

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1556 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No.10105/16.
2. For hearing of CMA No.8524/17.
3. For examination of Parties/Settlement of Issues.

21.11.2017.

Mr. Khursheed Javed, Advocate for the Plaintiff.
Mr. Raja Qasit Nawaz Khan, Advocate for Defendant No.1.

1. This is an Application under Order 39 Rule 1 & 2 CPC r/w Section 151 CPC, whereby, the Plaintiff seeks a restraining order against the Defendants from selling, transferring or creating any third party interest in respect of property bearing Plot No.238, 36th Street, Phase-8, admeasuring 2000 Sq. Yds. DHA, Karachi.

Learned Counsel for the Plaintiff submits that an Agreement to Sell was entered into by the Plaintiff with Defendant No.1 on 29.10.2015 for purchase of the Suit Property for a total sale consideration of Rs.13,25,00,000/- out of which admittedly the Plaintiff has paid an amount of Rs.1,30,00,000/- through various pay orders, which is not in dispute. He submits that on 02.02.2016 a Legal Notice was issued on behalf of the Defendants, wherein, the agreement in question was cancelled by them and such notice was replied on 03.03.2016 through which the Plaintiff asked the Defendants to give a schedule for execution of the agreement in question but it was not responded and thereafter through an advertisement it came to the knowledge of the Plaintiff that the Suit Property is being sold out to

someone else. He further submits that on 22.4.2016, the authorized representative of the Defendant was served with a notice but the same was not responded, hence instant Suit has been filed. Per learned Counsel the amount of advance i.e. Rs. 1,30,00,000/- is not in dispute and whereas time and again the Defendants were asked to give a proper schedule of payment so that the agreement could be finally executed. He submits that till such time the controversy in question as raised in this Suit is resolved the Defendants be restrained from selling out the property in question. In support he has relied upon the case reported as *Khalid Mehmood v Shabbir Ahmed (2017 MLD 1497)*.

On the other hand, learned Counsel for the Defendants submits that though the agreement in question as well as making of advance payment of Rs. 1,30,00,000/- is not in dispute, however, the Plaintiff has miserably failed to abide by the agreement in question as the balance payment was never made in time. He further submits that at the request of the Plaintiff an Addendum dated 2.2.2016 was also executed by the parties, and the time was further extended; but the Plaintiff again failed to pay the balance sale consideration even within such extended time. He submits that the agreement stands cancelled, whereas, amount of advance also stands forfeited, therefore, listed application be dismissed.

I have heard the learned Counsel for the parties and perused the record. Insofar as the agreement in question and payment of Rs. 1,30,00,000/- is concerned, the same is not in dispute. However, it appears that as per clause (ii) of the Agreement in question the time for completion of the agreement was fixed as 28.12.2015 or before. Admittedly the Plaintiff failed to make payment of the balance sale consideration within the specified time. It further appears that

thereafter an Addendum to the Agreement was executed on 02.12.2016, whereas, in the said Addendum the last date for making payment was extended till 18.03.2016, whereas, the Plaintiff was required to provide photo copies of the pay orders for the balance amount of Rs.11,95,00,000/= by 15.2.2016. It appears that the Plaintiff has not disclosed this Addendum in the plaint nor its copy has been annexed which is quite surprising as the same has not been denied. It further appears that the Defendants in performance of their part of the agreement appeared before the DHA Authority on 28.8.2015 but the Plaintiff failed to honour his agreement. In view of such circumstances, when the Plaintiff had admittedly failed to perform his part of the agreement without any reason or justification, whereas, even by means of instant Suit, the Plaintiff is not seeking any specific performance of the agreement but only cancellation and recovery of money, any injunctive relief could not be granted in this manner to restrain the Defendants from exercising their right to dispose of the property in question. It is not that in every Suit for cancellation of Agreement a restraining order in this manner could be passed, whereas, even otherwise the plaintiff has failed to make out any prima facie case for any injunctive relief and neither the balance of convenience lies in his favor nor any irreparable loss will be caused if injunctive relief is denied. It may further be observed that this is a Suit for cancellation and recovery, whereas, cancellation of agreement is also the case of defendants and therefore, it now remains only a case for recovery of the advance payment, whereas, listed application is not for any attachment before judgment and decree.

In view of above said position, by means of a short order listed application was dismissed on 21.11.2017 and these are the reasons thereof.

J U D G E

Ayaz P.S.