

failure to comply with the directions, the petitioner was further directed to pay monthly rent/compensation to the respondent No.3 at the rate of Rs.10,000/- per month with an annual increase of 10% with effect from November 05, 2007.

2. The learned senior civil judge partially decreed the suit in the following terms:

“I have considered above submissions, perused the record and the case law referred to. In the circumstances of the present suit it will be in the interest of justice to pass a partial decree on the admission of the defendant, which he has clearly made in his Written Statement, therefore, on the basis of said admission, the defendant is directed to perform his part of obligation and complete the project Gulf Towers within three months of this order and hand over the physical vacant possession of suit apartment to the plaintiff and to execute the Registered Sub-Lease of the suit apartment in favour of the plaintiff after receiving the balance amount of Rs.2,80,000/- from the plaintiff. Accordingly such partial decree be prepared without prejudice to the right of the plaintiff to proceed with his further claim.”

3. Whereas the learned Additional district judge converted the appeal into revision. Though the revision application was dismissed, nevertheless, the learned revision court also modified the order. The relevant paragraph of the order is reproduced as under:-

“Foregoing in view above revision, having no merits is hereby dismissed. R&Ps be sent back. Appellant/defendant has not put forth specifically as to how much time they would require to obtain the required permissions from the departments concerned. The same, however, remains the appellant/defendant’s responsibility. Court has not considered the propriety of letting respondent/plaintiff complete the construction of subject flat himself, as prayed, not finding it to be a practical mode. It is, however, further ordered that since the appellant/defendant has failed to hand over the subject flat to the respondent/plaintiff with in the time given by learned trial court, further time of two months is hereby given in the interest of justice to the appellant/defendant to complete the subject flat and hand over its possession to the respondent/plaintiff. In case of failure to comply with above order, or delay, the appellant/defendant would be required to pay monthly rent/compensation to the respondent/plaintiff at the rate of Rs.10,000/- per month (being less than even the minimum rent of the apartment of this size in the vicinity) with an annual increase of 10% with effect from November 05, 2007. [emphasis applied] Whereas the respondent/plaintiff would be under obligation to pay the balance amount of Rs.2,80,000/- to the appellant/defendant within a month of such demand made by appellant/defendant construction company.

All the pending applications in the above revision are also hereby dismissed including application for grant of stay under Order 41 Rule 5 r/w Section 151 CPC, for having gone infructuous.”

4. The ephemeral facts of the case are that respondent No.3 filed a civil suit for Specific Performance of Contract and Damages. According to him, some admissions were made by the defendant (petitioner) in the written statement henceforth, the respondent No.3 (plaintiff) filed an application under Order 12 Rule 6 CPC on 30.08.2005 in the trial court along with a copy of judgment dated 24.12.2004 passed by this court in C.P.Nos.D-1084 and 2007 of 1992. A mindful survey and appraisal of written statement unveils the stance and demeanour of the petitioner (builder) as under:-

“That contents of Para No.1 of the plaint are admitted, but it is submitted that the Defendant has got the approved plan from KBCA and started booking and construction thereon according to approved plan. The plaintiff booked his flat on 5th Floor. When the construction was under progress, some persons filed a C.P. against the Defendant and got stay from Honourable High Court of Sindh, and the Honourable High Court of Sindh gave observation that the Mezzanine floor was to be treated as full-fledged floor. Being law-abiding citizen Defendant accepted/ followed the directions of the Honourable High Court. In the light of the said observation status of 5th floor has become 6th floor, and the Plaintiff's flat automatically shifted on 6th floor which is stayed by the Apex Court of the province. It is also submitted that we never refused to provide a flat and we also undertake that whenever the litigation ended in favour of defendant, the defendant will complete the project and comply the terms of the contract with allottees. [Emphasis applied] The delay is not wilful neither deliberate from the part of defendant, that was due to be stay granted by the Honourable High Court, if the plaintiff wants to take back his deposited transaction he can take it back after deduction of 10% as per agreed terms and conditions of the contract.....”

5. The learned counsel for the petitioner did not deny the contents of paragraph No.1 of the written statement, furthermore, he self-confessed that aforementioned constitution petitions were decided in the month of December, 2004 with the directions to raise the construction in accordance with the approved building plan. He added that the construction was commenced but the Clifton Cantonment Board Karachi stopped the work due to expiry of approved building plan validity. He further

argued that construction was started in 1990 and since the construction was stayed by this court therefore no negligence, lapse, or default can be attributed to the petitioner. The petitioner is entitled to escalation in the cost of construction on prevailing market value regardless of admission made in the written statement.

6. It was further contended by the learned counsel that while passing both the impugned orders, the courts below failed to apply their judicial minds. The learned respondent No.1 wrongly, decreed the said suit partially, directing the defendant (builder) to complete the Project "Gulf Towers" within three months and handover the possession of the Apartment to the respondent No.3 and execute a registered sub-lease. He further argued that the petitioner never contended in its written statement that it (builder) would be able to do all such things within such a short period of three months. Thus the impugned orders are in excess of jurisdiction and without lawful authority. It is well settled that suit could not be decreed in absence of clear, unambiguous and unconditional admissions made by the defendant in his written statement. It was further contended that the ends of justice demands that the suit be tried and decided in accordance with law after recording evidence. The learned counsel for the petitioner relied upon following judicial precedents:-

(1) 1996 SCMR 696 (Macdonald Layton & Company Pakistan Ltd. v. Uzin Export-Import Foreign Trade Co. & others). In order to attract provision of Order XII, Rule 6, C.P.C. admission should necessarily be unequivocal, clear, unconditional and unambiguous. Such admission should not only be in respect of amount (where dispute related to payment -of money) but liability to pay the same to plaintiff. Court while deciding such application for grant of decree must exercise its discretion in judicial manner.

(2) 2001 MLD 1615 (Federation of Pakistan and others v. Ally Brothers & Company (Pak.) Ltd and another). Order XII Rule 5 & 6. Pleadings contained controversial questions, both factual and legal. Validity. Questions contained in the pleadings necessitated trial and findings by the Court below. Admissions attributed to the defendants in the written statements were not of the nature as to show that they were confessing the claim of the plaintiffs.

(3) PLD 1966 (W.P.) Karachi 75 (Kassamali Alibhoy v. Shaikh Abdul Sattar). An admission in order to be made the basis of a decree under Order XII, Rule 6 of the Civil Procedure Code, 1908 must be unqualified and unconditional. When factual admission is accompanied by a qualification that the suit itself is not maintainable or that the claim suffers from a legal difficulty, it cannot be said that the admission is unqualified.

7. On the contrary, the learned counsel for the respondent No.3 argued that in March, 1990, the petitioner advertised their project **“Gulf Towers”** with the assurance that it would be completed within 36 months. On 22.04.1990, respondent No.3 paid Rs.45,000/- to the petitioner through pay orders against the booking of Apartment No.C-518, at 5th floor of the project. A number of payments were also made from time to time and according to the schedule of payment, the remaining amount of Rs.80,000/- excluding expected loan of Rs.2,00,000/- was payable at the time of finishing and possession. In terms of Clause 11 of the agreement, the project was to be completed within 36 months but the petitioner failed to complete the construction within stipulated period. The respondent No.3 had left with no other option but to file the suit to protect his right and interest. He further argued the petitioner is liable to handover the possession of the apartment and execute the sub-lease on payment of balance amount of Rs.2,80,000/- by the respondent No.3.

8. It was further contended that the petitioner (defendant) in their written statement admitted the claim of the respondent No.3 in clear terms. The litigation terminated in favour of petitioner so on the basis of unconditional and unambiguous admission, the respondent No.3 (plaintiff) filed an application under Order 12 Rule 6 C.P.C for decreeing the suit and the learned trial court after taking into consideration all material facts rightly allowed the application and partially decreed the suit which order was rightly maintained in the revision application. The

petitioner has failed to point out any illegality. He concluded that both the orders passed by the learned courts below are structured on correct exposition of law. In support of his arguments, the learned counsel cited following judicial precedents:-

(1) PLD 1975 S.C. 678 (Manager, Jammu & Kashmir, State Property in Pakistan v. Khuda Yar and another). The scope of the revisional powers of the High Court though circumscribed by conditions of excess of jurisdiction, failure to exercise jurisdiction, illegal exercise of jurisdiction, is nevertheless very vast and corresponds to a remedy of certiorari and in fact goes beyond that at least in two respects inasmuch as: *Firstly*, its discretionary jurisdiction may be invoked by the Court *suo motu*, and *Secondly*, the Court "may make such order in the case as it thinks fit".

(2) 1999 SCMR 971 (Zakirullah Khan and others v. Faizullah Khan and others). Section 115. Where the High Court was seized of the matter in the revision petition, High Court had the jurisdiction under Section 115, C.P.C. to pass such orders in the case as were thought fit to modify the judgment of the lower Court to correct any error of jurisdiction or where the lower Court, in the exercise of its jurisdiction, had acted illegally or with material irregularity.

(4) 1987 SCMR 1850 (Lahore Development Authority & another v. Mian Riaz Ahmad and others). Suit decreed under Order XII, Rule 6, C.P.C. on basis of admissions contained in written statement filed by petitioner. Appeal challenging decree dismissed and revision there against also failed. Orders of Courts below being quite legal and proper, Supreme Court declined to interfere. Leave to appeal refused.

(5) PLJ 1988 Karachi 100 (Sheikh Mahmood Ahmad v. Dr. Ghaith Pharaon and 3 others). Order XII, Rule 6. Claim partly admitted. Judgment to the extent of admission during pendency of suit. Held: Provisions of Order XII Rule 6 envisages passing of judgment at any stage during pendency of suit. Held further: Defendant having admitted part of claim, judgment to extent of admission passed without prejudice to right of plaintiff to proceed with his further claim.

9. Heard the arguments. The rationale and object of Order 12 Rule 6 CPC is to enable a party to obtain a speedy judgment to the extent of admission of the defendant. The court cannot narrow down the meaning of this rule as the *raison d'être* is to enable a party to obtain a speedy judgment. The admission in the written statement could be in respect of the entire claim or even for a part of claim for which decree can be passed separately. This rule enables either party at any stage of the suit to obtain judgment or an appropriate order. This rule confers very

wide discretion on the court and the court may, at any stage of the suit on application of any party without determination of any other question, make such order giving such judgment as it may think fit on the basis of admission of fact made in the pleadings or otherwise. However, a judgment on admission is not a matter of right but is in the discretion of the court if a case involves questions which cannot be conveniently disposed of on a motion under this rule. The court may in the exercise of its discretion refuse the motion. The admission before a court under this rule must be clear, unambiguous, unconditional or unequivocal. There is no hard and fast rule but where the defendant admits part of the plaintiff's claim and denies the rest of the claim, the court should, if it gives judgment under this rule for the plaintiff as to the portion of the claim admitted by the defendant, refuse to allow the plaintiff to proceed with the suit as to the remainder of his claim. For the purposes of judgment on admission, the pleadings are not to be dissected but are to be read as a whole. The admissions are of many kinds, they may be considered as being on the record as actual if they are either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal, secondly, as between parties and by agreement or notice. Since it has been considered that admission for passing the judgment is based on pleadings itself, it is not necessary to examine as to what kind of admissions are covered by Order 12 Rule 6 CPC.

10. It is an admitted fact that the petitioner had advertised the project "Gulf Towers" in the year 1990 with the assurance to complete the same within 36 months. As per payment schedule the respondent No.3 made some payments and so far outstanding amount of Rs.2,80,000/- is concerned it was payable at the time of possession. The

petitioner unambiguously and unequivocally admitted in the written statement that whenever the litigation will be ended, they will complete the project. The litigation pending in this court was culminated in favour of the petitioner, hence, there was no impediment or obstacle in completion. The respondent No.3 filed a suit for specific performance of contract and damages for directions against the petitioner to perform their part of contractual obligations and hand over physical vacant possession of the Apartment on receiving balance amount. Besides claiming permanent injunction and mandatory injunction, the plaintiff/respondent No.3 also prayed for money decree for the sum of Rs.5,65,500/- on account of loss of rental income and further Rs.8,500/- per month from April, 2000 till the possession of apartment is delivered to the plaintiff/respondent No.3. He also made an alternate prayer without prejudice that if specific performance of contract is not possible then the decree may be passed for Rs.30,00,000/- being differential amount of booking price on market value.

11. On filing the written statement by the petitioner/defendant in the trial court, the respondent No.3 moved application under Order 12 Rule 6 CPC on the premise that the litigation i.e. C.P.No.D-1084/1992 and C.P.No.D-3007/1992 have been decided in favour of the petitioner/defendant by the Division Bench of this court vide order dated 24.12.2004. He also attached a copy of judgment. The aforesaid judgment reflects that the learned Division Bench of this court ordered that the construction in violation of the approved plan should be removed by the competent authority with further directions that the construction should be monitored ensuring that it is raised only in accordance with the approved building plan. The petitioner/defendant filed the counter affidavit

through their Project Director to the application in which he attributed the delay in project due to pending litigation. If we look into the written statement filed by the defendant (petitioner) in the trial court to evaluate and gauge the gravity of admission, it explicates and deciphers to us explicitly and without a shred of doubt that the petitioner confessed that they never refused to provide flat. They also undertook that whenever the litigation will be ended they will complete the project and comply with the terms of contract with allottees and the delay was not willful but due to stay granted by this court. This written statement was filed on 28.7.2000, whereas pending petitions against the petitioner were decided on 24.12.2004 with certain directions. After termination of the aforesaid proceedings in the year 2004 apparently there was no impediment against the completion of the project therefore in our considerate view, the trial court rightly and correctly passed the partial decree without prejudice to the right of the plaintiff/respondent No.3 to proceed the matter for the remaining claim.

12. In the dictum laid down in the case of **Macdonald Layton & Company Pakistan Ltd. vs. Uzin Export-Import Foreign Trade Co. & others, Federation of Pakistan vs. Ally Brothers & Company (PAK.) Ltd. and Kassamali Alibhoy vs. Shaikh Abdul Sattar** (supra), the courts expounded and explicated that the admission should be unequivocal and unambiguous and when factual admission is accompanied by a qualification that the suit itself is not maintainable or that the claim suffers from a legal difficulty or when the pleadings contained controversial questions, the court has to see as to whether the admission attributed to the defendants in the written statement are of the nature that they are confessing the claim of the plaintiffs. Learned counsel for the petitioner

was of the view that the admission was not unconditional and/or unequivocal but it was subject to the decision of the pending petitions in the High Court against the petitioner. Fact remains the application on the basis of admission made in the written statement was filed by the plaintiff after the orders passed by this court in the pending petitions when the petitioner had left with no impediment or excuse not to complete the project and hand over the possession of flats/apartments to the allottees.

13. Keeping in mind the ongoing state of affairs and overall set of circumstances in the real estate market with the most common issues, we would like to observe here that the manifold acceleration in the demand of residential and commercial property has given birth to a number of unprofessional builders and developers who entice, tempt and magnetize the potential rather innocent buyers via print and electronic media campaigns with loud and titanic claims by means of which they guarantee to grant access to preeminent and lucrative characteristics and attributes to fascinate and invite attention/interest of general public to rush the project but after booking mostly never live up to their promises and in such aftermath the ultimate victim is the allottee who suffers mentally as well as financially. It is worthwhile to mention here that some unprofessional builders/developers have tarnished the image and credibility of their entire community which is a matter of grave concern for righteous and upright builders/developers.

14. House is the essential need of human beings but due to non-implementation of building laws and regulations meticulously and religiously by the regulatory authorities and their loose and untied check and balance, the public

at large is facing numerous drawbacks and plights being victim and sufferer of misleading and fallacious promises of the various amateur and unprofessional builders who despite collecting substantial amount failed to complete the project and handover the possession within time. The National Accountability Bureau in some cases has also taken cognizance. Most of the builders use to collect huge money even prior starting the construction of project on the pretensions that they will complete the project within two or three years but in reality it is often seen that despite lapse of considerable period the people who got booked their apartments/flats/offices/plots/shops are deprived of possession or fruits of their hard-earned investment. Whenever a builder has delayed the project or the project turned out to be a scam or a nonstarter, the buyer is found to be an ultimate victim in this impasse. The real estate prices have been persistently and never-endingly upswing. In this state of affairs, countless people lost their hard-earned money in various delayed projects leaving them with no option but to depend either on the mercy and promises of the builder for several years or to show courage to fight out a legal battle with the builder/real estate developers again for several years. It is also a dilemma when a builder fails to complete the project within time, he use to ask more money from the buyers ahead of scheduled price quoted at the time of booking and in case of refusal to this demand, buyers have to face and cope with the threats of cancellation. These are the most critical issues which invite instantaneous attention and contemplation of all Building Regulatory Authorities to deal with and keep an eye on in the larger public interest.

15. The respondent No.3 also filed a statement on 20.01.2017 along with few documents. It appears that on

23.07.2005, the petitioner/defendant in the trial court filed an application under Order 6 Rule 17 CPC for making amendment in the written statement. The crux of the application seem like that the petitioner/defendant to wriggle out from admission made in the written statement, filed application that it is not possible for the defendant/petitioner to construct and complete the project at the cost on which the units in the said project were booked in the year 1990. It was further stated in the amendment application that the defendant/petitioner is ready and willing to fulfil his part of obligations to complete the unit of the plaintiff and to hand over the possession to the plaintiff if the plaintiff is ready and willing to pay prevailing cost in the locality. This application was heard on 24.02.2006 but it was dismissed by the learned trial court, thereafter the defendant/petitioner filed Civil Revision Application No.40/2006 which was also dismissed by the VIth Additional District & Sessions Judge, Karachi, South vide order dated 20.11.2006.

16. Last but not least, another facet cannot be lost sight that the learned trial court partially decreed the suit with the directions to complete the project within certain period of time and hand over the possession to the respondent No.3. The remaining claims were left out to be decided afterwards. The revisional court converted the appeal of the petitioner into revision. The trial court did not grant any relief to the respondent No.3 (plaintiff) for the payment of monthly rent/compensation at the rate of Rs.10,000/- per month with an annual increase of 10% with effect from 5.11.2007. Against the order, it is obvious that the respondent No.3 was not aggrieved so he did not file any appeal/revision that the trial court failed to award monthly rent to him nor any such prayer was made in the

application. The revisional court was obligatory to see only as to what irregularity or illegality has been committed by the trial court rather than modifying the order for further relief. The revisional jurisdiction only applies to the cases involving illegal assumption, non-exercise or the irregular exercise of jurisdiction which can be invoked in the cases in which no appeal lies and the case was decided by subordinate court and such court appeared to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity. The scope of entertaining the revision application is required by exercise only when the applicant's case falls within the four corners of provisions of Section 115 CPC in which the court has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of revision and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. The court in its revisional jurisdiction cannot travel beyond the scope of Section 115 CPC and cannot go into the matters not relevant for the purposes of testing the jurisdictional error committed by the court below. Revision is a matter between the superior court and the subordinate court regarding the matter of exercise of jurisdiction and appeal is the substantive right, whereas revisional jurisdiction is discretionary. The appellate court can exercise all powers of the trial court, whereas the revisional jurisdiction is a part of general appellate jurisdiction. In the case in hand while affirming the order passed by the trial court, the Revisional court has added some further relief and directions which in our view unwarranted and not commensurate to the revisional jurisdiction exercised by the learned revisional court so to

that effect and extent the order in revision requires some modification and annulment but not as a whole.

17. As a result of above discussion, we do not find out any merits in the petition, which is dismissed. The petitioner is directed to hand over the possession of the apartment to the respondent No.3 within three months on payment of balance amount according to the terms and conditions of the contract and also execute the sub-lease of the apartment. So far as the direction contained in the order of revision application for the payment of rent @ Rs.10,000/- per month with annual increase of 10% with effect from November 5, 2007 is concerned, we are of the firm view that this was not the subject matter before the court of revision, hence this direction is set-aside. The matter is pending in the trial court for deciding the remainder including the loss of rental income, therefore, let it be tried and decided by the learned trial court.

Judge

Judge

Dated 26.12.2017

N.B: Office is directed to transmit copy of this judgment to the Sindh Building Control Authority and its Chief Executive/Director General.