JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

R.F.A No.26 of 2020

Abdul Saeed
Vs
Mrs. Mamooni K. Mohsin Ali Khan, etc.

Appellant by:	Mr. Adil Aziz Qazi, Barrister Zopash Khan and Mr. Haseeb Hassan, Advocates.
Respondent No.1 by:	Mr. Mudasir Latif Abbasi, Ch. Yasir Irfan, Mr Asad Arshid, Mr. Fawad Haider and Malik Mushtaq, Advocates.
Respondents No.2&3 by:	Mr. Sajjad Muhammad Durrani, Advocate.
Date of Hearing:	**25.02.2025**

INAAM AMEEN MINHAS, J.- This Regular First Appeal has been filed against the order and decree dated 20.01.2020 **("Impugned Order and Decree")**, passed by learned Additional District Judge-II (West), Islamabad **("Trial Court")**, whereby suit for Specific Performance of Agreement Dated 22.04.2019 And Continuation of Agreement Dated 05.09.2019, Permanent and Mandatory Injunction, filed by the appellant, was dismissed.

2. Brief facts of the case are that the appellant/plaintiff entered into a sale agreement with respondent/defendant No.1 on 22.04.2019 regarding land measuring 26 Kanals and 18 Marlas, situated at Mouza Jhangi Syedan Main GT Road near Motorway Chowk, Islamabad **("Suit Property")** for a total price of Rs.1.3 billion. Initially, the appellant/plaintiff paid Rs.10 million as earnest money. Later, on 05.09.2019 both parties extended the agreement till 15.12.2019 and the

UNCERTIFIED

appellant/plaintiff paid an additional Rs.2 million. However, the appellant/plaintiff later discovered that respondent/defendant No.1 had concealed crucial facts, particularly that the Suit Property was owned by M/s Shahi Beverage Pvt. Ltd. and that respondents/defendants No.2 & 3 held a 14% share in the company. Respondent/defendant No.1 had sold her share in the Suit Property without consent of respondents/defendants No.2 & 3. Respondent/defendant No.1 then asked the appellant/plaintiff to directly purchase shares from respondents/defendants No.2 & 3. Due to these complications, the appellant/plaintiff repeatedly requested respondent/defendant No.1 to complete the transaction as per the agreement but his requests were ignored. The appellant/plaintiff also sent a legal notice, which was not responded. Therefore, the appellant/plaintiff filed a suit for specific performance.

3. Respondents/defendants No.1 to 3 entered their appearance through their counsels. On 13.01.2020 learned counsel for respondent/defendant No.1 raised objection that the appellant had not deposited the remaining sale consideration, whereupon Trial Court ordered the appellant/plaintiff to deposit the balance sale consideration by 20.01.2020 or face dismissal of the suit. The appellant/plaintiff challenged this order by filing Civil Revision Petition No.08/2020 before this Court, which was admitted and notices were issued. However, during pendency of the said Civil Revision Petition, Trial Court dismissed the suit through the Impugned Order due to the appellant/plaintiff's failure to deposit the balance sale consideration within the stipulated time, hence, this appeal.

UNCERTIFIED

4. Learned counsel for the appellant heavily relied upon Meer Gul vs. Raja Zafar Mehmood through legal heirs and others, (2024 SCMR 1496) and *Messrs DW Pakistan (Private) Limited, Lahore vs. Begum Anisa Fazl-i-Mahmood and others,* (2023 SCMR 555) and emphasized that the appellant/plaintiff cannot be non-suited on the ground of non-deposit of the balance sale consideration, since the order to deposit the amount was harsh and no consequences were provided for non-deposit of balance amount.

5. Learned counsel for the respondents contended that seeking a specific performance of the agreement to sell is an equitable relief and is essentially required to deposit the balance sale consideration in the Court to demonstrate that the purchaser at all relevant times was ready and willing to pay the balance sale consideration and showed the availability of the amount with him, so in the present case Trial Court rightly dismissed the suit.

6. I have heard the arguments and perused the record.

7. Perusal of the record reveals that the appellant instituted a suit seeking the specific performance of the agreement dated 22.04.2019 as well as continuation of the agreement dated 05.09.2019. The suit was filed on 30.12.2019, following which notices were issued to the respondents. Subsequently, on 06.01.2020, counsels representing the respondents No.1 to 3 entered appearance before Trial Court.

8. On 13.01.2020, learned counsel for respondent No.1, at the very outset, contended that in light of the judgment of the Supreme Court reported as *Hamood Mehmood vs. Mst. Shabana Ishaqure and others,*

UNCERTIFIED

(2017 SCMR 2022), the appellant has not deposited the balance sale consideration with Trial Court, thereby rendering his suit liable to be dismissed. He also submitted that the stipulated cut-off date of the agreement to sell has already expired, therefore, the appellant should be directed to deposit the outstanding sale consideration within two days and in case of non-compliance, he prayed for the dismissal of the suit.

9. Learned counsel for respondents No.2 & 3 submitted before Trial Court that the appellant could not obtain prior consent of respondents No.2 & 3 before the execution of the agreement. However, he stated that respondents No.2 & 3 are willing to settle the matter with the appellant outside the Court provided they receive the amount of their respective shares. Trial Court showed restraint and did not dismiss the suit out rightly. Instead, a categorical order was passed, directing the appellant to deposit the balance sale consideration in the Court within seven days, i.e., by 20.01.2020. Trial Court further held that non-compliance of the directive would result in the dismissal of the suit in light of above mentioned judgment of the Supreme Court and the case was adjourned to 20.01.2020.

10. On 20.01.2020, during proceedings Trial Court, inquired from the learned counsel for the appellant regarding deposit of the balance sale consideration. In response, learned counsel for the appellant candidly admitted that the balance sale consideration has not been deposited by the appellant. As the appellant failed to comply with Trial Court's directive and could not deposit the balance sale consideration, the suit was dismissed due to non-compliance of the direction.

UNCERTIFIED

11. It is a settled principle of law that a suit for specific performance is an equitable relief. The maxim *"he who seeks equity must do equity"* applies in such cases. In the present matter, learned Trial Court had specifically ordered the appellant to deposit the balance sale consideration within seven days, failing which the suit shall be deemed to have been dismissed. The appellant's failure to comply with order dated 13.01.2020 establishes his inability to demonstrate both the availability of the balance sale consideration and his willingness and capability to fulfill his contractual obligations. This view is further strengthen in the light of judgment reported as ***Masood Ahmad Bhatti and another vs. Khan Badshah and another*, (2024 SCMR 168)**.

12. The record further substantiates that the appellant willfully disregarded Trial Court's order, despite clear penal consequences for non-compliance. Learned counsel for the appellant conceded the non-compliance of the directive to deposit the balance sale consideration. In such circumstances, particularly when the order dated 13.01.2020 explicitly mandated the deposit of the balance sale consideration within seven days, failure to adhere to this requirement rendered the suit liable for dismissal. The appellant's conduct unmistakably demonstrates his failure to fulfill his primary contractual obligation and his attempt to derive an unfair advantage under the guise of a suit for specific performance is legally untenable. This stance is reinforced by the principle laid down in ***Nazar Hussain and another vs. Syed Iqbal Ahmad Qadri (Deceased) through his L.Rs and another*, (2022 SCMR 1216)**.

UNCERTIFIED

13. The contention of learned counsel for the appellant that mere non-deposit of the balance sale consideration does not warrant the dismissal of the appellant's suit and that the suit remains maintainable is misconceived and untenable in law. Likewise his argument that the appellant was non-suited merely on technical grounds is devoid of merit.

14. Perusal of paragraph 8 of the civil suit reveals that the appellant explicitly offered to tender the balance sale consideration to the respondents No.1 to 3 and when Trial Court issued a specific direction mandating the deposit of the balance sale consideration within a stipulated timeframe, the appellant failed to comply with the said order. This unequivocally establishes a default on the part of the appellant, which remains undisputed.

15. In view of above discussion, I am of the view that Impugned Order and Decree are well reasoned, supported by legal precedents and do not suffer from any jurisdictional defect. No illegality, irregularity or perversity has been found in the Impugned Order and Decree. Consequently, the instant appeal is **dismissed** being devoid of merit.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 06.03.2025.

JUDGE

R.Anjam

UNCERTIFIED