

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No.50 of 2008

Date	Order with signature of Judge
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Before: Mr. Justice Nazar Akbar

Appellant : Mst. Fatima Shafaqat,
Through Mr. Adnan Ahmed, advocate

Versus

Respondent No.1 : M/s Babooje Javedan Housing.

Respondent No.2 : Karachi Building Control Authority,
Through Deputy Controller.

Respondent No.3 : Karachi Building Control Authority.
Through Chief Controller.

Respondent No.4 : The City District Government Karachi.
Through Mr. Hasan Abidi, Advocate.

Date of hearing : 23.10.2018

Date of Judgment : 23.10.2018

JUDGEMENT

NAZAR AKBAR, J. This IInd Appeal is arising out of judgment and decree dated **19.4.2008** and **23.04.2008** passed in Civil Suit No.297/2006 by IVth Sr. Civil Judge Karachi (Central), whereby the suit filed by the Appellant was dismissed and District Judge Karachi (Central) by judgment and decree dated **03.11.2008** & **14.11.2008** passed in Civil Appeal No.45/2008 maintained the said judgment and decree of trial Court.

2. Briefly stated the facts of the case are that the Appellant filed suit for declaration, performance of contract, damages and permanent injunction stating therein that Respondent No.1 is a builder while Respondents No.2 to 4 are the controlling authority of the construction work in the city. A project in the name and style of

Babooji Pride situated at SC-6, Block-C, North Nazimabad, Karachi was launched by Respondent No.1 and the appellant applied for one of the flats in the said project. Flat No.M-I was booked for the appellant for consideration of Rs.10,50,000/- plus Rs.20,000/- for other charges and documentation etc. appellant paid installments till 18.4.2004 without fail amounting to Rs.50,000/-. On 18.4.2004 Respondent No.1 alongwith his representative visited the appellant at her house and stated that father of Respondent No.1 has expired and there are about 40/50 lacs dues on his shoulder of his uncle and requested that they intend to change name of project from "Babooji Pride" to "Babooji Javedan Housing" and they will issue fresh receipt and applications to all the purchasers of the project. The appellant surrendered all receipts and applications of Babooji Pride and was further requested for enhancement of the cost of the project from Rs.10,50,000/- to Rs.13,00,000/- but due to good relations the appellant will pay total cost of Rs.11,50,000/- plus Rs.20,000/- including the charges and the appellant accepted fresh offer. Respondent No.1 issued fresh application form and receipt dated 18.4.2004 to the appellant for a sum of Rs.1,60,000/-. It was agreed that the appellant will pay installments as per her choice and Respondent No.1 will not demand the installments as per schedule and after fresh settlement appellant paid near about Rs.250,000/- and got receipt. On 26.1.2006 Respondent No.1 issued a notice to cancel the allocation of the subject flat. The appellant visited the office of Respondent No.1 and requested for payment of installments but Respondent No.1 issued notice dated 26.1.2006 for cancellation of allotment, therefore, the appellant filed said suit.

3. Respondent No.1 filed his written statement denying the allegations and stated that the appellant failed to make the payment

of installments. The enhancement in the cost was mutually agreed but the appellant committed breach of agreement by defaulting in payments.

4. After framing issues, recording evidence and hearing the learned counsel for the parties the trial Court dismissed the suit filed by the Appellant. The learned District Judge, Karachi Central also dismissed Civil Appeal No.45/2008 by judgment and decree dated **03.11.2008** and **14.11.2008**.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for the appellant has failed to advance a single contention by referring to the evidence in the impugned judgments that the two Courts below have failed to determine any issue of law between the parties or there has been any substantial error as provided by the Code of Civil Procedure in passing the judgments impugned in this second appeal. After reading the judgment of the appellate Court wherein the appellate Court has observed in conformity with the findings of the trial Court that the appellant has committed default in payment of monthly installment and has not deposited the amount as per schedule and Respondent No.1 in view of terms and conditions of the agreement was authorized to cancel the allocation in case of default in payment of installment. The initial burden of proof of three issues i.e (1) Whether it was orally agreed that plaintiff would pay remaining amount of sale consideration in installments as per her own choice; (2) Whether plaintiff was required to pay the installment strictly according to schedule of payment; (3) Whether the defendant No.1 has rightly cancelled the suit flat; was on the appellant but she has failed to prove all these issues before

the trial Court. The only point raised by the learned counsel for the appellant is that pick and choose of the evidence by the learned trial Court. This is not the legal point in terms of **Section 100 of CPC**.

7. In view of the above facts, the concurrent findings of two Courts below do not call for any interference, therefore, this IInd Appeal is dismissed alongwith pending application(s).

JUDGE

Ayaz Gul/P.A