

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

**R.F.A. No.34 of 2014**  
**Muhammad Javed and another**  
**Versus.**  
**Syed Aftab Ali Naqvi and others**

Date of Hearing: 18.04.2016  
Petitioners by: Mr. Muhammad Munir Paracha,  
learned ASC,  
Respondents No.1&2 by: Syed Muhammad Ayub Bukhari,  
Advocate,  
Respondent No.3 by: Mr. Shajjar Abbas Hamdani, Advocate

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant regular first appeal, the appellants, Muhammad Javed, etc, impugn the order dated 21.12.2013, passed by the court of learned Civil Judge, Islamabad (West), whereby the appellants' suit for specific performance of sale agreement dated 25.02.2013 and permanent injunction, was dismissed. The learned Civil Court vide order dated 21.12.2013 had dismissed the appellants' suit because the appellants did not deposit the balance sale consideration in the Court.

2. Learned counsel for the appellants submitted that on account of the failure of the appellants to deposit the balance sale consideration within the time stipulated by the learned civil court in its order dated 11.12.2013 could only have resulted the recall of the interim injunction granted to the appellants by the learned civil court, but on account of such failure on the part of the appellants, their suit could not have been dismissed. He further submitted that as an application under Order I Rule 10 C.P.C. was still pending, the suit could not have been dismissed by the learned civil court.

3. Learned counsel for respondents No.1&2 defended the impugned order dated 21.12.2013 by submitting that the intention of the appellants was only to embroil the said respondents in frivolous litigation; that the learned civil court had given several opportunities to the appellants to deposit the balance sale consideration but they failed to do so; that

the dismissal of the appellants' suit by the learned civil court was consistent with the law laid down by the superior courts.

4. We have heard the submission of the learned counsel for the contesting parties and have perused the record with their assistance.

5. The record reveals that on 12.06.2013, the appellants instituted a suit for specific performance of the sale agreement dated 25.02.2013 and permanent injunction before the learned Civil Court. The sale agreement was with respect to a commercial property in Islamabad. Along with the said suit, the appellants also filed an application for interim relief under Order XXXIX, Rules 1&2 of the Code of Civil Procedure 1908, ("C.P.C."). Vide ad-interim order dated 12.06.2013 the learned civil court directed the respondents to maintain status quo regarding the suit property. Perusal of the order dated 29.11.2013 passed by the learned civil court shows that on 02.11.2013 respondents No.1&2 had recorded their statement to effect that if the remaining sale consideration of Rs.4,10,00,000/- was deposited in the court by the appellants, the said respondents would have no objection if the suit was decreed in favour of the appellants. On 29.11.2013, again respondent No.1&2's statements were recorded to the effect that if the appellant deposited the remaining sale consideration until 09.12.2013, the said respondents would have no objection if the suit was decreed, and in case of the appellants' failure, the sale agreement would be deemed to have been cancelled and the earnest money would be forfeited. The learned civil court gave a specific direction to the appellants to deposit the balance sale consideration, and adjourned the matter to 03.12.2013. The orders dated 03.12.2013 and 10.12.2013 show that the appellants did not deposit the balance sale consideration. Vide order dated 11.12.2013, the appellants were given a period of ten days to deposit the balance sale consideration. It was expressly mentioned in the order dated 11.12.2013 that in the event the appellants failed to deposit the remaining sale consideration on or before 21.12.2013, the agreement in question will be

considered as cancelled and the earnest money shall be deemed to have forfeited under clause 9 of the said agreement.

6. On 21.12.2013, the appellants applied for an extension of six months for the deposit of the balance sale consideration. The learned civil court turned down this application. Vide order dated 21.12.2013, the learned civil court dismissed the suit. The operative part of the order dated 21.12.2013 is reproduced herein below for ease of reference.

*“...This is suit for specific performance of agreement and it is always presumed that plaintiff is ready to perform his part but the defendant is not, but in present case the situation is quit opposite. As the suit was instituted, injunctive order was passed relying on the affidavit and other documents annexed. When defendant, got knowledge, they appeared before the court and recorded their statement. Though court has the discretion to grant time but in present case sufficient opportunity has been granted. Previously an application for grant of time was filed by plaintiff and time was granted. Another application under section 148 C.P.C. was filed today by the plaintiff. Counsel for the defendants strongly opposed the application as while exercising the discretion, court has also look at the interest of the defendants. Since, defendants had shown there bonafide in performance of the agreement but the plaintiff who was supposed to fulfill his obligations as a primary duty has badly failed to do so, therefore, plaintiffs should blame themselves for the non-performance of the agreement. Therefore, I do not see any reason to proceed with the present suit. Same is hereby dismissed in light of above findings.”*

7. The appellants have challenged the said order dated 21.12.2013 through the instant regular first appeal. We find the impugned order dated 21.12.2013 just and appropriated in the circumstances of the case. Reference to case law at this stage would be apposite:-

- (i) In the case of Haji Abdul Hameed Khan Vs Ghulam Rabbani (2003 SCMR 953) it was held that where the plaintiff, in a suit for specific performance of an agreement to sell, does not deposit the balance sale consideration amount within the time fixed by the trial court, the suit was liable to be dismissed. Furthermore, it was held that a plaintiff seeking the equitable remedy of specific performance must always be ready in willing to perform his part of the contract. If the plaintiff does not deposit the balance sale consideration amount within the time stipulated by the trial court, the presumption would

be that the plaintiff was not serious in prosecuting his remedy.

- (ii) In the case of Adil Tiwana and others Vs Shaukat Ullah Khan Bangash (2015 SCMR 828) the plaintiff had failed to pay the balance sale consideration within the period specified in the agreement to sell. Even when the suit for specific performance was filed, the plaintiff did not seek to deposit the balance sale consideration in the court. The direction of the trial court to the plaintiff to deposit Defence Saving Certificates, for an amount equal to the balance sale consideration, within a period of one month was also not complied with by the plaintiff. In the ultimate analysis, the plaintiff had failed to comply with the orders/directions of the trial court despite several opportunities. In such circumstances, the plaintiff's suit for specific performance was held to have been correctly dismissed. In the said judgment the Hon'ble Supreme Court made the following observations:-

*"...We may also add at this stage that the remedy by way of specific performance is equitable and it is not obligatory on the Court to grant such a relief merely because it is lawful to do so. Section 22 of the Specific Relief Act expressly stipulates so. It is axiomatic that one who seeks equity must do equity. In the present case all equities are squarely in favour of the appellants/defendants and stacked high against the respondent/plaintiff."*

- (iii) In the case of Muhammad Iqbal Vs Mehboob Alam (2015 SCMR 21) a suit for specific performance of an agreement to sell was held to have been correctly decreed because the plaintiff had deposited the balance sale consideration in the court. Even though the plaintiff in the said case had subsequently withdrawn the amount deposited in the court, the earlier deposit of the balance sale consideration had established his *bonafides*.

8. The mere fact that the appellants did not deposit the balance sale consideration despite a specific order passed by the learned civil court to deposit the same by a stipulated date, disentitled them from any discretionary relief. The appellants' failure to deposit the balance sale consideration in spite of respondents No.1&2's statements that the

appellants' suit may be decreed upon the deposit of the balance sale consideration, striped the appellants from all *bonafides*.

9. In view of the above, we do not find any merit in this appeal, which is accordingly dismissed with no order as to costs.

(AAMER FAROOQ)  
JUDGE

(MIANGUL HASSAN AURANGZEB)  
JUDGE

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

(JUDGE)

(JUDGE)

Qamar Khan\*

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Approve For Reporting.