

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.168 of 2012

[Syed Hamid Hussain Rizvi vs. Muhammad Asif Saeed]

Date of hearing : 04.11.2020

Syed Hamid Hussain Rizvi
(Plaintiff) : Through M/s. Muhammad Zubair
Qureshi and Muhammad Zia
Qureshi, Advocates.

Muhammad Asif Saeed
(Defendant) : Nemo for Defendant.

JUDGMENT

Muhammad Faisal Kamal Alam, J: Plaintiff has filed this Suit against the Defendant for breach of contract dated 17.02.2007 (as claimed) with the following Prayer Clause_

“It is, therefore, respectfully prayed that this Hon’ble Court may be pleased to pass the following Judgment and Decree in favour of the Plaintiff and against the Defendant: -

a) **DECLARATION.**

It be declared that under the circumstances, the Plaintiff is entitled to sale consideration of the suit property amounting to Rs.27 Lacs as minimum besides other benefits and reliefs incorporated in Para 9 of the plaint on account of mental torture and other sufferings.

b) **ACCOUNTS**

The Defendant be directed to submit accounts showing set-off or adjustment, if any, and pay the same to the Plaintiff as incorporated in the schedule.

c) **POSSESSION**

The Defendant further be commanded to hand over the possession of two luxury apartments as per annexure E to the plaint.

d) **COST**

Costs of the suit may be awarded with any other relief or remedy.”

2. In nutshell, the case of Plaintiff is that he is the owner of a Commercial Plot of land bearing No.SA-1, [ST-1] measuring 280 Square Yards or thereabout, Block No.12, K.D.A. Scheme No.36, Gulistan-e-Jauhar, Karachi; the same may be referred to as **“the Subject Property”**. Two Agreements were executed for the transaction in question, the first one is Sale Agreement dated 13.01.1997 (Exhibit **P-1/3**), which was executed with one Muhammad Saeed son of Abdul Latif, the deceased father of present Defendant. When the Agreement was not fulfilled and the purchaser / Muhammad Saeed passed away then a second Agreement was executed having captioned as **“Mutual Agreement for Settlement of Possession of (2) Two Flats/Apartment of Rado Hill View Commerical-9, Commercial-10, Project 2A, P.R.E.C.H.S, Block-16-A, Gulistan-e-Jouhar, Karachi” [Mutual Agreement]**, which has been exhibited as Exhibit **P-1/5**.

3. Since Defendant did not contest the suit despite service of notice, consequently, first he was debarred from filing Written Statement vide order dated 27.05.2016 and then by order dated 23.01.2017, the case was directed to be proceeded *ex-parte* against him.

4. Mr. Muhammad Zubair Qureshi along with Muhammad Zia Qureshi, Advocates, argued the matter. Evidence is read of Plaintiff’s Attorney, namely, Muhammad Tariq Pirzada in support of the claim. The learned counsel has

referred to two material documents, viz. (i) Allotment Order of the above Subject Property and (ii) Possession Order (*at pages-127 and 129 of the evidence part*) issued by KDA (Karachi Development Authority) in favour of Plaintiff. Learned counsel has also referred to a Statement dated 17.02.2020 and documents appended therewith to evidence the fact that Subject Property was purchased by Plaintiff through auction from KDA.

5. To a specific query about limitation, learned counsel has referred to Plaintiff's unchallenged evidence so also the pleadings, that the '**Rado Project**' built by Defendant was at the Subject Property of Plaintiff, hence, he argued, that on the one hand Plaintiff was deprived of his valuable property and on the other hand, even the terms mentioned in the Mutual Agreement were flouted. He states that grievance of Plaintiff still continues, besides, he has also sought relief of declaration and possession, therefore, the suit is not hit by any provision of the Limitation Act, 1908.

6. The first Agreement of Sale, Receipt in pursuance thereof and the second Agreement, viz. Mutual Agreement dated 17.02.2007, are all filed in original in the Evidence Part, from Exhibits P-1/2 to Exhibits P-1/5. The salient feature of the Mutual Agreement is that Defendant was required to compensate Plaintiff by delivery of two Apartments / Flats, viz. (i) Flat No.A-1-208 and (ii) Flat No.A-207, located at the Subject Property within three years. It was acknowledged in the said Mutual Agreement that present Defendant being defaulter will also compensate the Plaintiff with a sum of Rs.4,98,000/- (*rupees four hundred ninety eight thousand only*) as rents upto February, 2007. None has happened, that is, neither full price of the Subject Property was given / paid to Plaintiff nor the above mentioned two Apartments and monetary compensation attached with it.

7. In view of the above undisputed position, the arguments of Plaintiff's counsel have substance, particularly with regard to maintainability of the suit, that present *lis* is not time barred.

8. In the intervening period, learned counsel has also filed an upto date Statement of Claim vide Statement dated 15.01.2020, wherein Plaintiff has also added a component of compensation of Rs.1.5 Million, but the same is not mentioned in the Prayer Clause; to this aspect, learned Advocate has referred to paragraph-10 of the plaint relating to damages. Reply of Advocate is substantiated by record. In paragraph-10 of the plaint, Plaintiff has claimed a sum of Rs.1.5 Million towards price escalation of Subject Property, mental torture and suffering.

9. It appears that there is an anomaly in the pleadings, as Plaintiff has claimed a sum of Rs.2.7 Million towards sale consideration whereas in the first Agreement and above Receipt it has been acknowledged by the Plaintiff that he has received part payment and thus unpaid total sale consideration was Rupees Two Million, which was to be paid, rather, adjusted in the manner highlighted in the subsequent Mutual Agreement. However, the terms of the subsequent Mutual Agreement are also grossly violated by the Defendant, *inter alia*, as no evidence contrary to that of Plaintiff was led.

Conclusion of the above is that at present, only Plaintiff is entitled to monetary claim and possession of the above Flats/Apartments. It is mentioned in the undisputed Mutual Agreement (Exhibit **P-1/5**) that Defendant was required to pay Rs.498,000/- (rupees four hundred ninety-eight thousand only) as rental of the afore referred two Apartments / Flats upto February, 2007, which till date was not paid, therefore, Plaintiff is entitled to the rental as mentioned in the Statement of Claim (*ibid*), that is, an amount of Rs.1,374,000/- (rupees one million three hundred seventy-four

thousand only). However, Plaintiff is not entitled for any amount towards sale consideration and in this regard the claim is rejected.

10. Adverting to the issue of awarding damages. Broadly, damages are of two kinds; general and special. Special damages are awarded only when a Claimant successfully proves actual losses suffered by him / her. In the present case, Plaintiff has not produced convincing evidence with regard to his claim of Rupees Fifteen Million towards compensation and damages, which fall within the category of special damages. Notwithstanding this aspect of the case, the Superior Courts have held in number of decisions, *Abdul Majeed Khan versus Tawseen Abdul Haleem-2012 CLD {Supreme Court of Pakistan} page 6*, being one of the leading cases, that if circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal rights exists. Although the claim of Plaintiff has gone unchallenged, but still onus in this regard was not discharged. No tangible evidence is led by Plaintiff about his actual business losses, justifying award of special damages.

However, in the case of *Sufi Muhammad Ishaque versus The Metropolitan Corporation, Lahore-PLD 1996 Supreme Court 737*, the damages vis-à-vis mental agony has been discussed and the conclusion is that they can be no yardstick or definite principle for assessing damages in such cases, which are meant to compensate a party who suffers an injury. The determination criteria should be such that it satisfies the conscience of the Court, depending on the facts and circumstances of the case.

11. It is a matter of record and undisputed facts that Plaintiff is running from pillar to post just to get back his money and above Flats from Defendant for which he has filed the present proceeding. It is logical to conclude that pursuing the litigation for quite some time, the Plaintiff has suffered a certain degree of mental anguish and incurred cost of litigation. Plaintiff has been deprived of his property and rental income.

12. In the above circumstances although I do not agree that the special damages of Rs.15,000,000/- (rupees fifteen million only) be awarded to Plaintiff but he is at least entitled to Rs.5,00,000/- (rupees five hundred thousand only) as general damages. Consequently, I decree this suit for the following_

- a. Rental of two Flats at Rs.6000 per month
for 83 months (from March, 2000 to February, 2007) Rs.4,98,000/-
- b. Rental of two Flats at Rs.6000 per month
for 48 months (from March, 2007 to October, 2011) Rs.2,88,000/-
- c. Rental of two Flats at Rs.6000 per month
for months (from November 2011 to December, 2019) Rs.5,88,000/-

Total Rs.1,374,000/-

(Rupees one million three hundred seventy-four thousand only)

with 10% markup from the date of institution of suit till the realization of amount. In addition to this, Rs.5,00,000/- (*rupees five hundred thousand only*) as general damages is also awarded, which the Defendant is liable to pay to the Plaintiff.

Possession of the two Flats/Apartments, viz. (i) Flat No.A-1-208 and (ii) Flat No.A-207, at Rado Hill View.

13. Parties are left to bear their own costs.

JUDGE

Karachi.

Dated : 04.11.2020

M.Javid.P.A.