

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit 2068 of 2015

Order with signature of Judge

1. For hearing of CMA 13591 of 2018
2. For evidence.

02.09.2020

Mr. Altamash Arab, Advocate for plaintiff.
Mr. Arshad Lodhi, Advocate for defendants 1 and 2.
Mr. Aamir Saleem, Advocate for defendant 3.

Agha Faisal, J. This is a suit for specific performance, in respect of a purported agreement for sale of immovable property, instituted on 03.11.2015, however, the balance sale consideration, pursuant to the purported agreement under scrutiny, has admittedly not been deposited till date.

Learned counsel for defendants points out order dated 04.11.2015 (being the first day upon which the matter was listed before the Court) in which direction was given for deposit of the balance sale consideration with the Nazir of this Court. Learned counsel refers to the note of the Deputy Nazir, wherein it has been confirmed that the requisite amount has not been deposited. Learned counsel draws attention to numerous orders including order dated 04.10.2018, wherein the issue of non-deposit of sale consideration was taken note of by the Court, however, further opportunity was provided to the plaintiff in such regard. On several previous dates of hearing, the plaintiff remained unrepresented, however, after issuance of notice directly to the plaintiff, his counsel has appeared and confirmed to the Court that the balance sale consideration, as required to be paid vide order dated 04.11.2015, has not been paid till date.

The attention of the Court is solicited towards the judgment of the honorable Supreme Court in the *Hamood Mehmood case*¹ wherein it has been observed as follows:

“3. It is mandatory for the person whether plaintiff or defendant who seeks enforcement of the agreement under the Specific Relief Act 1877, that on first appearance before the Court or on the date of institution of the suit, it shall apply to the Court getting permission to deposit the balance amount and any contumacious/omission in this regard would entail in dismissal of the suit or decretal of the suit, if it is filed by the other side.”

It is articulated that the requisite deposit has not been made in this suit despite specific order/s and today learned counsel for the plaintiff is present and admits that the mandatory requirement for deposit of the balance sale consideration, per the *Hamood Mehmood case*, remains unsatisfied.

¹ Per *Dost Muhammad Khan J.* in *Hamood Mehmood vs. Mst. Shabana Ishaque & Others* reported as 2017 SCMR 2022.

The honorable Supreme Court has enunciated the legal position in the *Hamood Mehmood* case and has also observed that no exception can be taken in such regard. In due compliance with the directives of the honorable Supreme Court this suit, along with pending application/s, is hereby dismissed.

J U D G E

*Farooq ps/**