sale consideration has been settled in the reported judgment of the Apex Court titled **“Hamood Mehmood Versus Mst.Shabana Ishaqu and others (2017 SCMR 2022)”**, therefore, the petitioner has failed to point out any jurisdictional defect in the proceedings below and as such he himself is guilty of contemptuous delay and no cogent reason has been placed on record whereby the petitioner could justify non compliance of the direction of the Courts below, hence instant Civil Revision is misconceived and same is hereby dismissed.

**(MOHSIN AKHTAR KAYAN)**  
**JUDGE**