

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Mohammad Abdur Rahman

High Court Appeal No.374 of 2022

[M/s. Visionary Baluchistan Media Corporation v. Mst. Shanaz Abid & 2 others]

1.For hg of main case

2.For hg of CMA No.3663/22

07.10.2025.

Mr. Anwar Hussain, advocate for appellant.

Mr. Khalil Ahmed, advocate for respondent No.1.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: This appeal is filed against an order dated 06.09.2022 rejecting the plaint under Order 7 Rule 11 CPC and decree dated 19.09.2022 in Suit No.852/2021.

2. Record reflects that appellant filed the aforesaid suit, whereas, respondent No. 1 filed Suit No.1228/2017. It was stated, a sale agreement was executed on 19.04.2012 between the parties in respect of property i.e. Plot No.5-F, admeasuring 400 square yards, situated at Block-6, PECHS, Karachi. The said sale agreement gave way to compromise between the parties in Suit No.1701/2009, decided through an order dated 07.11.2012 stipulating that entire balance sale consideration should be paid to respondent No. 1 on or before 07.07.2013.

3. The record further reflects that in terms of the sale agreement, the sale consideration of the property was fixed as Rs.19 Million (Rupees Nineteen Million), out of which, only Rs.14,00,000/- were paid to the vendor/defendant/respondent No. 1 by appellant. In the agreement, the sale consideration was stipulated to be paid before a certain time but the appellant failed to adhere to the conditions and defaulted. The ground to justify the default by the appellant was that respondent No. 1 had no clear

title over the property and that the remaining payment was subject to the clearance of title. When the compromise in Suit No.1701/2009 could not be given effect to by the parties, the appellant filed Suit No.852/2021 for specific performance of contract. This suit was resisted by respondent No.1 on various grounds and in addition an application under Order 7 Rule 11 CPC was filed for rejection of the plaint, which through the impugned order has been allowed. The plaint in Suit No.852/2021 has been rejected, whereas, Suit No.1228/2017 in view of such fact has been dismissed as withdrawn.

4. We have heard the parties. Learned counsel for appellant has admitted that the only payment made by appellant towards the sale consideration amounting to Rs.14,00,000/- was made in the year 2012 in terms of agreement dated 19.04.2012. Thereafter, not a single penny towards sale consideration has been paid by the appellant despite filing of the suit for specific performance of contract. It is not even disputed that meanwhile the price of the subject property has increased manifold. It is not disputed either that the relief of specific performance is discretionary which the Court can deny even in presence of positive evidence in favour of vendee, when the Court is satisfied that such relief is not equitable.

5. Learned single Judge has observed in clear terms in the impugned order that the order passed in earlier suit (Suit No.1701/2009) stipulating compromise between the parties and payment of remaining sale consideration on or before 07.07.2013 had not been complied with even partly by the appellant. Nothing by the appellant has been articulated to even explain such inordinate delay, let alone making efforts to make payment of remaining sale consideration in time. It has also been held by learned single Judge that proviso in the contract stipulating fixed time for making payment of remaining sale consideration has made the time

essence of the agreement. When the time is essence of the agreement, its violation will render the defaulting party disentitled to Court's interference in the shape of discretionary relief.

6. The impugned order further shows that against the appellant rent proceedings were initiated by the respondent earlier, in which, the tentative rent order was passed and appellant was directed to make good of certain amount towards the rent but he failed to comply with the same even though ultimately he was directed to do so by the Supreme Court. While noting such facts, the learned single Judge has also taken into account the fact that the contract between the parties was more than a decade old and worth of the subject property has meanwhile increased manifold; hence, in his view, even such development i.e. property getting hugely costly was sufficient to deny the discretionary relief to the appellant.

7. On the point of limitation, it has been held by learned single Judge that the sale agreement was executed on 19.04.2012 and the plaint was presented on 09.11.2019 after seven years, whereas, under Article 113 of the Limitation Act, appellant had only three years to file suit for seeking enforcement of the contract from the date of refusal. The earlier contract dated 19.04.2012 was novated by the order dated 07.11.2012 disposing of the Suit No.1701/2009 on the basis of compromise, in which, appellant was directed to make good of the remaining sale consideration before a certain date (07.07.2013), but even that appellant failed to comply with.

8. In consideration of all these relevant facts, the learned single Judge has held that the suit of the appellant is hit by Article 113 of the Limitation Act and is apparently barred by time. In lengthy arguments rendered by learned counsel for appellant, he has been unable to present any material scuttling the findings made by learned single Judge in the impugned order. Not only the suit was barred by time but because of failure of the

appellant to adhere to the terms and conditions mentioned in the order dated 07.11.2012, he has made himself disentitled to discretionary relief of specific performance by the respondent.

9. Further, due to failure of appellant to deposit the remaining sale consideration in the Court at the time of instituting the suit, the case of the appellant seeking relief of specific performance got on weaker footings from the very inception. The discretionary relief can be extended to a person whose actions are anchored in *bona fide* while pursuing a contract, and he is seen to be making genuine efforts to perform his part of the agreement. Anyone whose action speaks otherwise will not be held entitled to such a relief. In the present case, relevant material showing genuine efforts of the appellant to adhere to his part of the agreement is lacking. Further, before us no justification has been articulated to warrant inaction of the appellant to file the suit within time firstly, and secondly his failure to deposit the remaining sale consideration within time in the Court even. The plaint has been rightly rejected under Order 7 Rule 11 CPC; hence, we do not find any illegality or error in the impugned order to justify its reversal in this appeal. Consequently, we find this appeal to be without any merit, and accordingly dismiss it along with pending application.

The appeal is disposed of.

JUDGE

JUDGE

HANIF