JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

F.A.O. NO. 17 OF 2025

MUHAMMAD LATIF.

VS

MUHAMMAD ANWAR BHATTI ETC.

Appellant by	**:**	**Mr. Afzaal Qadeer Satti, Advocate.**
Respondents by	**:**	**Raja Zafar Ullah Dhanial, Advocate.**
Date of hearing	**:**	**07.05.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Appeal, the Appellant [Muhammad Latif] has assailed the Order dated 12.06.2024 ("**Impugned Order**") passed by the learned Civil Judge 1st Class (West), Islamabad ("**Trial Court**"), whereby the Appellant's application under Order XXXIX, Rules 1 & 2, read with Section 151, Code of Civil Procedure, 1908 **("CPC")** was dismissed.

2. The brief facts of the case are that the Appellant/Plaintiff filed a suit for recovery of damages of Rs. 27,000,000/- along with bank markup till realization of the actual amount, against the Respondents/Defendants before the learned Trial Court on 17.02.2023. Along with the said suit, the Appellant/Plaintiff filed an application under Order XXXIX, Rules 1 & 2, CPC. The said application was contested by Respondents No. 1 & 2/Defendants No. 1 & 2 by filing a written reply. The learned Trial Court, after hearing arguments of learned counsels for the parties, dismissed the application under Order XXXIX, Rules 1 & 2, CPC, vide the Impugned Order dated 12.06.2024. Being aggrieved by the Impugned Order, the Appellant has filed the instant Appeal.

3. The learned counsel for the Appellant/Plaintiff argued that the Impugned Order is contrary to the facts, law, and documentary evidence on record, and thus deserves to be set aside. The Civil Court failed to appreciate the merits of the case, including that the Appellant is a *bona fide* purchaser who paid full consideration under the agreement dated 17.01.2007. The Impugned Order, passed without proper consideration of the record, has resulted in a miscarriage of justice and infringes the

Appellant's rights, especially as the main suit is still pending. The Appellant has a strong *prima facie* case, with the balance of convenience and potential for irreparable loss in his favor. The dismissal of the stay application was arbitrary, based solely on a recovery amount of Rs. 27,000,000/-, and ignored key issues, including the prayer for the transfer of property. The Court acted beyond its jurisdiction and failed to apply the judicial mind, rendering the order unsustainable. A related case is pending before the Civil Court-XXIX at Islamabad (West), and due notice has been issued under Order XLIII, Rule 3, CPC. Lastly, learned counsel prayed that the Impugned Order dated 12.06.2024 passed by the learned Civil Court may kindly be set aside and the Application under Order XXXIX, Rules 1 & 2, CPC filed by the Appellant may be allowed.

4. On the other hand, the learned counsel on behalf of Respondents No. 1 & 2 argued that the learned Trial Court has passed a well-reasoned order; that the Impugned Order does not suffer from any illegality or irregularity and does not call for any interference. Finally, the learned counsel prayed for 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. The Appellant filed a suit for recovery of damages of Rs. 27,000,000/- along with bank markup till realization of the actual amount, on the ground that he entered into an agreement to sell dated 17.01.2007 with the Respondents and purchased two files of plots in Supreme Court Employees Cooperative Housing Society and paid the whole amount. The plots remained in the name of the Respondents as the transfer was banned in the Society for the last 15 years, which ban was subsequently lifted. The Appellant approached the Respondents for transfer of the said plots in his name or that of his nominee, but the Respondents made lame excuses and failed to do so. The Appellant sold one file to one Muhammad Farooq, but the Respondents, due to natural greed and lust, hatched a conspiracy against the Plaintiff with *mala fide* intention and ulterior motives, and failed to transfer the aforementioned files in favor of the Appellant or his nominee. As a result, the Appellant suffered mental agony, torture, stress, and loss of reputation, and thus claimed damages. Along with the main suit, he filed an Application under Order XXXIX, Rules 1 & 2, CPC, seeking to restrain the Respondents from alienating the suit files, transferring, gifting,

mortgaging, executing any sale agreement, selling the suit files/plots to anyone else except the Appellant, or from creating any hindrance, threatening, harassing, pressurizing, blackmailing, or from taking any other prejudicial action affecting the lawful rights of the Appellant in any manner whatsoever, until the final decision of the main suit.

7. The learned Trial Court, while deciding the Application under Order XXXIX**,** Rules 1 & 2, CPC read with Section 151, CPC, dismissed it on the ground that the Appellant had filed a suit for recovery of damages and had not sought specific performance of the agreement dated 17.01.2007. The main claim of the Appellant in the suit is for recovery of the amount and damages, and if the injunction is refused, he is not likely to suffer irreparable loss. Superior Courts in numerous judgments have held that monetary loss cannot be held as an irreparable loss. The learned Trial Court rightly observed that all three ingredients are essential for the issuance of a temporary injunction, and if any one of the ingredients is missing, an injunction cannot be granted. An injunction is a form of equitable relief and is to be issued in aid of equity and justice. To obtain an interim injunction, the applicant must establish that he has a good *prima facie* case, the balance of convenience is on his side, and that he would suffer irreparable loss/injury. In the present case, the essential ingredient of irreparable loss is missing; hence, t``he learned Trial Court has rightly decided the application of the Appellant.

8. With the above said observations, the instant Appeal being devoid of any merits is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

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

JUDGE

Sajid/--