IN THE HIGH COURT OF SINDH AT KARACHI

Second Appeal No.130 of 2019

(*Muhammad Atif v. Hassan Associates Ltd & Others*)

Before:

Sana Akram Minhas J

Appellant	Muhammad Atif Through, Mr. Farmanullah Khan, Advocate
Respondent No.1	Hassan Associates Ltd Through, Mr. Ghulam Nabi Shar, Advocate
Respondent No.2	National Investment Trust Ltd None
Respondent No.3	Cantonment Ltd None
Respondent No.4	Shabbir & Co. None
Respondent No.5	Ms. Farida Sirajuddin None
Respondent No.6	S. Naeem Ali None
Respondent No.7	Grand Leisure Corporation None
Date of Hearing:	**6-5-2026**
Date of Decision:	**7-8-2026**

O R D E R

1. **Sana Akram Minhas, J**: Through the present Appeal, preferred under Section 100 of the *Code of Civil Procedure, 1908* **("CPC")**, the Appellant assails:

i) The Order dated 29.8.2017 passed by the learned Trial Court **("Trial Court's Impugned Order")**, whereby the Respondent No.1's application under Order 7 Rule 11 CPC was allowed, and the Appellant's plaint in its suit for specific performance was rejected;

ii) The Judgment dated 20.4.2019 and Decree dated 15.5.2019 passed by the learned first Appellate Court **("Impugned Judgment and Decree")**, whereby the Appellant's Civil Appeal No.172/2017 was dismissed with a direction to the Respondent No.1 to refund to the Appellant the principal sum of Rs.500,000/- (*Rupees Five Lacs*), paid on 9.3.1982.

<u>Facts</u>

2. Sometime in 1982, the Appellant entered into an arrangement with Respondent No.1 for the purchase of seventeen (17) shops in the latter's twin-tower project known as "*Hasan Terrace*", situated at Khyaban-e-Roomi, Clifton, KDA Scheme No.5, Karachi, and on 9.3.1982 paid Rs.500,000/- as part payment towards the sale consideration against a receipt. As no formal agreement of sale was executed, the parties are at variance as to the precise terms and conditions governing the transaction.

3. The Appellant originally instituted Suit No.549 of 1982 (*Muhammad Atif v. Hassan Associates Ltd & Others*) before this Court in its Original Civil Jurisdiction, inter alia, seeking specific performance. Following the enhancement of the pecuniary jurisdiction of the District Courts, the said Suit was subsequently transferred to the Trial Court and renumbered as Civil Suit No.167 of 2003 (*Muhammad Atif v. Hassan Associates Ltd & Others*)[1]. After

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[1] <u>Prayer Clauses in the Amended Plaint</u>: It is therefore, prayed that this Honourable Court may be pleased to pass judgment and decree in favour of the plaintiff against the defendants for:

i. Declaration that the Defendant's demand for the payment of balance consideration without.

a) Completing the shops in all respects and handing over the possession thereof with competent authorities' permission to occupy.

b) Arranging loan the 50% consideration, and.

c) Executing and registering an irrevocable General Power of Attorney in favour of the plaintiff or his nominee, empowering him to dispose of and deal with the suit shop, is illegal, wrongful and of no effect and they are not entitled to make the same.

ii. Permanent injunction restraining the defendants from alienating, transferring and/or disposing of the suit shops or any of them to any other person in any manner.

iii. Specific performance of the Contract of Sale of shops No.SA-1 to SA-16 and SC-1 in the Shopping Centre of defendants' building project, namely, Hasan Terrace, built on Plot No.FL/10, Khyaban-e-Roomi, K.D.A. Scheme No.5, Kehkashan, Clifton, Karachi in accordance with the terms and conditions, mentioned in para 2 above.

iii-A. To cancel the sale deed executed by defendant No.1 in favour of the defendant No.7, registered at No.298, Book No.1, dated 18-01-1988 with Sub-Registrar-T, Div-II, Karachi.

ALTERNATIVELY FOR:

a) The refund of Rs.5,00,000/- (Rupees Five Lac only) paid by the plaintiff to the defendants on 9.3.1982 against receipt with interest at 14% p.a. from that date till realization, and.

b) Damages at Rs.10,00,000/- (Rupees Ten Lac only) with interest at 14% p.m. from the date of suit till realization.

iv. Costs.

v. Any other/further relief, which this Honourable Court may deem fit under the circumstances of the case.

the parties had led their respective evidence, the Trial Court rejected the plaint under Order 7 Rule 11 CPC on the ground that it disclosed no cause of action, on the basis that the Appellant had failed to deposit a sum of Rs.2,000,000/- (*Rupees Two Million*) in court as directed by an order dated 15.12.1982.

4. In appeal, the first Appellate Court dismissed the Appellant's Civil Appeal challenging the rejection of its plaint, but directed the Respondent No.1 to refund to the Appellant the principal sum of Rs. 500,000/- paid on 9.3.1982. The said direction has attained finality, as the Respondent No.1 never challenged the same.

<u>Respondent No.1's Admission Of Receipt Of The Amount</u>

5. The receipt by Respondent No.1 of the sum of Rs.500,000/- on 9.3.1982 stands expressly admitted in its application under Order 7 Rule 11 CPC. The receipt dated 9.3.1982 (Exhibit P-3), issued by the Respondent No.1 acknowledging the said payment, was produced before the Trial Court and forms part of the record.

6. Learned Counsel for Respondent No.1 also candidly acknowledged before this Court that Respondent No.1 had received the said amount and was willing to return the same to the Appellant.

<u>Scope Of Adjudication</u>

7. More than four decades have elapsed since the Respondent No.1 received the sum of Rs.500,000/- on 9.3.1982. To date, the said amount has neither been refunded to the Appellant nor deposited before any Court.

8. The Respondent No.1 has not challenged the first Appellate Court's Impugned Judgment and Decree. Consequently, the direction requiring it to refund the principal sum of Rs.500,000/- has attained finality. Its case, however, is that its liability is confined to refund of the principal sum alone and that no further monetary amount, whether by way of mark-up or otherwise, is payable.

9. The only surviving controversy, therefore, is whether the Appellant is entitled to any monetary enhancement over and above the refund of the principal amount of Rs.500,000/-. The said controversy was identified by this Court in its order dated 11.3.2020, which reads as follows:

11.03.2020

Mr. Farmanullah Khan, advocate appellant.
Mr. Shoaib Ali Khan, advocate for Respondents.

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Learned counsel for the appellant states that the controversy is reduced to the level whether the refund of Rs.5,00,000/- which was token money paid by the appellant should be refund only to the extent of Rs.5,00,000/- or it should be increased for certain reasons as per following case law;

i. Hamood Mehmood Vs. Mst. Shabana Ishaque and others (2017 SCMR 2022)

ii. Haji Zahoor and others Vs. Khalid Latif and others (2016 MLD 1623)

iii. Muhammad Shoaib Vs. Jamila Khatoon and 4 others (2015 YLR 1213)

iv. Saeed Ullah Khan Vs. Muhammad Khalid and 3 others (2018 CLC 648)

v. Mrs. Nusrat Kausar Gillani Vs. Aftab Ahmed Khan and another (2016 YLR 1690)

vi. Muhammad Abdur Rehman Qureshi Vs. Sagheer Ahmad (2017 SCMR 1696)

vii. Muhammad Iqbal Vs. Mehboob Alam (2015 SCMR 21)

viii. Mst. Mehmooda Begum Vs. Syed Hassan Sajjad and 2 others (PLD 2010 SC 952)

ix. Malik Bahadur Sher Khan Vs. Haji Shah Alam and others (2017 SCMR 902)

Only on these case laws parties are directed to come forward on the next date of hearing to explain in the given facts of the case, which case law is applicable or not.

To come up on 02.4.2020.

10. By order dated 23.4.2026, Counsel for Respondent No.1 was afforded an opportunity to obtain instructions regarding the possibility of an amicable settlement, failing which the Appeal was to be heard and decided on the only remaining controversy recorded in the order dated 11.3.2020.

11. On 6.5.2026, Counsel for Respondent No.1, upon instructions, informed the Court that an amicable settlement was not possible. The Appeal was accordingly heard on the aforesaid sole controversy, whereafter judgment was reserved.

<u>Question For Determination</u>

12. The question that falls for determination is whether the Appellant is entitled only to the refund of the principal sum of Rs.500,000/- (*Rupees Five Lacs*), being the part payment made to Respondent No.1 on 9.3.1982, or whether, in

the facts and circumstances of the case, the Appellant is entitled to any monetary relief over and above the principal sum, whether by way of mark-up or other appropriate monetary enhancement.

Decision

13. The matter has been heard and the available record perused.

14. The first Appellate Court declined to award the damages claimed by the Appellant or any mark-up solely on the grounds that there was neither a written agreement between the parties stipulating such payment nor any witness to prove such entitlement. With respect, the said reasoning is misconceived and legally unsustainable. The payment of Rs.500,000/- by the Appellant to Respondent No.1 on 9.3.1982 was never a disputed question of fact requiring proof through oral evidence. Rather, it stands expressly admitted by the Respondent No.1 in its application under Order 7 Rule 11 CPC and is further evidenced by the receipt dated 9.3.1982 (Exhibit P-3).

15. The absence of a contractual stipulation regarding mark-up did not, by itself, conclude the matter, particularly when the plaint specifically sought, in the alternative, refund of the said amount together with mark-up at the rate of 14% per annum from 9.3.1982 till realization. The first Appellate Court was, therefore, required to consider whether, on the admitted facts and the applicable principles governing restitution and appropriate monetary relief, the Appellant was entitled to any monetary enhancement. Its failure to undertake that enquiry does not, however, preclude this Court from moulding the relief, where the facts so warrant, to secure the ends of justice between the parties.

16. The present case, therefore, is not concerned with the enforcement of a contractual stipulation for payment of mark-up, but with the appropriate monetary relief to which the Appellant may be entitled, having regard to the principles of restitution, equity and justice. The question is whether, in moulding the relief, this Court may grant such monetary enhancement as the circumstances of the case warrant.

17. It is beyond dispute that Respondent No.1 received from the Appellant the sum of Rs.500,000/- on 9.3.1982 towards the proposed transaction. As stated above, the said payment is evidenced by the receipt dated 9.3.1982 (Exhibit P-3) and stands expressly admitted in Respondent No.1's application under Order 7 Rule 11 CPC.

18. It is equally undisputed that the said amount has remained with Respondent No.1 ever since 9.3.1982. During the intervening period of more than four

decades, Respondent No.1 neither refunded the amount to the Appellant nor made any serious endeavour to deposit the same before the Trial Court, the first Appellate Court or this Court. The Respondent No.1 thus continued to enjoy the use and benefit of the Appellant's money throughout this period. The Appellant was, correspondingly, deprived not only of the purchasing power of that money as it declined over time, but also of the opportunity to use, invest or otherwise deploy it during this prolonged period. Simultaneously, the purchasing power of the Rupee has substantially eroded, while immovable property values have escalated manifold. In these circumstances, to confine the Appellant to recovery of only the nominal amount paid in 1982 would neither afford effective restitution nor meet the ends of justice.

19. The direction of the first Appellate Court requiring Respondent No.1 to refund the principal amount of Rs.500,000/- has attained finality, the Respondent No.1 having chosen not to challenge that direction. The question that now falls for determination, therefore, is whether the Appellant should be confined to recovery of the principal amount alone or whether the facts of the case warrant an appropriate monetary enhancement in addition thereto.

20. In the facts and circumstances of the present case, the Appellant cannot be confined to recovery of the principal amount alone. To direct repayment today of only the principal sum received in March 1982 would permit Respondent No.1 to retain, without any corresponding consequence, the benefit of having had the use of the Appellant's money for more than four decades, while the Appellant remained deprived of the opportunity to use, invest or otherwise deploy that money during the same period. It would further require the Appellant to accept the same nominal sum notwithstanding sustained inflation, substantial depreciation in the purchasing power of the Rupee and an extraordinary escalation in immovable property values. Such a result would not afford effective restitution or accord with equity, good conscience and justice. While the Appellant has claimed mark-up at the rate of 14% per annum, this Court is not confined to that particular form of relief and may, in moulding[2] the relief, award such monetary enhancement as the facts and circumstances of the case warrant. Indeed, a prayer made more than four decades ago cannot, in the circumstances of the present case, be regarded as an adequate measure of relief today, having regard to the factors enumerated above and the substantial erosion in the value of money during this period.

[2] PLD 1978 SC 220 (*Amina Begum v. Ghulam Dastgir*); 2005 CLC 441 (*Mehrab Khan v. Province of Sindh*)

21. The authorities[3] relied upon by the Appellant include cases recognising that, even where specific performance is declined on account of the vendee's own conduct, such refusal does not, in appropriate circumstances, preclude the award of substantial monetary relief in respect of the money paid by the vendee. They further demonstrate that the superior Courts have, in appropriate cases, moulded the relief by awarding monetary enhancement over and above the amount originally paid, having regard to the circumstances of the case, prolonged deprivation and the need to prevent unjust enrichment. The following authorities illustrate the application of this principle:

i) In ***Liaquat Ali Khan v. Falak Sher*** **(PLD 2014 SC 506)**, the Supreme Court (vide its decision dated 28.1.2014) allowed the vendor's appeal and dismissed the vendee's suit for specific performance on account of the vendee's own default. Nevertheless, in respect of Rs.30,000/- paid under the agreement of sale in 1979 and deposited in Court in 1982, the Court awarded compensation of Rs.5 million.

ii) In ***Zahoor-ud-Din v. Khalid Latif*** **(2016 MLD 1623)**, although the suit for specific performance was held to be unenforceable, a Division Bench of the Lahore High Court (vide its decision dated 10.6.2014), observing that the legal heirs of the vendor had retained the earnest money of Rs.900,000/- paid in 1999, and taking into account the substantial devaluation of the currency and the enormous escalation in property values, directed the respondents to refund an amount equivalent to the present value of the quantity of gold that could have been purchased with Rs.900,000/- on 13.3.1999.

iii) In ***Nusrat Kausar Gillani v. Aftab Ahmed Khan*** **(2016 YLR 1690)**, although the vendee's suit for specific performance was dismissed, the Islamabad High Court (vide its decision dated 8.3.2016) directed payment of double the earnest money by requiring refund of Rs.3 million against Rs.1.5 million received in July 2003.

iv) In ***Bahadur Sher Khan v. Shah Alam*** **(2017 SCMR 902)**, the Supreme Court (vide its decision dated 7.3.2017), while allowing the vendor's appeal and dismissing the suit for specific performance, directed payment of Rs.3 million as compensation in addition to refund of the Rs.2 million deposited by the vendee, noting, inter alia, that no effort had been made by the vendor to return the amount received.

v) In ***Muhammad Abdur Rehman Qureshi v. Sagheer Ahmad*** **(2017 SCMR 1696)**, the Supreme Court (vide its decision dated 25.7.2017) declined specific performance because of the vendee's conduct. Nevertheless, observing that the vendee's funds had remained blocked since the year 2000, it directed release of the deposited amounts of Rs.5.2 million and Rs.1 million together with the returns

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[3] PLD 2010 SC 952 (*Mehmooda Begum v. Hassan Sajjad*); PLD 2014 SC 506 (*Liaquat Ali Khan v. Falak Sher*); 2015 SCMR 21 (*Muhammad Iqbal v. Mehboob Alam*); 2016 MLD 1623 (*Zahoor-ud-Din v. Khalid Latif*); 2016 YLR 1690 (*Nusrat Kausar Gillani v. Aftab Ahmed Khan*); 2017 SCMR 902 (*Bahadur Sher Khan v. Shah Alam*); 2017 SCMR 1696 (*Muhammad Abdur Rehman Qureshi v. Sagheer Ahmad*); 2018 CLC 648 (*Saeedullah Khan v. Muhammad Khalid*); 2019 CLC 1227 (*Mrs. Bilquis Mohsin Butt v. Ghulam Rasool Unnar*)

> <u>accrued thereon, and further awarded</u> compensation of Rs.10 million. The Court specifically took into account the depreciation in the value of money, the effect of inflation, the rate of return on investment and the passage of time in determining the compensation.

22. These authorities are also significant in view of the periods for which the vendees' monies remained retained or blocked, which were considerably shorter than the more than four decades for which the Appellant's money has remained with the Respondent No.1. The prolonged retention of the Appellant's money, therefore, assumes particular significance in determining the appropriate monetary relief.

23. The lapse of more than four decades cannot be viewed merely as the passage of time. During this period, economic conditions have undergone a marked transformation, with sustained inflation, erosion in the purchasing power of the Rupee, and the extraordinary escalation in immovable property values substantially altering the economic landscape. These considerations assume even greater significance in the present case, where the subject property is situated on Khyaban-e-Roomi, Clifton, KDA Scheme No.5, Karachi, a prime and one of the city's most valuable commercial localities. Consequently, the nominal sum of Rs.500,000/- paid in 1982 cannot, in any meaningful economic sense, be equated with the same nominal amount today.

24. The extent of the economic erosion suffered by the Appellant may be appreciated by way of illustration. Had the sum of Rs.500,000/- paid on 9.3.1982 been measured by reference to the value of gold[4] prevailing at that time, its present-day equivalent would be substantially greater than the original amount. This comparison is referred to solely to illustrate the magnitude of the erosion in the economic value and purchasing power of the Appellant's money over more than four decades.

25. No inflexible formula can be prescribed for determining the appropriate monetary relief, if any; the determination necessarily depends upon the facts and circumstances of each case and requires a considered exercise of judicial discretion. Having regard to the admitted retention of the Appellant's money since 9.3.1982, the uninterrupted enjoyment of its benefit by Respondent No.1 for more than four decades, the Appellant's consequent loss of the opportunity to use or deploy that money, the absence of any refund or deposit before any Court, the substantial erosion in the purchasing power of the Rupee, the extraordinary appreciation in immovable property values, and the principles emerging from the aforesaid authorities, this Court considers it just, fair and reasonable to award the Appellant a monetary enhancement of

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[4] 2016 MLD 1623 (*Zahoor-ud-Din v. Khalid Latif*)

Rs.70,000,000/- (*Rupees Seventy Million*). The amount so awarded is not intended to represent a mathematical computation of the Appellant's loss or the full present-day economic equivalent of the sum paid in March 1982, but represents a restrained and considered exercise of judicial discretion, having regard to the circumstances of the case and the need to ensure that the Appellant is not confined to a mere nominal refund.

Conclusion

26. In light of the foregoing, this Appeal is ***allowed*** to the aforesaid extent, with costs. The Trial Court's Impugned Order dated 29.8.2017 (rejecting the plaint) is set aside, and the first Appellate Court's Impugned Judgment dated 20.4.2019 and Decree dated 15.5.2019 are modified accordingly. In addition to the refund of the principal sum of Rs.500,000/- (*Rupees Five Lacs*), the Respondent No.1 shall pay to the Appellant a sum of Rs.70,000,000/- (*Rupees Seventy Million*) by way of monetary enhancement. The aforesaid amounts shall be paid within *thirty-five (35) days* from the date of this Order, failing which the outstanding amount shall carry future mark-up at the rate prescribed by law until realization.

JUDGE