JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CIVIL REVISION NO. 183 OF 2025

CH. TARIQ MEHMOOD

VS

NOOR HUSSAIN

Petitioner by : Ch. Ibrar Hussain, Advocate.

Respondent by : Dr. Anwar Baig, Advocate

Date of hearing : 16.06.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Revision Petition under Section 115 of Code of Civil Procedure, 1908 **("CPC"),** Ch. Tariq Mehmood **("Petitioner/Defendant")** has assailed the Judgment and Decree dated 28.02.2025 **("Impugned Judgment and Decree")** passed by the learned Additional District Judge, Islamabad-West whereby the appeal filed by the Petitioner/Defendant against Judgment and Decree dated 14.02.2024 passed by learned Senior Civil Judge-1 West, Islamabad, has been dismissed.

2. The brief facts giving rise to the instant Civil Revision are that Noor Hussain **("Respondent/Plaintiff")** filed a suit for cancellation of the sale agreement dated 19.06.2019 before the learned Trial Court, contending therein that he entered into the sale agreement dated 19.06.2019 for sale of Shop No. 7 and Basement No. 7 at Akash Plaza, Sector F-10 Markaz, Islamabad, with a total consideration of Rs. 29 million, whereunder he had received Rs. 10 million as earnest money. A period of two months with a 15-days grace period was fixed for payment of the remaining consideration amount, which expired on 04.09.2019. After expiry of the prescribed period, the Respondent/Plaintiff repeatedly asked the Petitioner/Defendant to pay the remaining consideration amount, but to no avail.

3. The Petitioner/Defendant contested the suit by filing a written statement. Vide order dated 19.11.2020, passed by the learned Senior Civil Judge-I (Admin), West-Islamabad, the suit of the Respondent/Plaintiff was decreed. Thereafter, both parties filed RFA No. 386/2020 and RFA No. 414/2020 against the order dated 19.11.2020, and the case was remanded to the learned Trial Court. On 05.10.2022, issues were

framed by the learned Trial Court, and the case was fixed for the Respondent's/Plaintiff's evidence. The Respondent/Plaintiff appeared in the witness box as PW-1 and produced his affidavit as Ex.P-1, legal notice as Ex.P-2, receipt of TCS as Ex.P-3, and sale agreement as Ex.P-4. The Petitioner/Defendant appeared as DW-1 and produced the agreement as Ex.D-1. The learned Trial Court, after hearing the parties' arguments, decreed the Respondent/Plaintiff's suit as prayed for, vide Judgment and Decree dated 14.02.2024. Feeling aggrieved by the Judgment and Decree dated 14.02.2024, the Petitioner/Defendant filed an appeal before the learned Additional District Judge, Islamabad-West, which was dismissed vide the Impugned Judgment and Decree. Being aggrieved thereby, the Petitioner/Defendant has filed the instant petition.

4. The learned counsel for the Petitioner/Defendant submits that the Impugned Judgment and Decree, passed by the learned Appellate Court in a hasty and arbitrary manner, is not sustainable in law and is liable to be set aside. The learned Appellate Court failed to follow due legal procedure, did not consider the payment of Rs. 10,000,000/- as earnest money by the Petitioner/Defendant, nor addressed the Petitioner's/Defendant's application regarding the remaining installment. The Impugned Judgment and Decree lacks proper reasoning, ignores material facts, including the Respondent's/Plaintiff's failure to issue the NDC, and misappreciates the law and evidence. The learned Appellate Court's findings are based on assumptions rather than facts and law, causing potential irreparable loss to the Petitioner/Defendant. Therefore, the Petitioner/Defendant prays that the Impugned Judgment and Decree be set aside.

5. The learned counsel for the Respondent/Plaintiff submitted that the Petitioner/Defendant failed to pay the remaining consideration amount within the stipulated period; that time was the essence of the agreement; that the learned Appellate Court has rightly passed the Impugned Judgment and Decree; and that **the** Impugned Judgment and Decree does not suffer from any illegality or irregularity. Lastly, the learned counsel prayed for dismissal of the present petition.

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

7. Upon a careful appraisal of the record and the arguments advanced by both learned counsel, it is established that the sale agreement dated 19.06.2019 executed between the parties included a clear clause regarding the timeline for performance. Under the agreement, the Petitioner/Defendant was to pay the remaining balance of Rs. 19 million within a period of two months, with an additional 15 days as a grace period. This extended deadline expired on 04.09.2019, but the Petitioner/Defendant failed to pay the remaining sale consideration. The courts have consistently held that failure to perform within the agreed time amounts to a breach that entitles the non-defaulting party to relief, including cancellation of the agreement. Reliance is placed on the judgment of the august Supreme Court of Pakistan titled *Mst. Samina Riffat and others Vs. Rohail Asghar and others* **(2021 SCMR 7)**, the relevant portion of which is reproduced hereunder:-

> *"Generally, in respect of sale of immovable property, time is not considered as of the essence of the contract. However, parties may consciously strike a deal to make time essence of the contract by providing certain consequences for breach of reciprocal obligation casted upon them, in such cases, time is treated as essence of the contract, In instant case, as could be noted that, where vendor backs out from the deal and avoid to execute conveyance deed, clause 5 of the agreement stipulated that "then they shall pack back the entire sale consideration already received from the purchaser along with an equal amount as compensation." Likewise for failure of the vendee to perform his part of the obligation in terms of clause 6 "in event he backs out from this deal or fails to pay the remaining consideration within prescribed period, then this deal will be considered cancelled and the received earnest money will be forfeited".*

8. The Petitioner/Defendant paid only Rs. 10 million as earnest money and failed to pay the remaining Rs. 19 million within the stipulated time. The record is devoid of any evidence to show that the balance amount was paid or deposited at any point before or even shortly after expiry of the contractual deadline. The Respondent/Plaintiff served a Legal Notice (Ex. P-2) and produced a dispatch receipt (Ex. P-3). The Petitioner/Defendant, during his cross-examination, admitted that he had never issued any written notice to the Respondent/Plaintiff regarding the performance of his part of the agreement. Moreover, the conduct of the Petitioner/Defendant reflects an absence of *bona fide* intent to fulfill his contractual obligations. Notably, despite alleging readiness and willingness to perform the contract, the Petitioner/Defendant did not file a suit for specific performance of the agreement. The failure to pursue this remedy over the course of several years is a material omission that weighs against the Petitioner/Defendant. If he was indeed

interested in completing the sale, a suit for specific performance was the proper legal course, yet no such action was ever initiated.

9. It is also significant that the Petitioner/Defendant was provided multiple opportunities to fulfill his payment obligations, both within and after the contractual period, but he failed to do so, which shows that he did not have funds for the purchase of the shop in question. Even during the course of litigation, and after the case was remanded for re-trial, the Petitioner/Defendant could have deposited the balance amount; however, the record shows continued inaction and delay on his part, with no substantive effort to demonstrate performance or intention to perform. This continued default, despite opportunities, further justifies the decree in favor of the Respondent/Plaintiff.

10. The findings of both the learned Trial Court and the learned Appellate Court are concurrent and well-reasoned. The learned Trial Court, after recording evidence and hearing the parties, passed a detailed Judgment dated 14.02.2024, allowing the Respondent's/Plaintiff's suit. The learned Appellate Court, vide Impugned Judgment and Decree, reviewed the record and affirmed the Trial Court's conclusions. There is no misreading or non-reading of evidence, or procedural illegality in the Impugned Judgment and Decree. The conclusion drawn by the Appellate Court is based on cogent reasoning, supported by the terms of the contract and the parties' conduct.

11. In view of the foregoing, it is concluded that the Petitioner/Defendant failed to perform his contractual obligations within the stipulated time, did not pursue any remedy for enforcement, and remained inactive despite being given ample opportunities. The Impugned Judgment and Decree does not suffer from any legal infirmity. Accordingly, the instant Civil Revision Petition, being devoid of any merits, is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

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

JUDGE

Sajid"