

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

RA. No. 69 of 2016

DATED **ORDER WITH SIGNATURE OF JUDGE**

25.05.2017

1. For katcha peshi
2. For hearing of MA 498/06

Mr. Rafiq Ahmed Kalwar, Advocate for applicant
Mr. Haresh Chandar, Advocate for respondents

The instant Revision Application was filed against the impugned orders dated 15.1.2016 and 8.3.2016 passed by learned IInd Senior Civil Judge, Mirpurkhas in Execution Application No. 10 of 2014 and passed by learned District Judge Mirpurkhas in C.A. No. 02 of 2016 respectively wherein the learned Appellate court dismissed / disposed of Civil Appeal No. 10 of 2014.

2. When this Revision Application was presented to this court on 28.3.2016 on the same date parties were directed to maintain status quo, however, the applicant was ordered to submit bank guarantee equivalent to balance sale consideration of Rs.2,57,00,000/- (Two Crore Fifty Seven Lacs) to be deposited with the Additional Registrar of this court.

3. The heart of the controversy between the parties is that they reached a compromise in F.C. Suit No. 06 of 2008 which was accordingly decreed through a compromise entered into between the parties of which terms 2 and 3 are of relevance which are reproduced hereunder:-

02. That the defendant No.17 undertakes to abide by terms of said agreement and after the plaintiff No.10 got sale certificate from concerned authority, he (defendant No.17) would get the regular sale deed executed by making payment of balance of consideration within a period of one month as per clause 6 of the agreement.

03. That in case of failure of the defendant No.17 to pay balance of consideration within such period of one month in the court in addition to penalty clause of agreement, the suit shall be deemed to have been decreed for possession and such decree shall be executed without further notice to defendant No.17 and plaintiff No. 7 to 11 shall be put in its possession through Nazir of the court.

4. Learned counsel for the applicant after having gone through the above terms submitted that after making payment of earnest money the defendant No.17 (present applicant) undertook to abide by the terms of the compromise and once the plaintiff No.10 was to receive sale certificate from the concerned authority (NOC) it was incumbent upon the defendant No.17 to make balance payment of Rs.2,57,00,000/- and have the property transferred in his name through a sale deed executed in his favour. Learned counsel contended that as required by the said term No.2 it was pre-requisite for making the final payment that the plaintiff No.10 obtains an NOC from the concerned authority when such NOC was not furnished, for which the defendant No.17 kept on chasing, the applicant filed Execution Application No. 10 of 2014 in F.C. Suit No. 06 of 2008. The plaintiff No.10 filed objections to the said Execution on the ground that notwithstanding NOC being provided or not, the defendant No.17 was required to make balance payment within one month which as per his contentions was not paid, therefore, a request was made that the said Execution Application be dismissed. Vide order dated 15.1.2016, the Hon Senior Civil Judge, Mirpurkhas on the ground that the defendant No.17 having failed to comply with the terms of compromise order dated 12.2.2013 dismissed the Execution Application. The present applicants preferred an appeal but on the same ground that the respondent No.17 had failed to comply, that appeal was also dismissed, hence the present Revision Application.

5. Learned counsel for the applicant after giving background of the case narrowed into clause 2 of the compromise and break them it into three parts. Per counsel in part-A the defendant No.17 undertook to be abide by the terms of the compromise and by part-B the plaintiff No.10 was to get the sale certificate from the concerned authority and per part-C the defendant No.17 (applicant) was to get the sale deed executed by making payment of the balance sale consideration within a period of one month. The counsel contended that since the plaintiff No.10 failed to furnish the sale certificate from the concerned authority therefore, there was no legal or even logical possibility that the balance sale consideration could have been handed over to the plaintiff No.10 as he has to show his readiness and clear title by producing the NOC. It was therefore contended that courts below have completely failed to appreciate the steps involved in the compromise and did not apply their mind and came up with an illogical order which practically was not possible and no legal rational for that outcome could be given.

6. Learned counsel for respondent on the other hand emphasized that clause 2 of the terms of compromise was in respect of NOC and the defendant No.17 was required to make balance payment whether or not the plaintiff No.10 has acquired sale certificate (NOC), he therefore, supported the earlier two orders dated 15.1.2016 and 8.3.2016 of the courts below

7. Heard the counsel and perused the record.

8. From the plain reading of the terms of compromise, it is crystal clear that the balance payment was only to be made at the time of sale deed having been executed which could not have been possible until and unless plaintiff No.10 had obtained the NOC. A specific question to the counsel of respondent was posed as to when did the plaintiff No.10 obtained the NOC, the counsel could not provide the date of NOC, however, admitted that the plaintiff No.10 did get the NOC. When posed with another question as to why such NOC is not attached in the current Revision Application, the counsel had not answers.

9. To me it is a very clear case of greed and dishonesty taken over the plaintiff No.10 who while having agreed to a compromise decree that after having received token money he will obtain the NOC and when the NOC is available he will proceed for having the sale deed executed in favour of the defendant No.17 and at that time will get his balance payment, he chosen to part ways. To me there was no legal, practical or business possibility as to why the balance sale consideration be handed over to the plaintiff No.10 when he has not obtained the NOC. The intent of the applicant (defendant No.17) is clearly demonstrated from the fact that he, when court required in the current Revision Application, he deposited a bank guarantee in the balance sum of Rs.2,57,00,000/- which is still lying with the Additional Registrar of this court.

10. In the given circumstances coming to the conclusion that the respondents have acted deceitfully and have created holes and corners in the compromise decree to dishonour their commitment and having willfully failed to perform what was envisaged by clause 2 of the terms of the compromise, I accordingly allow this Revision Application, set-aside the impugned orders dated 15.1.2016 and 8.3.2016 and direct the respondent No.10 to provide sale certificate /NOC from the concerned authority to the Additional Registrar of this court who shall execute the sale deed in favour of the applicant and handover the sum of Rs.2,57,00,000/- lying with him to the respondent No.10 who has been acting as

an attorney for respondent Nos. 1 to 9 and 11 and file compliance report within 15 days.

JUDGE

karar_hussain-memon/PS*