

*Judgment Sheet*

IN THE HIGH COURT OF SINDH AT KARACHI

**II<sup>nd</sup> Appeal No. 57 of 2015**

Appellant : Salahuddin Siddiqui, through  
Mr. Ali Zaidi advocate.

Respondent No.3 : Jason International (Pvt.) Ltd., called absent.

Date of hearing : 02.06.2017.

**J U D G M E N T**

**NADEEM AKHTAR, J.** – Civil Suit No.1120/2013 was filed by the appellant against respondent No.3 for specific performance, which was dismissed by the trial Court vide judgment and decree dated 04.09.2014. Civil Appeal No.182/2014 filed by the appellant against dismissal of his above Suit was also dismissed by the appellate Court vide judgment and decree dated 11.07.2015. The above concurrent findings of the two Courts below have been impugned by the appellant through this second appeal.

2. Relevant facts of the case are that the appellant and respondent No.3 entered into a verbal sale agreement whereby the appellant agreed to purchase from respondent No.3 and the latter agreed to sell to the former apartment No.A-31 and penthouse No.2 in the building known as 'Jason Costal View' constructed on Block 3, Kehkashan, Clifton, Karachi, in consideration of Rs.550,000.00 and Rs.1,200,000.00, respectively. The entire agreed sale consideration was paid by the appellant to respondent No.3 between 16.03.1989 to 18.12.1989 for which proper receipts were issued by respondent No.3. Allotment letters and possession letters were issued in favour of the appellant in respect of both the properties, whereafter physical possession thereof was handed over to him. Despite repeated requests and demands by the appellant, sub-leases in respect of the said properties were not executed in his favour by respondent No.3. In this background the above Suit for specific performance was filed by the appellant which was dismissed and appeal filed by him was also dismissed as noted above. It may be noted that respondent No.3 / defendant did not appear before the trial Court and the Suit proceeded against him ex-parte, and he also did not appear before the appellate Court to contest the appeal.

3. Perusal of the impugned judgment and decree of the learned trial Court shows that it was observed therein that except for exhibits P/2 and P/3 no receipts of payment were produced by the appellant to show that sale consideration was paid by him to respondent No.3. The Suit was dismissed mainly in view of the above observation, and the learned lower appellate Court also came to the same conclusion. It is contended that the appellant had successfully discharged his burden by producing relevant documents and receipts confirming payment of sale consideration in full and final settlement, but the learned trial Court did not appreciate or record the same. It is further contended that this is a case of misreading and non-reading of material evidence. It is also contended that the Suit ought to have been decreed as the evidence produced by the appellant was not rebutted or disputed before the learned trial Court. In the present appeal, the appellant has filed CMA No.5867/2015 under Order XLI Rule 27 CPC praying that he may be allowed to produce documents viz. annexures A/3 to A/12 available at pages 55 to 73 as additional evidence as the said documents, which are proof / receipts of payment of sale consideration, are material for deciding the matter in a just, proper and equitable manner. Learned counsel for the appellant submits that the above documents were shown by the appellant in original to the trial Court at the time of his evidence, but the same were not exhibited or considered.

4. Perusal of Rule 27(1) of Order XLI CPC shows that the scope thereof is limited as it contemplates very few circumstances or conditions in which the appellate Court may allow a party to the appeal to produce additional oral or documentary evidence. Such circumstances / conditions are, (a) where the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (b) where the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or (c) for any other substantial cause. In the present case, the documents in question were not produced in the manner recognized by and prescribed in Qanoon-e-Shahadat, nor did the learned trial Court refuse to admit the same in evidence. Thus, in my opinion the case of the appellant does not fall under Rule 27 *ibid*. The contention of the appellant that the documents in question are material for determining the controversy involved in the Suit, appears to be correct as proper consideration and appreciation of the said documents will lead to conclusive finding as to whether or not agreed sale consideration was paid by the appellant in full and final settlement. Therefore, I am of the view that it would be more appropriate if the above documents are produced by the appellant before the trial Court so that the questions involved in the Suit could be decided completely and effectually.

5. As a result of the above discussion, the impugned judgments and decrees are set aside, and the matter is remanded to the learned trial Court with direction to allow the appellant / plaintiff to produce additional evidence in accordance with law, and thereafter to decide the Suit afresh latest by **31.08.2017** strictly in accordance with law. The appeal and listed applications stand disposed of in the above terms with no order as to costs.

J U D G E