

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.960/2011

Date	Order with signature of Judge
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1. For hearing of CMA No.8042/2011
 2. For hearing of CMA No.8987/2013
 3. For hearing of CMA No.10877/2015
 4. For Final Arguments
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09.08.2017

Mr. Abdul Wajid Wyne, advocate for the Plaintiff.

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1to3. This is a suit for specific performance. Record shows that even on the first date of hearing Defendant was served through bailiff and his counsel Mr. Muhammad Yaqoob Chaudhry, has filed power in Court on **09.8.2011**. The Plaintiff on the said date specifically agreed to pay the balance sale consideration of **Rs.1,32,00,000/-** to the Defendant within a period of two months and the counsel for the Defendant stated that if balance sale consideration is paid within 10 days the Defendant will execute sublease and will also deliver the possession of the property. The plaintiff instead of depositing balance sale consideration on **19.11.2011** filed an application for extension of three months' time to deposit balance sale consideration and in the said CMA he has stated in para-3 as follow:-

That paucity of funds due to prevailing financial and the business crises coupled with law and order situation in the city, the Plaintiff is unable to deposit the huge balance of sale consideration within time.

The said application is still pending though time requested by the Plaintiff himself to deposit balance sale consideration stand expired six years ago. Then pending the said application after two years the Plaintiff in 2013 filed another application wherein he has only stated that he is ready to pay balance sale consideration and did not specify the time for such payment and also imposed conditions to deposit sale consideration. Be that as it may, the record shows that Plaintiff despite having given undertaking / assurance to the Court that he is ready to

deposit balance sale consideration within two months as far back as in August 2011 he has not deposited the same and trying to linger on the case by making frivolous applications. It means at the time of filing of the suit he was not capable of performing his part of the contract.

Since there was no status quo order in the suit, there is every likelihood that suit property must have changed hands or its state of affairs from the date of agreement. No case was made out nor any explanation was given for failing to deposit balance sale consideration by the Defendant.

In view of the above, all the three applications are dismissed. Now the Plaintiff is required to satisfy the Court in the above circumstances, when the Plaintiff has practically failed to demonstrate his ability to pay the balance sale consideration then how this suit is maintainable.

In the meanwhile, issue notice to the learned counsel for the Defendant namely Mr. Muhammad Yaqoob Chaudhry, advocate through the Bar Council since his power is still intact as neither learned counsel has withdrawn it nor participating in the proceeding also issue notice to the Defendant as well.

JUDGE

SM