JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A.No.136/2005
Haji Nawaz and others
Versus
M/s Alitas (Pvt.) Limited

Date of Hearing: 03.10.2019
Appellants by: Mr. Usman Ali Chaudhry, Advocate
Respondent by: Syed Ishtiaq Haider, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant regular first appeal, the appellants impugn the order and decree dated 30.05.2005 passed by the Court of the learned Senior Civil Judge, Islamabad, whereby the plaint in the suit for *"specific performance of contract and permanent injunction"* filed by them, was rejected under Order VII, Rule 11 C.P.C.

2. The facts essential for the disposal of the instant appeal are that on 29.10.2003, an agreement to sell was executed between the appellants and the respondent, whereby the latter agreed to sell land measuring 370 *kanals* situated in different *khasra* numbers in Revenue Estates *Padhana Kalan, Jhangi Syedan* and *Tarnol*, Islamabad **("the suit land")** for a sale consideration of Rs.2,20,000,00/-, out of which an amount of Rs.20,00,000/- was paid as earnest money and the balance amount was to be paid on/or before 01.03.2004. It is an admitted position that possession of the suit land was handed over to the appellants on the date of the signing of the said agreement to sell.

3. It was also agreed between the parties to the said agreement to sell that if the respondent fails to complete the deal by executing a sale deed of the suit land in favour of the appellants, the latter will have the right to have the transaction enforced in *toto* through the Court of law. The parties had also agreed that if the appellants failed to pay the balance sale consideration on/or before 01.03.2004, the respondent will have the right to confiscate the earnest money/part payment received by the respondent. On 27.02.2004, a legal notice is said to have

been issued on behalf of the appellants to the respondent/company requiring the latter to have the suit property transferred to the appellants. The said legal notice was responded to by the respondent/company.

4. Dispute between the appellants and the respondent caused the former to file a suit for specific performance and permanent injunction against the latter on 28.06.2004. The respondent contested the said suit by filing a written statement. In the said written statement, a preliminary objection was taken to the maintainability of the suit primary on the ground that Mr. A.R. Pervez, the former Chief Executive Officer **("C.E.O.")** of the respondent/company who had signed the agreement to sell had not been authorized to execute such an agreement. In the said written statement, it was also pleaded that the agreement to sell was executed after the Board of Directors of the respondent/company had passed resolution dated 25.10.2003, whereby all powers given to Mr. A.R. Pervez were recalled/rescinded/withdrawn.

5. Although the respondent/company did not file an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 **("C.P.C.")**, the learned Civil Court, vide order and decree dated 30.05.2005, rejected the plaint in the appellants' suit. The said order and decree has been assailed by the appellants in the instant appeal.

6. Learned counsel for the appellants, after narrating the facts leading to the filing of the instant appeal, submitted that the learned Civil Court could not have rejected the plaint while deciding an application under Order XXXIX, Rules 1 and 2 C.P.C.; that the learned Civil Court erred by not appreciating that Mr. A.R. Pervez who had signed the agreement to sell on behalf of the respondent/company was the C.E.O. of the said company; that in the said agreement to sell, it was clearly mentioned that Mr. A.R. Pervez was lawfully authorized to sign and execute the agreement to sell vide resolution dated 25.10.2003; that the respondent/company is a private limited company registered with the Securities and Exchange Commission of Pakistan, and

the internal affairs of the company are not something that the appellants were concerned with; that the respondent/company was well aware as to the execution of the agreement to sell since in part performance of the same, possession of the suit land was handed over to the appellants; that the suit land is still in the appellants' possession; that in part performance of the said agreement, an amount of Rs.20,00,000/- has been paid to the respondent/company which is still being utilized by the said company; and that whether or not Mr. A.R. Pervez had the requisite authority to enter into the agreement to sell was a matter of evidence, and the same could not have been decided with undue haste and without the recording of evidence. Learned counsel for the appellants prayed for the appeal to be allowed and for the impugned order and decree to be set-aside. In making his submissions, learned counsel for the appellants placed reliance on the law laid down in the judgments reported as *2012 CLC 1998, 2012 CLC 1740, 2011 CLC 1946, 2011 CLC 135, 1994 SCMR 826* and *1996 CLC 1892*.

7. On the other hand, learned counsel for the respondent/company submitted that the impugned order and decree passed by the learned Civil Court does not suffer from any legal infirmity; that although Mr. A.R. Pervez, who had signed and executed the agreement to sell with the appellants, had remained the C.E.O. of the respondent/company but his power to the sell land owned by the respondent/company was withdrawn vide resolution passed by the Board of Directors on 25.10.2003; that even under the earlier resolution dated 08.10.1994, Mr. A.R. Pervez was not authorized to sell the respondent/company's land unless such sale was approved by a 2/3rd majority of the Board of Directors of the respondent/company; that the said agreement to sell was not enforceable under the provisions of the Specific Relief Act, 1877; and that the said agreement to sell could not be treated as a contract according to the provisions of the Contract Act, 1872. Learned counsel for the respondent/company prayed for the appeal to be dismissed.

8. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 5 and need not be recapitulated.

9. We have noticed that the learned Civil Court had, vide impugned order and decree dated 30.05.2005, rejected the plaint in the appellants' suit for specific performance etc. primarily on the ground that Mr. A.R. Pervez, the former C.E.O. of the respondent/company had not been authorized by a resolution of the Board of Directors of the respondent/company to sell any land owned by the respondent/company.

10. Now in the agreement to sell dated 29.10.2003, it has explicitly been stated that Mr. A.R. Pervez has been lawfully authorized to sign and execute the said agreement vide resolution dated 21.01.2003 of the Board of Directors of the respondent/company. It was asserted on behalf of the respondent/company that Mr. A.R. Pervez was removed from the position of the C.E.O. of the said company through resolution dated 25.10.2003, and therefore was not authorized to have executed the agreement to sell dated 29.10.2003.

11. Whether Mr. A.R. Pervez was authorized to sell the respondent/company's land through a resolution duly passed by the Board of Directors of the respondent/company; and whether the agreement to sell dated 29.10.2003 had been executed after Mr. A.R. Pervez had been removed from the position of the C.E.O. of the respondent/company; and whether Mr. A.R. Pervez's authority to sell the respondent/company's land had been revoked/withdrawn by a resolution of the Board of Directors of the respondent/company, were in our view, matters that could have been decided by the learned Civil Court after recording of evidence. These disputed factual controversies could not have been decided while adjudicating upon the application for interim injunction and/or any other interlocutory application.

12. It ought to be borne in mind that if indeed Mr. A.R. Pervez's authority to sell the respondent/company's land had been revoked by the respondent/company's Board of Directors in accordance with the law, then how come the respondent/company could part with possession of the suit land which is admittedly in the appellants' possession. Furthermore, if the said agreement to sell had been executed without due authorization, it does not appeal to reason as to why the respondent/company did not file a suit for the cancellation of the said agreement. Since the respondent/company had replied to the legal notice dated 27.02.2004 sent on behalf of the appellants, the said agreement was in the respondent/company's knowledge ever since there.

13. In view of the above, the instant appeal is allowed. The impugned order and decree dated 30.05.2005, is set-aside. The matter is remanded to the learned Civil Court to decide the suit after framing of issues from the divergent pleadings of the parties, and after recording of evidence. Needless to observe that the learned Civil Court while deciding the suit shall not, in any manner, be influenced by the observations made herein.

(CHIEF JUSTICE) **(MIANGUL HASSAN AURANGZEB)**
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(CHIEF JUSTICE) **(JUDGE)**

*Qamar Khan**

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