JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO. 287 OF 2024

MUHAMMAD AURANGZEB

VS

MANSOOR AHMED QURESHI & 4 OTHERS

Petitioner by : **Ch. Muhammad Junaid Akhter Advocate.**

Respondents by : **Muhammad Akram Shaheen, Advocate for respondents No.1, 3 & 4.**
Zain Qureshi, Advocate for respondent No.2.
Shaneela Razzaq, Advocate for respondent No.5.

Date of hearing : **27.03.2025**

MUHAMMAD AZAM KHAN, J.

1. The Petitioner has filed the instant Revision Petition under Section 115 of the Code of Civil Procedure, 1908 **("CPC")** against Order dated 08.07.2024 **("Impugned Order")** passed by learned Civil Judge 1st Class, West-Islamabad **("Trial Court")** whereby the Petitioner has been directed to pay the remaining sale price as per market value in 2024 as determined by local commissioner.

2. The brief facts of the case in hand, as per memo of instant petition, are that the Petitioner filed a civil suit for Specific Performance of Agreement to Sell dated 14.02.2015 and Continuation of Agreement to Sell dated 06.01.2017, Mandatory and Permanent Injunction to the effect that he entered into an agreement with receipt dated 31.03.2014 with the brother of Respondents No.1 to 4, namely Javed Ahmed Qureshi on their behalf, against the sale consideration of Rs.3,10,00,000/ and later on, the Respondents No.1 to 4 entered into an agreement to sell up to ownership and possession of suit property/shops measuring 40x80 situated in I&T Centre G-9/4, Islamabad with an increase of sale consideration of Rs.3,40,00,000/- which was accepted by the Petitioner for the sake of completion of deal regarding the transfer of said property. In this regard, the amount of Rs.30,00,000/- was paid as earnest money at the time of agreement to sell dated 14.02.2015. The Petitioner waited two years for NDC/NOC of the suit property which was the duty of Respondents No.1 to 4,

who had failed to arrange the concerned NDC/NOC from Respondent No.5 along with non-incorporation of legal heirship of their deceased mother. Resultantly, the Petitioner filed a suit for specific performance of agreement to sell dated 01-12-2016 against Respondents, which was subsequently filed afresh with the permission of Court. Thereafter, the Petitioner and Respondents executed another agreement with the continuation of agreement dated 06.01.2017 with the final increase of sale consideration of Rs.4,10,000,00/- and on this final increase of consideration, the Respondents No.1 to 4 agreed to transfer the suit property on or before 5th May, 2017 subject to obtaining the legal heirship and NDC/NOC from Respondent No.5. As per agreement to sell dated 14.02.2015 and continuation of agreement to sell dated 06.01.2017, the Respondents No.1 to 4 put the Petitioner in constructive possession of shops No.3, 6, 7 & 8 by having their tenants get paid in good will in part performance of agreement to sell, which created Petitioner's possessory rights in part performance protected under Section 53-A of Transfer of Property Act; that the Petitioner paid all expenses in the head of transfer in the office of Respondent No.5, but on 8th November, 2017, the brother of the Petitioner namely Mr. Irshad was informed by the neighbors that the Respondents No.1 to 4 evicted the tenants through Court with assistance of Police and also got the possession of properties/shops which was promised to be delivered to Petitioner. The Respondents No. 1 to 4 earlier delayed the transfer and deliberately exhausted the execution and performance of sale agreement in time through tactics, and after a passage of time, when the price of suit property had increased due to inflation and boom in real estate, the Respondents No.1 to 4 became greedy and refused to perform the agreement to sell in violation of terms of the agreement agreed between the parties; they are still adamant on not listening to anything reasonable. It is further mentioned in the memo of petition that the Petitioner has already performed his part of the obligation as per terms and conditions of the above said sale agreement by paying earnest money, transfer charges, good will to tenant and also obtained possession of some shops, whereas the Respondents No.1 to 4 have failed to perform their obligations, which they are duty bound to do so as agreed upon, and subsequently continue to execute the same. The Respondents No.1 to 4 have filed written statement and admitted the sanctity of sale agreement and possession of the Petitioner by admitting the factual position in para No 2,3,6,10 & 11, but meanwhile opposed

the Petitioner's application for submission of remaining sale consideration before the learned Trial Court in violation of clauses of agreement. On 12-09-2022, the Petitioner filed an application for deposit of remaining sale consideration, whereas the Respondents No.1 to 4 filled an application for dismissal of suit. On 01-02-2023, the learned Civil Judge, Islamabad graciously allowed the application of the Petitioner to deposit the remaining sale consideration at its own risk and cost, whereas the application of the Respondents No.1 to 4 was dismissed. The Respondent No.2 assailed the said order by filing appeal before the Court of learned Addl: District Judge-VI, Islamabad (West) which was accepted vide order dated 07.03.2024 and case was remanded back to the trial Court with the observations that *"the instant matter is remanded to the trial Court and the said two applications one for the dismissal of suit for violation of order dated 06-04-2018 and other for submission of pay order of remaining sale consideration of Rs.3,80,00,000/- are deemed pending before the Court for deciding these applications afresh with a speaking order by considering into the matter minutely when the respondent No.2 is seeking in 2024 for submitting the sale consideration executed between them in 2015 and subsequently through their revised agreement in 2017"*. On 09.03.2024, the Respondent No.2 filed an application for the appointment of local commission in order to assess the market value of property to which Petitioner's counsel had not raised objection. On 20-06-2024, the local commission submitted its report according to which the market value was determined. The Petitioner did not object to that report, however, the Petitioner submitted that Respondent No.2 used the property since 2015, received earnest money as well as pay order amounting to Rs.3,80,00,000/-, therefore, in the interest of justice, the amount determined by the local commission for the year 2022 may kindly be allowed to be deposited, however, the learned Civil Judge dismissed the application of Petitioner vide impugned order dated 08.07.2024. Being aggrieved of the Impugned Order, the Petitioner/Plaintiff has filed the instant revision petition.

3. The learned counsel for the Petitioner/Plaintiff submits that the Impugned Order passed by learned Civil Court is capricious, illegal and void; that the learned Civil Court did not bother to peruse the evidence available on the record; that the learned Civil Court has exercised its jurisdiction illegally and with material irregularities; that the Impugned Order is against the law and facts of the

case; that the learned Civil Court has failed to appreciate that the Petitioner has deposited the remaining sale price at its own risk and cost; that record was not at all taken into consideration by the learned Civil Court which reflects its misreading and non-reading, therefore, the Impugned Order of learned Civil Court is liable to be set-aside; that the learned Trial Court has failed to exercise the jurisdiction vested in it under the law and has exercised the same while committing illegality and material irregularity, which is against the true spirit of law. In the last, learned counsel prayed that the instant revision petition may kindly be accepted and the Impugned Order dated 08.07.2024 passed by learned Civil Court may kindly be set-aside.

4. On the other hand, the learned counsels for the Respondents No.1 to 4 submitted that the Impugned Order was passed after considering the facts and the record of the case, and that the learned Civil Court issued a well-reasoned order; that there is no illegality or irregularity in the impugned order. Lastly, it is prayed that instant civil revision petition may kindly be dismissed.

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

6. The Petitioner/Plaintiff had entered into an agreement to sell with the Respondents No.1 to 4 regarding the sale of shops in I&T Center, G-9 Islamabad, initially in the year 2015 for a sale consideration of Rs.3,40,00,000/- and later on the price was revised in the year 2017 with mutual consent to the tune of Rs.4,10,000,00/- and the time fixed for paying the remaining sale consideration was fixed as 05.05.2017. The Petitioner/Plaintiff failed to pay the same after the expiry of the date fixed i.e. 05.05.2017, and filed a suit for Specific Performance of the Agreement. The learned Trial Court vide order dated 06.04.2018 directed the Petitioner to deposit the remaining sale consideration, however, he failed to do so again. In a suit for Specific Performance of Agreement to sell, it is the pre-requisite condition that the Plaintiff must show his intention to deposit the remaining sale consideration, and for that, he has to seek permission to deposit it in the Court in order to show his bonafide intention that he has sufficient funds to fulfil the obligations agreed between the parties. In the present case, the Petitioner has failed to deposit the remaining sale consideration at that time, rather he requested before the Court on 01.02.2023, to deposit the remaining sale

consideration of Rs.3,80,00,000/-, which was allowed by the Court at the Petitioner/Plaintiff's own risk and cost. The Petitioner now wants to purchase the shops in question and enforce the agreement to sell as per the market value in the year 2022 and he has filed application for depositing the remaining sale consideration in the year 2023. The learned Civil Judge decided that the Petitioner/Plaintiff is bound to pay the remaining sale consideration as per market value in the year 2024, which was determined by the local commissioner. The local commissioner was sent by the Court in order to determine the market value of the shops in question on the application of Respondent No.2; the said order was not objected by the Petitioner/Plaintiff at that time. The Petitioner/Plaintiff has not even filed any objection upon the report of local commissioner, meaning thereby that he has given consent for the determination of the market value of the shops in question in the year 2024. Thus, at this stage, he cannot object regarding payment of the remaining sale consideration as per the market value in the year 2024. Hence, the learned Trial Court has rightly decided that the Petitioner/Plaintiff will deposit the remaining sale consideration as per the market value in the year 2024 as determined by the local commissioner.

7. With these observations, the instant Civil Revision Petition is ***dismissed*** being devoid of any merits.

(MUHAMMAD AZAM KHAN)
JUDGE

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

JUDGE

//Mehboob//