JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 1392/2023

NAEEM ISMAIL

Vs

RAJA WALEED UR REHMAN, ETC

Petitioner by	**:**	**Mian Mohammad Omer Riaz, Advocate.**
Respondents by	**:**	**Mr. Muhammad Jamshed Khan, Advocate.** **Respondent No. 2 (ex-parte).**
Date of hearing	**:**	**30.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, the Petitioner, Naeem Ismail has assailed the order dated 06.02.2023 **("Impugned Order")** passed by the learned Civil Judge 1st Class, Islamabad-West, whereby an Application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 **("CPC")** for the rejection of plaint, filed by the Petitioner, was dismissed.

2. Brief facts of the case, as stated in the petition, are that Respondent No. 1/Plaintiff [Raja Waleed Ur Rehman] filed a Suit for Specific Performance and Permanent Injunction before the learned Civil Judge, Islamabad-West. The Petitioner/Defendant No.1 contested the suit by filing a written statement. On 24.09.2022, the Petitioner/Defendant No. 1 filed an application under Order VII, Rule, 11 CPC, which was contested by respondent No.1 through a written reply. After hearing arguments, the learned trial court dismissed the application vide the Impugned Order dated 06.02.2023. Aggrieved by the said order, the Petitioner/Defendant No. 1 has filed the instant writ petition.

3. Learned counsel for the Petitioner/Defendant No. 1 contended that the Impugned Order is illegal, arbitrary, contrary to the record, and against settled law, and therefore not sustainable. He argued that despite clear directions issued in the order dated 17.03.2021, the respondent/plaintiff did not deposit the remaining sale consideration for over two years, nor did he seek an extension or challenge the said

order, which had attained finality. This non-compliance renders the suit non-maintainable in view of the law laid down by the Honourable Supreme Court of Pakistan in **2020 SCMR 171** and **2017 SCMR 2022**, which mandate such deposit at the time of first appearance or at the institution of the suit. The trial court's decision to allow further opportunity to the plaintiff was prejudicial to the Petitioner/Defendant No. 1, amounted to misreading and non-reading of the record, violated Article 189 of the Constitution, and reflected misuse of jurisdiction. It is settled law that failure to deposit sale consideration warrants dismissal of the suit. The Impugned Order has, therefore, resulted in a grave miscarriage of justice. He prayed that the instant writ petition be accepted, the application under Order VII, Rule 11, CPC be allowed, and the respondent's suit be dismissed.

4. Conversely, learned counsel for Respondent No.1 argued that no illegality or irregularity has been pointed out in the Impugned Order, which was passed after due consideration and application of judicial mind. He contended that the trial court rightly dismissed the application based on the material available on record. He prayed for the dismissal of the petition.

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

6. Respondent No. 1/Plaintiff filed a Suit for Specific Performance and Permanent Injunction against the Petitioner/Defendant No. 1 and others on 17.03.2021 before the learned Civil Judge, Islamabad. On the same date, the learned Judge directed Respondent No. 1/Plaintiff to deposit the remaining sale consideration in the Civil Nazir Branch of District Courts West, Islamabad within seven days. The stay application annexed with the plaint was placed before the Court of Mr. Saqib Jawad, Civil Judge-West, Islamabad who granted an ad-interim stay on 17.03.2021, subject to the deposit of the remaining sale consideration on or before 21.04.2021. However, on 28.04.2021, when the matter again came before the said Court, it was observed that Respondent No. 1/Plaintiff had failed to deposit the amount. Consequently, the stay application was dismissed.

7. Respondent No. 1/Plaintiff, despite clear directions from two different Courts, failed to deposit the remaining sale consideration. He not only failed to comply with Court orders but also acted in violation of the authoritative judgments of the august

Supreme Court of Pakistan reported as *Hamood Mehmood v. Mst. Shabana Ishaque and Others* (**2017 SCMR 2022)** and *Messrs Kuwait National Real Estate Company (Pvt.) Ltd. and Others v. Messrs Educational Excellence Ltd. and Another (***2020 SCMR 171)**. The relevant portion of the ruling of the august Supreme Court of Pakistan cited in **2017 SCMR 2022** is reproduced hereunder: -

> *"3. It is mandatory for the person whether plaintiff or defendant who seeks enforcement of the agreement under the Specific Relief Act 1877, that on first appearance before the Court or on the date of institution of the suit, it shall apply to the Court getting permission to deposit the balance amount and any contumacious/omission in this regard would entail in dismissal of the suit or decretal of the suit, if it is filed by the other side."*

The relevant portion of the ruling of the august Supreme Court of Pakistan cited in **2020 SCMR 171** is reproduced hereunder: -

> *"----S.12---Suit for specific performance of agreement to sell---Pre-requisites---Deposit of sale consideration in court---Party seeking specific performance of an agreement to sell was essentially required to deposit the sale consideration amount in court---By making such deposit the plaintiff demonstrated its capability, readiness and willingness to perform its part of the contract, which was an essential pre-requisite to seek specific performance of a contract---Failure of a plaintiff to meet the said essential requirement disentitled him to the relief of specific performance, which undoubtedly was a discretionary relief."*

In a recent judgment of august Supreme Court of Pakistan in similar facts reported in **(2024 SCMR 1862)** titled *Abdil Ali Vs. Additional District Judge, Gojra and others*, it is held as under: -

> *"---S. 12---Transfer of Property Act (IV of 1882), S. 54---Suit for specific performance of agreement to sell immovable property---Cut-off date stipulated for payment of balance sale consideration---Extention of such date by Court---Scope---Balance sale consideration to be deposited in Court---Scope---Courts are not legally empowered to extend the time for depositing the balance sale consideration contrary to the terms of the agreement---And, if they do so they effectively rewrite the agreement between the parties---Only obligation of a buyer of a property is to make timely payment---However, if the seller does not receive payment the buyer must demonstrate that he was ready, able and willing to pay the same to the seller, failing which he must show that he had offered the payment and upon the seller's refusal to accept it had either prepared a pay order/demand of the said amount or had deposited the same in Court---One exception could be when the balance sale consideration constitutes a small portion of the total sale consideration".*

8. The learned Trial Court while giving reasoning for the dismissal of the application filed by the Petitioner for the rejection of the suit under Order VII, Rule 11, CPC, observed that the suit was filed on 17.03.2021, and on 21.10.2021, the suit was dismissed in default, which was restored on 04.06.2022, then along with

restoration application, Respondent No.1/Plaintiff had also filed an application for deposit of remaining sale consideration amount. Thus justified the *bonafide* of the vendee at any stage of proceedings which may put him to terms. Such reasoning cannot be justified on the ground that a person may institute a suit for specific performance, yet fail to deposit the remaining sale consideration despite clear directions of the Court, thereby defying its orders. After more than seven months, the suit is dismissed for non-prosecution, and nearly a year later, it is restored, only for the plaintiff to then claim *bona fide* intent or readiness to pay the remaining sale consideration before the Court. In such peculiar circumstances, the courts must exercise great caution to safeguard the rights of the litigants. The learned Civil Judge 1st Class, Islamabad, Mr. Saqib Jawad rightly appreciated the legal position and accordingly dismissed the temporary injunction application pending before him, as per his Order dated 28.04.2021.

9. With the above-mentioned observations, the instant Writ Petition is **accepted** and the Suit for Specific Performance filed by the Respondent No.1/Plaintiff is **dismissed** for non-deposit of remaining sale consideration within the time stipulated by the learned Trial Court vide Order dated 17.03.2021.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of May 2025.

JUDGE

Sajid/--