

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
RA No.111 of 2014

Date	Order with signature of Judge
1.	For order as to non-prosecution on CMA No.1534/2016.
2.	For order as to non-prosecution on CMA No.6038/2014
3.	For order as to non-prosecution on CMA No.6039/2014
4.	For hearing of CMA NO.6018/2015
5.	For hearing of CMA NO.6014/2015
6.	For hearing of Main Case

22.01.2020

Mr. Fayyaz Aslam, advocate for the Applicant.

Mr. Muhammad Ramzan Awan, advocate for Respondent No.1.

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To be very precise this revision application is arising out of Suit

No.106/2009 filed by Respondent No.1 with the following prayer:-

- i. Directing the defendant No.2 to cancel the power of Attorney allegedly got registered fraudulently by the Defendant No.1.
- ii. To direct the defendant No.1 to return the original NIC and original property documents to the plaintiff i.e. Allotment order and photographs.
- iii. To pay Rs.50,000/- to the plaintiff as damages for defrauding and causing mental agony.
- iv. To restrain the defendants, their agents, employees, workers, subordinates, or anybody acting on their behalf or in his individual capacity not to transfer the house on the basis of Power of Attorney thereby took fraudulently or by any other means and or to create any third party interest till final decision of the instant suit.
- v. Award costs.
- vi. Any other relief or reliefs, which this Hon'ble Court deems fit and proper in circumstances.

The suit has been decreed and even appeal filed by Respondent No.1 has been dismissed by the appellate Court bearing civil Appeal **No.173/2014** way back on **22.5.2014** after discussing everything on merit. Today the learned counsel for the applicant before this Court while challenging the concurrent findings has not been able to point

out that which part of the two judgments is against him to the extent of any right accrued to him if at all through the sale agreement. The decree has already been partly executed because the registered Power of Attorney has already been cancelled by the sub-Registrar in terms of the judgment and decree through the executing Court. The NIC has been returned to the respondent. For the purpose of returning the original allotment order the execution is pending. Learned counsel has contended that two judgments are contrary to facts on record because factum of sale agreement is still intact. The plain reading of the plaint in presence of the learned counsel suggests that the Respondent in her suit has not even mentioned that there is any agreement of sale with the applicant. However, if there was any agreement of sale, it has not transferred any right or title or conferred any statutory right in favour of the applicant. Even with written statement he has not claimed transfer of property in his name. He was under obligation to make prayer of specific performance in his written statement way back in **2006** when the suit was filed and he with the said prayer he should have also file Court fees to secure his right under the sale agreement, if any. The burden of enjoying the benefit of the agreement of sale were on the applicant and since he has never filed a suit for specific performance to acquire, if any, his right under the said sale agreement, these two judgments and decrees cannot be set aside on this very ground. After 15/20 years if he still has any right to enforce agreement of sale he can do so subject to return of Original Allotment order towards the satisfaction of decree against him.

With this observation, this revision application stands dismissed.

JUDGE