JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 2667 OF 2021

JAHANGIR SULTAN

VS

CIVIL JUDGE 1ST CLASS, ISLAMABAD-EAST, ETC.

Petitioner by	**:**	**Syed Haider Ali, Advocate.**
Respondents by	**:**	**Mr. Habib ur Rehman, Advocate for Respondent No. 2.** **Mr. Usman Akbar Khan, State counsel.**
Date of hearing	**:**	**27.06.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Petition, the Petitioner [Jahangir Sultan] has assailed the Order dated 28.06.2021 **("Impugned Order")** passed by the learned Civil Judge 1st Class, Islamabad-East **("Trial Court")** whereby application under Order XII, Rule 6 read with Order XV, Rule 1, Code of Civil Procedure, 1908 **("CPC")**, filed by the Petitioner/Plaintiff, has been dismissed.

2. The brief facts of the case in hand are that the Petitioner/plaintiff filed a suit for specific performance of agreement to sell dated 27.11.2019 and continuation of agreement to sell dated 27.01.2020, mandatory and permanent injunction, before the learned trial court, contending that Shabbir Ahmed **("Respondent No.2/defendant No.1")**, is the owner of land measuring 12 Kanals & 14 Marlas situated in Khewat No.994, Khatooni No.1954, Khasra No.3378 and land measuring 05 Kanals out of 91 Kanals and 17 marlas situated in Khewat No.938, 994, Khatooni No.1449, Qita 20, total land 17 Kanals and 14 marlas, Mouza Humak, Tehsil & District Islamabad. The petitioner/plaintiff agreed to purchase the suit land for a total sale consideration of Rs.3,54,00,000/- and in this regard, petitioner and respondent No.2 entered into agreement to sell dated 27.11.2019. The petitioner/plaintiff paid Rs.1,00,00,000/- to the respondent No.2/defendant No.1 as earnest money which respondent No.2 acknowledged through agreement to sell. As per terms and conditions of the agreement to sell dated 27.11.2019, the respondent No.2 received Rs.2,40,00,000/- from the petitioner acknowledged through written continuation of agreement to sell dated 27.01.2020 and respondent No.2 transferred

the land measuring 05 Kanals out of 91 Kanals and 17 Marlas situated in Khewat No.938, 994, Khatooni No.1449, Qita 20, Mouza Humak in the name of petitioner through mutation No.12015, 12016, 12017, 12018, 12019, 12020 and 12021 dated 23.12.2019. As per agreement dated 27.01.2020, respondent No.2 was bound to transfer land measuring 11 kanals out of 12 kanals and 14 Marlas on or before 10.02.2020 and remaining 1 Kanal and 14 Marlas of the suit land on or before 09.03.2020 and petitioner was bound to pay Rs.14,00,000/- to the respondent No.2 at the time of transfer of remaining suit land. On 10.02.2020, the petitioner/plaintiff contacted the respondent No.2 to transfer the land measuring 11 Kanal situated in Khewat No.994, Khatooni No.1954, Khasra No.3378, Mouza Humak, Islamabad, but the respondent No.2 delayed the matter on one pretext to another. The petitioner alleged that respondent No.2, due to the escalation in prices, changed his mind and is trying to sell the suit property to someone else at a higher price, although he has already received the major sale consideration from the petitioner/plaintiff.

3. The suit was contested by the respondent No.2/defendant No.1 by filing a written statement. On 10.10.2020, petitioner/plaintiff filed an application under Order XII Rule 6 read with Order XV Rule 1 CPC praying therein that suit may kindly be decreed as prayed for, in view of the admission/statement dated 24.02.2020 made by respondent No.2/defendant No.1. The said application was contested by respondent No.2/defendant No.1 by filing written reply. Learned trial court, after hearing arguments of learned counsel for the parties, dismissed the said application vide impugned order dated 28.06.2021. Being aggrieved, the petitioner/plaintiff has filed the instant petition.

4. The learned counsel for the Petitioner argued that the Impugned order is violation of Article 4 of the Constitution of Pakistan; that the impugned order is not speaking order, as the same does not refer to any principle of law; that bare perusal of the impugned order is enough to establish that the said order is non-speaking in nature, is not well founded in the eyes of law, and that the learned trial court did not apply its mind in a judicious manner in passing the same, thus, rendering the impugned order liable to be set aside; that it is settled law that once an admission is made, the learned court entertaining the matter, pass orders to the extent of admission given, without delving any further into the merits of the case; that learned trial court despite having a clear, unambiguous, unequivocal, and unqualified admission of the respondent No.2 along with a signed affidavit by

respondent No.2 to the same effect, overreached his authority and passed the impugned order; that the impugned order has caused a grave miscarriage of justice to the petitioner, as the same is result of misreading, non-reading, and mis-application of law. Lastly, learned counsel prayed for acceptance of the instant petition and setting aside of the impugned order.

5. On the other hand, the learned counsel on behalf of Respondent No.2 argued that the Petitioner's counsel has failed to point out any illegality in the Impugned order and the learned trial Court has rightly dismissed the application of the Petitioner, based on the correct appreciation of facts and record by applying proper judicial mind. Lastly, the learned counsel prayed for the dismissal of the instant Petition.

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

7. The Respondent No.2 entered into an agreement to sell with the petitioner for the sale of his land measuring 17 Kanals & 14 Marlas on 27.11.2019 for a sale consideration of Rs.3,54,00,000/-. The petitioner paid Rs.1,00,00,000/- as earnest money at the time of agreement to sell while the remaining was agreed to be paid at the time of transfer of the land. As per the terms of the agreement, possession was delivered to the petitioner by the respondent No.2. Land measuring 5 Kanals was transferred to the petitioner through mutation dated 23.12.2019 out of the total agreed sold land. In continuation of the previous agreement to sell dated 27.11.2019, on 27.01.2020, another agreement was executed between the petitioner and respondent No.2, vide which respondent No.2 received Rs.2,40,00,000/- in presence of witnesses and agreed to transfer 11 Kanal of land on 10.02.2020. It was also agreed that the remaining Rs.14,00,000/- will be paid to respondent No.2 after the transfer of remaining 1 Kanal 14 Marlas of land on 09.03.2020.

8. The petitioner after some time asked the respondent No.2 to fulfil his obligation as per the agreements but he deliberately delayed the matter under one or other pretext, ultimately, petitioner filed suit for specific performance of agreement to sell dated 27.11.2019 and continuation of agreement to sell dated 27.01.2020, for the transfer of remaining 12 Kanals and 14 Marlas land, before the learned Civil Judge, Islamabad. Respondent No.2 was summoned by the court on 17.02.2020 and the case was fixed for appearance of respondent No.2 on 04.03.2020. On 24.02.2020,

an application was filed before the learned Civil Judge for early hearing, in which petitioner and his counsel, respondent No.2 alongwith his counsel, appeared and requested the court to record statement of the parties as amicable settlement has reached between them. On the same day, an affidavit/compromise deed was submitted before the court on stamp paper issued by Respondent No.2, vide which respondent No.2 received the remaining Rs.14,00,000/- and he stated that due to the interference of Jirgah, the matter between the parties has been resolved and he has received total remaining amount and nothing is left between the parties. He further stated that he has got no objection if the suit of the petitioner is decreed in his favor. The learned court also recorded the statement of petitioner and respondent No.2 with the same contents mentioned in the affidavit/compromise deed, duly signed by the learned Civil Judge. The learned court also procured the thumb impression and the signature of the parties along with signatures of their counsels on the margin of the order sheet. The learned court adjourned the matter to 04.03.2020 for further proceedings. On 04.03.2020, respondent No.2/defendant No.1 submitted fresh power of attorney and requested for an adjournment for filing of written statement. The petitioner's counsel objected that statement of respondent No.2/defendant No.1 has already been recorded on 24.02.2020, therefore, in the light of the statement, the suit of the petitioner be decreed. The learned Judge allowed the request and adjourned the matter to 24.03.2020 for further proceedings. Due to Covid-19 pandemic, the case was adjourned on different dates and on 10.10.2020, application under Order XII Rule 6 CPC was filed and the matter was fixed for reply. After hearing the arguments from both the sides, the learned Civil Judge, dismissed the application of petitioner on 28.06.2021 on the ground that law favors adjudication of disputes on merits as the respondent No.2 intends to contest the matter.

9. From the facts narrated before this court, it transpires from the record that Respondent No.2 received the whole sale consideration pertaining to the land total 17 Kanals 14 Marlas in Khasra number mentioned in the plaint and duly recorded his statement before the court in presence of his counsel. Presumption of truth is attached to the proceedings of the court in which it is very much clear that respondent No.2 stated and agreed that after the intervention of the Jirgah, the matter between the parties has been resolved and he received the remaining sale consideration of Rs.14,00,000/- from the petitioner and nothing is left between them. He further stated that if the learned court issues decree in favor of the petitioner, he

will have no objection. Later on, he changed his stance and filed written statement in which he totally denied and stated that the petitioner committed fraud and he signed on a blank paper in the court and later on it revealed to him that it is written that he has withdrawn the suit filed by the petitioner.

10. Respondent No.2 neither challenged the statement which was given before the learned Civil Judge in which he has made admission and stated that he has got no objection if the suit of the petitioner is decreed. The stamp paper from which the affidavit/compromise deed is written was issued by the respondent No.2 from the stamp vendor and his statement was recorded by the learned court in presence of his Lawyer. Respondent No.2 transferred 5 Kanals of land vide mutation No.12015, 12016, 12017, 12018, 12019, 12020 and 12021 dated 23.12.2019, which shows that there was an agreement to sell executed between the parties for the sale of land measuring 17 Kanals 14 Marlas owned by Respondent No.2. The remaining portion of transfer of land i.e. 12 Kanals 14 Marlas was remaining and later on through continuation agreement dated 27.01.2020, respondent No.2 received further Rs.2,40,00,000/- and he received the remaining Rs.14,00,000/- which is reflected in his statement recorded before the learned trial court dated 24.02.2020. The respondent No.2 cannot go back from his statement which was recorded before the learned trial court and he has also received the full sale consideration. The principle of estoppel is also applicable in the instant circumstances and it will be great injustice with the petitioner if his claim is not accepted despite of the fact that respondent No.2 has recorded his statement before a competent court of law in which he has categorically stated that he has no objection if a decree is passed in favor of the petitioner. Great sanctity is attached to the proceedings of the court and if the same are not acted upon or disbelieved, it will amount to great miscarriage of justice which in the circumstances of this particular case cannot be ignored.

11. In the light of the above discussion, this court is of the view that the learned trial court has wrongly dismissed the application of the petitioner which was filed under Order XII Rule 6 read with Order XV Rule 1 CPC, without giving any plausible explanation/reason. Thus, the instant writ petition is **accepted** and the petition under Order XII Rule 6 read with Order XV Rule 1 CPC is accepted and suit for specific performance of contracts dated 27.11.2019 and 27.01.2020 is accepted, with cost of Rs.50,000/-, which will be paid by respondent No.2 to the petitioner.

12. It is to be noted here that the instant writ petition was filed against the order of the learned Civil Judge when the Code of Civil Procedure (Amendment) Act, 2020 was in existence and the instant writ petition was filed in the year 2021 i.e. during the subsistence of the said amendment, as the said amendment was repealed by the Act of 2023. Section 16 of the Act of 2023 amends section 159 of the Code of Civil Procedure and in its amended form, the referred provision of law reads as follows: -

> *"16. Amendment of section 159, Act No.V of 1908- In the said Act, for section 159, the following shall be substituted, namely:-*
>
> *"159. Savings of proceedings.- All proceedings instituted prior to the commencement of the Code of Civil Procedure (Amendment) Act, 2023 (Act of 2023) shall be deemed to be the proceedings of, and dealt in accordance with, the provisions of this Code which existed prior to the aforesaid commencement.*
>
> *Explanation.- In this section, the expression 'proceedings' includes suit, appeal, review, revision, execution applications or any other proceedings and any matter incidental thereto".*

Thus, the instant writ petition is competent to be filed and decided by this court (Reliance is placed on 2024 CLC 529).

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ 2025.

JUDGE

Sajid/--