

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 1979 / 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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Plaintiffs: **Muhammad Mustafa Shaikh & another
through Mr. Muhammad Irfan along with Mr.
Shahid Iqbal Advocates.**

Defendants: **The Silk Bank Ltd. & others through Mr. Taimur
Ali Mirza along with Mr. Shahzad Mehmood
Advocates.
Mr. Sharfuddin Mangi State Counsel.**

- 1) **For hearing of CMA No. 12208/2017.**
- 2) **For hearing of CMA No. 12209/2017.**

Date of hearing: **01.03.2018.**
Date of order: **01.03.2018.**

Muhammad Junaid Ghaffar, J. This is a Suit for Specific Performance and Permanent Injunction and through CMA No.12208/2017 (at Serial No.1) the Plaintiff seeks permission to deposit first installment of the balance sale consideration amounting to Rs.5.0 million as per Schedule annexed with the plaint and through CMA No.12209/2017 (at Serial No.2), the Plaintiff seeks restraining order against the Defendants from dispossessing, terminating and creating third party interest in respect of the Suit property.

Learned Counsel for the Plaintiff submits that the agreement dated 28.02.2017 was entered into between the Plaintiffs and Defendants in respects of property bearing No. D-134 SITE, Karachi and an amount of Rs. 100,000/- was paid as advance, whereas, the remaining amount of Rs.248.399 million was to be paid as per Schedule at Page 39 and when the Defendants were approached to

receive the first installment of Rs.5.0 Million the same was refused, therefore, instant Suit has been filed along with listed applications. Per learned Counsel the agreement has not been denied, whereas, the Plaintiffs are in possession, and therefore, the Plaintiffs have a very good case for grant of relief as prayed. Learned Counsel has also referred to order dated 5.12.2017 and submits that Order 7 Rule 11 application of the Defendants stands dismissed, whereas, the only objection raised by the Defendants is in respect of the Schedule of Payment which can only be resolved through evidence and therefore, the Plaintiff be permitted to deposit the first installment as per Schedule annexed with the plaint and be restrained from creating and third party interest. In support he has relied upon ***Abdul Hamid Khan and 10 others V. Mst. Rajo Bibi and 9 others (1990 SCMR 911), Muhammad Matin V. Mrs. Dino Manekji Chinoy and others (PLD 1983 Karachi 387), Muhammad Rasab and another V. Muhammad Siddiquie Choudhry (1998 MLD (SC AJ&K) 2045), Mian Muhammad Latif V. Province of West Pakistan and another (PLD 1970 SC 180), Muhammad Sadiq V. Mst. Raj Bibi and another (KLR 2012 Civil Cases (Lahore) 303), Bilal Ahmed V. Abdul Razaq (2011 YLR (Lahore) 2767), Fateh Muhammad V. Muhammad Hanif and another (PLD 1990 Lahore 82) and Zafar Ahmad V. Mst. Hajran Bibi (PLD 1986 Lahore 399).***

On the other hand, learned Counsel for the Defendants has contended that material facts have been concealed by the Plaintiffs inasmuch as they have failed to disclose the reasoning for execution of the agreement in question as according to the learned Counsel the property in question was owned by the Company named Pakistan Vehicle Engineering (Pvt.) Limited and due to default on the part of the company a settlement agreement was reached upon between the

parties and the defaulted amount of Rs.194.019 million was required to be paid in installments, initially of Rs.15 million per month and thereafter Rs. 20 million and so on and so forth. However, due to State Bank of Pakistan Regulations such agreement could not have been entered into and therefore, subsequently the property which was assigned to the Defendants was sold by way of the present agreement. Learned Counsel submits that though the agreement is not denied; however, the Plaintiffs have manipulated the Schedule annexed with the agreement inasmuch as they have changed the amount of installments from Rs.24.701 Million in June-2017, Rs.23.951 Million in December-2017, and so on and so forth to Rs.5.0 million for the first seven installments spreading over a period of 3½ years whereas, Schedule itself is unsigned and is manipulated. Learned Counsel has also referred to the stamp and signatures affixed on the first three pages of agreement, as against the Schedule being relied upon by the Plaintiffs and submits that there is a marked difference which according to the learned Counsel is tempered by the Plaintiffs to seek relief from the Court by concealing material facts. Learned Counsel has further contended that it is not conceivable that a property of Rs.248 million is handed over upon payment of Rs. 100,000/- with installments of Rs.5.0 million by a Bank which is not in the business of sale / purchase of property, therefore, the Plaintiffs have failed to make out a prima facie case and neither any balance of convenience lies in their favour. Learned Counsel has also referred to Section 21(g) of the Specific Relief Act and submits that this contract even otherwise, cannot be specifically enforced as it spreads over a period of three year and there is a bar in law.

I have heard both the learned Counsel and perused the record. Insofar as the agreement in question is concerned, the same is not in

dispute however; the Schedule attached with the agreement is in dispute. The Defendants case is that it is a manipulated document as the amount of installments have been changed and altered. For ease of reference, it would be advantageous to reproduce the payment schedule relied upon by the Plaintiffs and disputed by the Defendants as well as the actual Schedule according to the Defendants. Both reads as under:-

(Schedule relied upon by Plaintiffs)

“SILK BANK PAYMENT SCHEDULE

Date	Installment (Rs. In Million)
28-Aug-2017	5,000
28-Feb -2018	5,000
28-Aug-2018	5,000
28-Feb -2019	5,000
28-Aug-2019	5,000
28-Feb -20	5,000
28-Aug-20	5,000
28-Feb -21	213.339

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Total	248.339
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(Schedule relied upon by Defendants)

Silkbank Repayment schedule Annexure A

Dated	Installments (Rs. In Million)
Jun-17	24.701
Dec-17	23.951
Jun-18	29.021
Dec-18	27.925
Jun-19	27.503
Dec-19	36.293
Jun-20	34.926

Dec-20	44.019
TOTAL	248.339

Perusal of the aforesaid Schedule clearly reflects that there is a huge difference of amount required to be paid through installments by the Plaintiffs. It further appears that in the Schedule annexed with the Plaint there is no signatures of any of the parties to the agreement i.e. either the Plaintiffs or the Defendants. It is only having a bank stamp whereas, the Schedule relied upon by the Defendants is duly signed. However, this question which is the root cause of the dispute can only be properly adjudicated at the time of evidence and not by mere examination but at the same time it is to be appreciated that in the agreement itself certain terms were understood and settled by the parties and for that Clause 3 is very relevant which reads as under:-

“3. The Seller have agreed to sell the property to the purchaser against the total sale consideration of Rs. 248,339M (Rupees Two hundred forty eight thousand three hundred and thirty nine only) (hereinafter to be referred to as the “Sale Consideration”) to be paid by the purchaser in a period of 4 years in 6 monthly installments from the day of signing of this Agreement to Sell according to the Schedule attached herewith.”

This Clause provides that the seller (Defendants) have agreed to sell the property to the purchaser against the total sale consideration of Rs. 248,339 million to be paid by the purchaser in a period of four years in six monthly installments from the date of signing of this agreement according to the Schedule attached herewith. After going through this clause provision I had confronted the learned Counsel for the Plaintiffs that if the main part of the agreement is read properly, it reflects (though not expressive as it ought to be) that the

balance amount was supposed to be paid in 8 equal month installments spreading over a period of four years i.e. on every six month the installment was due. To that the learned Counsel could not satisfactorily respond; however, submitted that the Schedule annexed with the plaint clearly reflects that first seven installments are supposed to be of Rs.5.0 million and in the last installment an amount of Rs. 213.339 million is required to be paid. However, I am not convinced with such line of argument of the learned Counsel for Plaintiff as it does not appeal to a prudent mind as to why the Bank in lieu of the huge outstanding liability, for which already certain arrangement for its repayment has been made, would sell the property in question on a meager amount of Rs.100,000/- and would defer the major chunk of the repayable amount and agree for settlement of the same with installments of Rs.5.0 million and thereafter, receive the bulk portion of Rs.213 million in the fourth year.

It is also a matter of record that the Plaintiffs while filing this Suit have not disclosed these facts that the agreement in question was in fact an outcome of some previous settlement arrangement in respect of default and have merely come before this Court making it an ordinary Suit of Specific Performance and have obtained a restraining order, rather have concealed the facts to that extent. This otherwise, disentitles a Plaintiff who comes before the Court with unclean hands. The relief of specific performance is purely discretionary in nature and the Court is not bound to grant such relief merely as it is lawful to do so.¹ It further appears that as per Section 21(g) of the Specific Relief Act the contracts which cannot be specifically enforced includes a contract the performance of which involves the performance of a continuous duty extending over a

¹ Liaqat Ali Khan and others v. Falak Sher and others ([PLD 2014 Supreme Court 506](#))

longer period than three years from its date and therefore, even otherwise, the Plaintiffs claim does not seem to be appropriate. The case law relied upon by the learned Counsel for the Plaintiffs is not relevant as apparently the Plaintiffs have failed to make out any prima facie case for grant of injunctive relief whereas, the balance of convenience also does not lie in their favour.

In view of such position, by means of a short order on 01.03.2018 both the listed applications were dismissed and these are the reasons thereof.

J U D G E

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