

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
H.C.A. No. 347 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGES

Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Adnan Iqbal Chaudhry.

Mrs. Uzma Jawaid & another

Appellants

Versus

Muhammad Arif and another

Respondents

Date of hearing 07.09.2018.

Mr. Muhammad Ali Lakhani, Advocate for the Appellant.

Ms. Saman Riffat Imtiaz, Advocate for the Respondent No. 1.

Muhammad Ali Mazhar, J:The respondent No. 1/plaintiff has filed a Suit No. 432 of 2015 for specific performance, permanent injunction, and damages. The brief facts as alleged in the plaint are that the defendant No. 1 and plaintiff (in suit) executed an agreement dated 14th March, 2012 for the sale of Shop No. 1, Ground Floor, Avanti Park View, Plot No. 2/141/A, P.E.C.H.S., Block-2, Karachi, admeasuring 420 square feet. Due to some dispute over the execution of the conveyance deed and materializing the deal, the suit was filed by the respondent No. 1/plaintiff in the trial court. According to the respondent No. 1/plaintiff he had already paid Rs.2,900,000.00/- (Rupees two million nine hundred thousand only) to the appellant No. 1 out of total sale consideration. In fact this appeal has been preferred against the impugned order dated 26.04.2017 passed by the learned single Judge on C.M.A. No. 4643 of 2015 moved under Section 94 CPC by the plaintiff in that suit with the prayer that the defendants be directed to deposit with the Nazir of this court the part payment/difference money of Rs.2,900,000.00/. After hearing the arguments of the learned counsel, the learned single Judge concluded as under: -

“In view of the above, the application is allowed by directing defendants 1 and 2 to deposit the amount of Rs.2,900,000.00/- (Rupees two million nine hundred thousand only) with the Nazir of this Court within thirty (30) days from today. The said amount shall be invested by the Nazir in some suitable profit bearing Government scheme”.

2. Ms. Saman Riffat Imtiaz, learned counsel for the respondent No. 1 argued that in the suit the evidence has already been recorded, however, the Commissioner has not sent the report to the trial court for consideration so that the matter may be fixed for final arguments. Mr. Muhammad Ali Lakhani, Advocate for the appellant is not aware of this fact because he is not appearing in the trial court. However, he does not dispute the contention of Ms. Saman Riffat Imtiaz. Since the suit for specific performance is at its closing stage when only arguments are to be heard by the learned single Judge, therefore, after arguing at some, length learned counsel for the parties agreed for the disposal of this appeal in the following terms:-

- (i) In case the suit for specific performance is decreed by the learned trial court, of course the advance amount paid to the seller/defendant No. 1 in the suit shall be adjusted in the sale consideration amount and remaining amount as may be ordered by the trial court shall be paid to the seller.
- (ii) In the eventuality if the suit for specific performance is dismissed and the learned trial court passes the order to refund the amount received by the seller/defendant No. 1 in suit, the amount will be refunded back to the plaintiff alongwith prevailing rate of markup according to the State Bank Circular/Policy.

3. We expect the learned trial court will expedite this case and decide the suit preferably within a period of three (03) months. The appeal is disposed of accordingly alongwith pending applications(s).

JUDGE

JUDGE

