

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

RA No.96 of 2018

Date	Order with signature of Judge
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For orders as to non-prosecution

06.11.2018

Malik Khushal Khan, advocate for applicant.

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This civil revision is dismissed for the following reasons.

- i. The plaintiff has filed a suit for recovery of earnest money which the applicant has received from the Respondent at the time of execution of an agreement of sale dated **09.07.2013** and the suit was filed on **14.3.2014** after making efforts that his earnest money may be refunded to him by the applicant.
- ii. The applicant who is the owner admits the execution of the agreement. However, he insists that he would not refund the earnest money and Respondent may be directed to purchase the property in question. However, he has not filed suit for specific performance.
- iii. To be precise when the respondent found himself unable to abide the terms and conditions of the agreement of sale, he decided to cancel the deal. The applicant / owner of the property in April, 2014 has come to know that respondent is incapable to buy the property and since then till date the applicant has not filed any proceeding against the respondent even to forfeit the earnest money on any pretext. As of today the applicant's right under the agreement has been ceased because of lapse of five years' time from the date of agreement. Learned counsel was requested to satisfy the Court under what circumstances

he can refuse to refund the earnest money, he first tried to look in the agreement but unfortunately there is no clause in the agreement that applicant has right to forfeit the earnest money. It is settled law that even if there is such a clause in the agreement about forfeiture of earned money on default on the part of the buyer, the earnest money has to be returned.

iv. In view of the two concurrent findings whereby the applicant was directed to refund the earnest money are lawfully justified and need no interference.

JUDGE

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