

Form No.: HCJD/C
JUDGEMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

FAO No. 13 of 2020

Sardar Muhammad Ali Lashari

VERSUS

Mian Ashfaq Ahmed, etc

**For the Petitioner: Mr. Shehryar Nawaz Malik,
Advocate.**

**For Respondent No.1: Respondent No. 1 in person.
Mr. Zahid Mehmood Raja,
Advocate.**

Date of hearing: 04.02.2020.

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LUBNA SALEEM PERVEZ. J : Present Appeal is filed against order dated 23.12.2019, whereby, the learned Civil Judge, East-Islamabad has vacated the status quo already granted on the ground that the remaining sale consideration was not deposited within the time period given to the present Appellant.

2. The fact giving rise to the instant appeal are that Appellant filed suit for specific performance of sale agreement dated 21.05.2017 on 11.12.2019 in respect of sale of immovable property bearing Khewat No. 515, Khatooni No. 858, Qitta No. 03, situated at Mouza Bharakahu, Islamabad measuring 02 kanal for total sale consideration of Rs. 32,50,000/- out of which amount of Rs. 20,50,000/- was paid to the Defendant on various dates. The Appellant filed the said suit as he came to know that the Respondent/Defendant intends to sell the suit land on the

ground of default in payment of remaining sale consideration of Rs. 12,00,000/-.The said suit is pending before the learned Senior Civil Judge, East-Islamabad. The Appellant/Plaintiff, along with the said suit, also filed stay application under Order 39 Rule 1&2 for restraining the Respondent/Defendant from selling, alienating, transferring, dispossessing or interfering the suit land, or doing any act which could cause prejudice to the rights of the Appellant/Plaintiff. The learned Civil Judge, vide order dated 11.12.2019, while directing the parties to maintain status quo also directed the Appellant to pay the remaining sale consideration till the next date of hearing failing which the interim relief was ordered to be vacated. The learned counsel for the Appellant submitted that the Appellant could not arrange the remaining sale consideration and tried to file the application for extension in time for depositing the amount as well as for extending the interim relief before the Nazir on 21.12.2019, who refused to entertain the said application due to the reason that only learned Trial Court has powers to extend the date and interim injunction and learned Presiding Officer was on leave on the said date. However, the Reader fixed the next date as 23.12.2019, which was not in the knowledge of the Counsel. The learned Court on 23.12.2019, vacated the status quo relief on the ground that the Appellant failed to pay the remaining sale consideration.

3. Learned Counsel, *inter-alia*, submitted that as the suit for specific performance is still pending and he is still willing to pay the balance sale consideration, thus order dated 23.12.2019 may be set aside and status quo order may be passed regarding the

suit land till the final disposal of the suit. Learned Counsel contended that the learned Trial Court has not appreciated the bonafide of the Appellant as he had already paid an amount of Rs. 20,50,000/- including a vehicle Suzuki Swift model 2012 worth Rs. 10,00,000/- to Respondent No.1 in respect of the suit property.

3. Learned Counsel for the Respondents vehemently opposed the contentions of the learned Counsel for the Appellant and submitted that sufficient time was given to the Appellant for making payment and finalizing the sale agreement dated 21.05.2017 and the learned Court has vacated the interim injunction on 23.12.2019 in accordance with law. Learned Counsel submitted that the Appellant was specifically allowed time up to 20.12.2019, vide order dated 11.12.2019 with the warning that in case of failure, the status quo shall be vacated. Learned counsel for the Respondent further argued that the conduct of the Appellant is important as he lingered on the payment since, 2017 and argued that compliance of terms and conditions of the agreement was mandatory, hence, Appellant is not entitled for any relief.

4. I have heard the learned counsel for the parties and have also perused the relevant record with their able assistance.

5. Perusal of the record reveals that the Appellant and Respondent No.1 entered into a sale agreement dated 21.05.2017, in respect of immovable property, for total sale consideration of Rs.32,50,000/-, out of which Rs.20,50,000/- has, admittedly, been paid by the Appellant to Respondent No.1.

Record further revealed that there is only an Iqrarnama executed between the parties on a plain paper and at para No.4 of the same it has been written in Urdu, translation of which is **“remaining sale consideration of Rs.30,50,000/- will be paid after Eid-ul-Fitar upon which 1st Party will transfer/register the suit plot in the name of 2nd Party”**. As such, there was no specific deadline for payment of remaining consideration provided in the said IqarNama/Sale Agreement and the Appellant/Plaintiff on different dates up to 08.08.2018, paid the amount of Rs. 20,50,000/- which also includes vehicle worth Rs. 10,00,000/-, duly admitted by Respondent No.1. The Appellant apprehending that the Respondent No.1 would sell/alienate/transfer the suit land to other person, filed application under Order XXXIX Rule 1 & 2 CPC whereby status quo was granted subject to deposit of remaining sale consideration up to 21.12.2019, however, interim relief was vacated for non-deposit of remaining sale consideration by rejecting the application for grant of extension of time for deposit of the remaining sale consideration filed by the Appellant, on the ground that “no justifiable reason has been given by the Appellant/Plaintiff” without considering the reasons stated in the application which are as under:

“2. That along with the main suit, the applicant also filed an application for grant of interim relief and this Honourable Court after hearing preliminary arguments was pleased to grant status quo vide order dated 11.12.2019 and to adjourn the case for 21.12.2019 with the directions that, “plaintiff is directed to submit remaining sale consideration”.

3. That on 21.12.2019 the remaining sale consideration could not be deposited because the learned Presiding Officer was on leave and the case was adjourned for 23.01.2020.

4. That the applicant left the court with the impression that the case has been adjourned for 23.01.2020 and he shall deposit the remaining sale consideration on the said

date, but the applicant was astonished when he learned through his friend that the instant case is existing on today's cause list i.e. 23.12.2019. The applicant rushed to this Honourable Court and marked his attendance and on inquiry it transpired that the date of hearing was shuffled after departure of the applicant from the court on 21.12.2019.

5. That non deposit of remaining sale consideration is neither willful nor deliberate but the same happened due to the events described above."

5. Perusal of contents of Appellant's application reveals that due to leave of the learned Civil Judge, there was some miscommunication of date to the learned counsel of the Appellant/Plaintiff who was seeking time to pay the balance sale consideration on the next date. I am of the view that the learned Trial Court while dismissing the application has not given any lawful reason and has not considered the bonafide of Appellant/Plaintiff who has already paid 70% of the sale consideration to Respondent No.1 prior to filing of suit.

6. It is pertinent to mention here that during arguments the learned Counsel for Respondent stated that on 23.12.2019, the learned Judge allowed time up to 03:30 P.M for depositing balance sale consideration and finally vacated the status quo when Appellant did not return to the Court. Learned counsel for the Appellant strongly opposed this statement and submitted that the statement is self-contradictory as a request was made to the learned Judge on behalf of the Appellant for acceptance of application for granting permission to deposit sale consideration on the next date of hearing (*application is annexed at page 20 of the present FAO*). Learned Counsel referred the impugned order dated 23.12.2019, wherein it has been recorded by the learned Judge that "*counsel for the plaintiff submitted the apps, firstly, for extension in time to deposit the remaining sale consideration and*

secondly for rectification of typographical mistake in the plaint”.

After reading the impugned order dated 23.12.2019, I am of the view that the contention of the learned counsel for the Respondent is not correct as no such event as per his argument before us has been reflected in the order sheet rather the learned Judge has simply dismissed the application on failure to comply with the order dated 11.12.2019.

7. The learned Trial Court has not appreciated the circumstances under which the application was filed. It is settled law that each and every case is to be decided on its own merits, circumstances and its peculiar facts giving rise to the controversy, therefore, it is duty of the Court that while deciding the matter it must consider the facts and circumstances of the case with all fairness and to advance cause of justice. Though it is the discretion of the court to allow the interim relief and the party cannot seek it as of a right, specifically in cases of Specific Relief, yet it has also been held in plethora of cases of superior courts that the discretion is to be exercised judicially and keeping in view the principles laid down by the superior courts before rejecting the injunction prayed for under Order XXXIX Rule 1 & 2 CPC.

8. In view of the above facts and circumstances, order dated 23.12.2019, is set-aside. Consequently, the application of the Appellant shall be deemed to be pending before learned Civil Judge who is directed to decide the same afresh by taking into account the facts and circumstances of the case and by providing

an opportunity of hearing to both the sides and dispose of the same in accordance with law through a speaking order.

9. With the above said direction, the appeal stands disposed of.

(LUBNA SALEEM PERVEZ)
JUDGE

M. JUNAIDUSMAN