

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

**RSA No.14/2013**  
Malik Fatah Khan  
*versus*  
CDA & another

Appellant by: Qazi Shaheryar Iqbal, Advocate.  
Respondents by: Barrister Amar Hussain Khushnood,  
Advocate.  
Date of Decision: 08.05.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this regular second appeal has impugned the judgment and decree dated 06.04.2013, passed by learned Additional District Judge-VI (West), Islamabad.

2. Brief facts referred in the instant appeal are that appellant has filed a suit for declaration and permanent injunction with the claim that he is owner of Plot No.3-I, Sector I-10, Islamabad, whereby the learned Civil Judge while granting temporary injunction to appellant had directed him to pay balance amount of Rs.2,139,198.75 within six (06) months, which the appellant claimed to have paid. The said order has been complied with by the appellant, whereafter the CDA authorities confirmed the stance of the appellant and Assistant Director (Estate Management) CDA has recorded his statement on 06.02.1996 before the Court with the acknowledgment that the CDA has not cancelled the allotment of appellant and appellant has completed his construction. All the due payments have been cleared in compliance of letter dated 30.09.1989 and the suit has been dismissed having become infructuous. However, the CDA, later on, started claiming delayed charges,

whereupon the appellant filed contempt petition for initiation of contempt proceedings against the respondents i.e. CDA and Zia Ullah/ Assistant Director (EM) CDA. The said application was dismissed by the learned Trial Court vide order dated 22.01.2008 due to non submission of any evidence in terms of Order XVII Rule 3 CPC. Feeling aggrieved thereby, the appellant preferred an appeal before learned Additional District Judge (West), Islamabad, which was dismissed vide impugned judgment dated 06.04.2013. Hence, the instant appeal.

3. Learned counsel for appellant contends that concurrent findings of the both the Courts below are illegal and exposed to interference of this Court; that while non suiting the appellant on the score and count of Order XVII Rule 3 CPC, both the Courts below did not appreciate the factum of valuable rights; that appellant was not given proper opportunity of hearing and even no warning was given before dismissal of the application; that learned first Appellate Court has also not considered the ownership rights of the appellant, who has spent a huge amount in the construction of building and as such, no opportunity was granted to appellant to establish his case.

4. Conversely, learned counsel for respondents/CDA contends that the appellant has not paid the delayed charges and as a result whereof his allotment was cancelled; that during the course of evidence, 14 different opportunities were granted to appellant to tender his evidence, but he failed to do so and finally the Court was left with no other option but to dismiss the application in terms of Order XVII, Rule 3 CPC, which has rightly been upheld by the learned first Appellate Court.

5. Arguments heard, record perused.

6. The perusal of record reveals that appellant has filed civil suit for declaration and permanent injunction against the letter of cancellation of his Plot No.3-I, I-10 Markaz, Islamabad, in which the CDA has taken the stance that appellant has not paid due installment and balance amount, whereafter the appellant has paid due amount in the record of CDA. Zia Ullah, Assistant Director (EM), CDA put appearance before the Court on 06.02.1996 and recorded his statement that CDA will not cancel the allotment of the appellant as the balance amount has also been paid in compliance of letter dated 30.09.1989. While considering the said statement of CDA official, the suit has been dismissed having become infructuous on the said date.

7. The CDA again issued a letter for delayed charges, upon which appellant has filed an application for contempt proceedings in which notices were issued to respondents CDA, appellant was directed to produce his evidence in contempt proceedings as issues were framed on 22.06.2002 as to whether the CDA authorities have violated the order of the Court and committed contempt. Whereafter, the proceedings were adjourned on different dates and 09 different opportunities were granted to appellant for production of evidence, even last opportunity was granted, but no evidence has been brought on record and as a result whereof, the learned Civil Court has dismissed the application of contempt proceedings after closing down the right to produce evidence of appellant in terms of Order XVII Rule 3 CPC vide order dated 22.01.2008. The appellant has filed appeal before learned Additional

District Judge, Islamabad, which was also dismissed vide judgment dated 06.04.2013 and declares the conduct of appellant as lethargic/sluggish. The appellant has filed regular second appeal against the said judgment.

8. I have confronted the learned counsel for appellant to satisfy this Court on a question of law as required in terms of Section 100 CPC, which is the minimum requirement of regular second appeal, however the appellant has not raised any question of law to justify the maintainability of instant appeal and even failed to render any plausible explanation for non submission of his evidence in the contempt proceedings, even otherwise, he could not answer the question as to how a regular second appeal is maintainable in contempt proceedings, which has been dismissed due to non production of evidence in terms of Order XVII Rule 3 CPC.

9. Keeping in view the above background, this Court is of the opinion that the instant regular second appeal is meritless and has been filed without any legal question. No illegality has been observed in the proceedings of both the Courts below, therefore, the instant regular second appeal is hereby **DISMISSED**. However, the appellant may approach the CDA authorities for restoration of his allotment under restoration policy, if so advised.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.