JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

REGULAR FIRST APPEAL NO. 37 OF 2025

WALEED BABAR KHAN.

VS

QAISER MANZOOR ETC.

Appellant by : Mr. Ahmad Hasan, Advocate.

Respondents by : Malik Shahid Mehmood Kandwal, Advocate for the Respondent No. 1.

Date of hearing : 21.02.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Appeal, Waleed Babar Khan **(Appellant)** has assailed the Judgment and Decree dated 30.11.2024 **("Impugned Judgment and Decree")** passed by the learned Civil Judge 1st Class, Islamabad-West **("Trial Court")** whereby the Suit for Cancellation/Rescission of the Contract contained in the Sale Agreement dated 28.04.2022 **("Sale Agreement")** between Appellant and Respondent No. 1 regarding House No. 28, measuring 30'x60' situated at Street No.87, Sector G-13/1, Islamabad **("Suit House")**, Recovery of Mesne Profits and Damages for Breach of the Contract, Declaration and Permanent Injunction **("Suit")**, has been partially decreed.

2. The brief facts of the case in hand are that the Respondent No.2 sold the Suit House to the Respondent No.1 for a sale consideration of Rs.28,500,000/- through an *Iqrarnama* dated 14.01.2022. In pursuance thereof, the Respondent No.1 took possession but refrained from transferring it into his name, as there was a mutual agreement to transfer it directly to a subsequent buyer in order to avoid incurring additional costs. The Respondent No.1 later on sold the Suit House to the Appellant for a sale consideration of Rs. 35,000,000/- through the Sale Agreement, receiving Rs.10,000,000/- as earnest money and cheques for the remaining amount. The cheque amounting to Rs.15,000,000/- was dishonored on 10.08.2022 which constituted a material breach of contract, leading to its rescission by the Respondent No.1, who also forfeited the amounts received as per the Sale Agreement. The Respondents filed the Suit before the learned Trial Court for

rescission of the Sale Agreement with a decree of declaration for forfeiture of the sale consideration received by the Respondent No.1 as well as recovery of Rs.10,000,000/- as damages for breach of contract. In addition to that, the Respondents prayed for recovery of possession of the Suit House along with recovery of Rs.200,000/- per month as mesne profits and permanent injunction of the court for restraining the Appellant from transferring possession of the Suit House, creating liens, or selling the Suit House. On receipt of summon/notice from the learned Trial Court, the Appellant appeared before the court and submitted written statement through which the contentions of the Respondents were strongly contested. From the divergent pleadings of the parties, vide Order dated 11.05.2024 issues were framed by the learned Trial Court. In evidence, the Respondent No.1 appeared in witness box as PW-1 in his personal capacity as well as being attorney of the Respondent No.2. He also produced documents in support of his version. Mr. Khushal Khan, Special Attorney of the Appellant and Mr. Muneeb Javed appeared as DW-1 & DW-2 respectively from the Appellant side who produced certain documents in their evidence. After recording of evidence and hearing arguments of the learned counsel for the parties, vide the impugned Judgment and Decree, the Respondents' Suit was decreed against the Appellant, subject to all just and legal exceptions, in terms that: -

- The agreement to sell dated 28.04.2022 stands cancelled/rescinded.

- It is declared that the sale consideration received by the Plaintiff No.1 i.e. Rs.2,00,00,000/- (20 million) stands forfeited in his favor.

- The defendant is permanently restrained from handing over possession of the suit house to a third party or entering into an agreement with a third party or creating any charge or lien on the suit house or selling or disposing it off, in any manner whatsoever;

- The possession of the suit house i.e. House No.28, Street No.87, Sector G-13/1, Islamabad, be delivered/handed over to the plaintiff No.2 (Registered owner) or his duly appointed representative.

- A sum of Rs.50,000/- per month, as mesne profit of the suit house, be paid to the Plaintiffs, from 15.06.2022 till realization of possession of the suit house.

Whereas to the extent of recovery of Rs.10,000,000/- as damages from the defendant for breach of the contract the suit was dismissed. Being aggrieved of the Impugned Judgment and Decree, the Appellant has filed the instant Appeal.

3. The learned counsel for the Appellant argued that the Suit has been decided arbitrarily in sheer violation of the principles of natural justice that caused a miscarriage of justice, and is liable to be dismissed and the Judgment and Decree is also liable to be set-aside; that the Impugned Judgment and Decree passed by the learned Trial Court is against the law as well as the facts of the case, therefore, same is not sustainable in the eye of law; that the learned Trial Court failed to apply its judicial mind with respect to the provisions of law and could not appreciate the averments made by the Appellant and also ignored the merits of the matter; that in the Sale Agreement executed between the Appellant and the Respondent No.1, the Respondent No.1 portrayed himself as the owner of the Suit House; that in the Sale Agreement, the Respondent No.1 induced the Appellant that the Suit House is free from all sorts of legal defects; that the Appellant paid a hefty amount to the Respondent No.1 on the basis of the inducement made by the Respondent No.1 claiming to be the lawful owner of the Suit House; that as per the Sale Agreement, it is an admitted fact that the Appellant had paid an amount of Rs. 20,000,000/- to the Respondent No.1 and the receiving of such amount was given by the Respondent No.1 and that acknowledgment is available on record and also forms part of the evidence; that the remaining sale consideration of Rs. 15,000,000/- was to be paid at the time of transfer of the Suit House, which was to occur by 29.05.2022 and in case of any delay in the transfer, a grace period of fifteen days was to be allowed; that the Respondent No.1 managed to receive a cheque of Rs.15,000,000/- bearing No.34813140 dated 29.05.2022 as a guarantee to the performance of the Sale Agreement that has to be returned to the Appellant at the time of transfer but the Respondent No.1 till the effectiveness of the Sale Agreement failed to transfer the Suit House in the name of the Appellant; that the learned Trial Court passed the Impugned Judgment and Decree in a hasty, whimsical and arbitrary manner ignoring all the evidence which was brought on record and without proper application of judicial mind; and that the Impugned Judgment and Decree as such suffers from misreading and non-reading of evidence. Lastly, the learned counsel prayed that the present Appeal be allowed and that the Impugned Judgment and Decree be set aside.

4. On the other hand, the learned counsel for the Respondents argued that the Appellant's counsel has failed to point out any illegality in the Impugned Judgment and Decree and the learned Trial Court has rightly decreed the Respondents' Suit, based on correct appreciation of evidence and proper application of judicial mind; that the learned Trial Court passed the Impugned Judgment and Decree keeping in view the facts and evidence available on record. In the last, the learned counsel prayed for the dismissal of the instant Appeal.

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

6. In the present Appeal, the matter under consideration is regarding cancellation of the Sale Agreement dated 28.04.2022 entered between Appellant and the Respondent No.1, pertaining to the Suit House. Admittedly the Sale Agreement was executed between the Appellant and the Respondent No.1; the Appellant paid Rs.10,000,000/- (Rupees seventy lacs in cash while Rupees thirty lac through cheque No. 34813138 dated 28.04.2022 of Bank Alfalah F-7 Islamabad) as earnest money/*bayana*; and further paid an amount of Rs.10,000,000/- (through cheque No. 34813139 dated 15.05.2022 of Bank Alfalah F-7 Islamabad) which was also received by the Respondent No.1 on 01.06.2022, while the remaining amount i.e. Rs.15,000,000/- which was to be paid at the time of transfer of the Suit House i.e. on 29.05.2022 with a grace period of 15 days and in lieu of that handed over a cheque of the same value i.e. Rs.15,000,000/- (cheque No.34813140 dated 29.05.2022 of Bank Alfalah F-7 Islamabad). The possession of the Suit House was handed over to the Appellant and it was agreed in the Sale Agreement that if the Appellant fails to pay the remaining amount, the Sale Agreement will deem to be cancelled.

7. As per the Sale Agreement, the time was the essence of the agreement and it was settled between the parties that the remaining sale consideration was to be paid at the time of transfer of the Suit House. It is the version of the Respondents that the Appellant did not pay the remaining sale consideration within the stipulated period, hence, the Sale Agreement is liable to be canceled/rescinded. While the Appellant came with a defense that the seller of the Suit House is not the owner, therefore he did not pay the remaining sale consideration, hence non-performance of the Sale Agreement cannot be attributed to him. During the trial, the

Respondents presented strong and convincing evidence in support of their claim, and they also succeeded in bringing out admissions from the Appellant's side on record. The respondents produced a cheque, issued by the Appellant for the payment of the remaining sale consideration, which was presented for encashment but the same got dishonored due to insufficient funds. Even otherwise, it is admitted fact that the remaining sale consideration has not been paid yet, for emphasis and ready reference, the relevant portion of written statement of the appellant and admissions of his Special Attorney are reproduced as under:-

> *"As per terms and conditions of said agreement, the plaintiff No.1 bound to transfer the said house in the name of answering defendant or his nominee, but he miserably failed to perform his part of agreement, due to which the answering defendant filed said suit in which the Hon'ble Court passed a direction to the answering defendant to submit pay order of remaining sale consideration but due to domestic problems, the answering defendant unable to appear before the Court and also unable to submit pay order of balance sale consideration due to which the suit of the answering defendant was dismissed under Order XVII Rule 3 CPC vide order dated 17.11.2022."*
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> ***Admission of Special Attorney:***
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> "یہ درست ہیکہ بقایا رقم آج تک ادا نہ کی ہے۔"

8. It is also necessary to mention here that earlier to this suit, a suit for specific performance of the Sale Agreement was filed by the Appellant and in response thereof, both the parties appeared before the learned Trial Court and got recorded their statements, whereby the Respondents stated that they are ready to transfer the Suit House in the name of the Appellant, if remaining sale consideration is paid in two days. In pursuance thereof, the learned Trial Court directed the Appellant to deposit/pay the remaining sale consideration within 15 days, but the Appellant failed to deposit/pay the remaining amount to the Respondent No.1. Finally, the said suit was dismissed.

9. In light of the discussion in the preceding paragraphs, it is established that the Appellant has failed to pay the remaining sale consideration to the Respondent No. 1 on the agreed date as per the Sale Agreement and even he failed to pay the same when he was given opportunity by the Court in his suit for specific performance of the Sale Agreement and due to the Appellant's failure to pay the same, his suit was dismissed. The time was essence of the Sale Agreement dated 28.04.2022, but the Appellant failed to pay the remaining sale consideration as agreed upon despite being given sufficient time and multiple opportunities.

10. The upshot of the above discussion is that the learned Trial Court has effectively addressed each issue framed during the trial, carefully evaluated the evidence presented by both the parties with detailed reasoning and has rightly partially decreed the Suit filed by the Respondents vide the Impugned Judgment and Decree. The learned counsel for the Appellant has failed to point out any illegality or irregularity in the Impugned Judgment and Decree which does not warrant any interference by this Court. Resultantly, the instant Regular First Appeal, being devoid of any merit, is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Sajid/--