JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A No.96 of 2019

Arshad Aqeel Awan

Versus

National Cooperative Housing Society and others

Appellant by:	Ch. Muhammad Shafqaat, Advocate.
Respondent No.1 by:	Ch. Muhammad Asrar, Advocate.
Respondent No.2 by:	Ms. Shoeba Akhtar, Advocate.
Date of Hearing:	**03.06.2025.**

INAAM AMEEN MINHAS, J:- Through this Regular First Appeal, the appellant has assailed the order and decree dated 20.04.2019 **("Impugned Order and Decree")**, passed by the learned Civil Judge 1st Class, East-Islamabad **("Trial Court")**, whereby plaint of the suit for specific performance of the agreement to sell dated 24.10.2003, mandatory and permanent injunction filed by the appellant was rejected under Order VII, Rule 11, CPC.

2. Brief facts are that the appellant filed a suit for specific performance of an agreement to sell dated 24.10.2003, mandatory and permanent injunction, in which respondent No.1 filed an application under Order VII, Rule 11, CPC. The appellant contested the said application by filing a reply to the same. The learned Trial Court, after hearing the arguments on the application dismissed the same through the Impugned Order and Decree, hence, this appeal.

3. The learned counsel for the appellant contended that the Impugned Order and Decree are against the law and facts of the case;

UNCERTIFIED

that respondent No.1 society became illegal after CDA cancelled its NOC, yet the learned Trial Court ignored this fact; that the appellant's suit was wrongly treated as outside the Civil Court's jurisdiction, despite clear legal precedent; that the learned Trial Court overlooked CDA's public notice declaring the scheme illegal and failed to apply the judicial mind or consider key evidence; that NAB is also investigating the representative of the society for serious irregularities.

4. On the other side, the learned counsel for contesting respondent No.1 contended that Impugned Order and Decree have been passed in accordance with law and sought dismissal of the appeal.

5. I have heard the learned counsel for the parties and perused the record.

6. Perusal of the record reveals that the matter stems from a public advertisement issued by respondent No.1 (National Cooperative Housing Society/Ex-Aiwan-e-Sadar Employees Housing Society) inviting applications for membership in the society. The appellant responded by acquiring a total of 19 membership numbers ranging from 2592 to 2610. Out of these, 9 memberships were registered in the appellant's name and 10 in the name of his wife, to secure the allotment of residential plots each measuring 50x90. In compliance with the society's terms, the appellant paid the initial instalment of Rs.120,000/- for each plot, along with membership fee of Rs.3,500/- per membership. Subsequently, the society issued allotment certificates for each membership and formally acknowledged, vide letter dated 24.10.2003, the receipt of Rs.120,000/- per membership as the initial deposit for plot allotment. However, due to a ban by CDA (respondent No.2) regarding the society's layout plan and by the National Accountability Bureau (NAB), the appellant refrained from making any further payments towards the plot allotments. This led to a dispute between the appellant and the respondent No.1 society, culminating in the filing of the suit by the appellant for specific performance of an agreement dated 24.10.2003, along with mandatory and permanent

UNCERTIFIED

injunction. In which respondent No. 1 filed an application under Order VII, Rule II, CPC asserting that under Sections 51 and 70-A of the Cooperative Societies Act, 1925, the suit before the learned Trial Court was not legally maintainable, suggesting that the matter falls within the exclusive domain of the Registrar of Cooperative Societies or an appropriate forum prescribed under the said statute.

7. It is an undisputed fact that the appellant is a member of the respondent No.1 society, which is a cooperative housing society registered under the Cooperative Societies Act, 1925. Sections 70 and 70-A of the Cooperative Societies Act, 1925 impose specific legal restrictions on the jurisdiction of Civil Courts. These provisions clearly state that a member cannot file a suit in a Civil Court without first giving prior notice to the society and allowing a mandatory statutory period to lapse. This means that Civil Courts cannot entertain such disputes unless the procedural requirements laid down in the Cooperative Societies Act, 1925 have been fulfilled.

8. It is an admitted fact that the appellant before filing the suit in the learned Trial Court did not serve the mandatory legal notice under Section 70-A of the Cooperative Societies Act, 1925 to respondent No.1, which is a legal requirement and a necessary step before initiating any legal action against a cooperative society, as it gives the society an opportunity to respond or resolve the dispute within a specified time period.

9. Moreover, dispute revolves around the allotment of plots based on the membership certificates issued to the appellant by respondent No.1 society. This is a matter that squarely falls within the regulatory framework of the Cooperative Societies Act, 1925 as this law is a self-contained and comprehensive legal framework specifically designed to govern the functioning of cooperative societies and to address the rights and obligations of their members. It provides detailed procedures and remedies for resolving disputes between members and the society. In particular, Section 54 establishes a mechanism for arbitration, meaning

UNCERTIFIED

that any disagreement or claim arising between a member and the society must first be referred to arbitration rather than being taken directly to a Court.

10. In view of above discussion, the learned Trial Court passed the Impugned Order and Decree in accordance with law, which do not call for interference by this Court. The instant appeal bears no merits, therefore, the same is **dismissed**. No order as to costs. The appellant, being a member of the society, can approach the Registrar Cooperative Societies under the Cooperative Societies Act, 1925 for redressal of his grievance, if so advised.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 20.06.2025

JUDGE

R.Anjam

UNCERTIFIED