

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 206 of 2009

Present :

Mr. Justice Nadeem Akhtar

Date of hearing : 01.11.2012.

Plaintiff : Mst. Gulshan Naseem Akhtar through
Mr. Abdul Karim Siddiqui, Advocate.

Defendant : Izharuddin called absent.

J U D G M E N T

Nadeem Akhtar, J.- This suit for specific performance has been filed by the plaintiff against the defendant in respect of two flats, namely, flat Nos. 201 and 202 measuring 1100 sq. ft. each situated on the second floor of the building known as "Al-Fatima Centre" constructed on Plot No. 3-F-12/8, Nazimabad No.3, Karachi.

2. It is the case of the plaintiff that the defendant, who is a builder, agreed to sell both the flats described above to her in consideration of Rs.2,500,000.00 each and executed two separate agreements of sale dated 15.04.2008 (Exhibits No.PW-1/4 and PW-1/5) in favour of the plaintiff. The entire agreed sale consideration was paid by the plaintiff to the defendant in full and final settlement at the time of execution of the said agreements. It is also the case of the plaintiff that under the terms and conditions of the agreements of sale, the defendant was obliged to complete the entire project and to handover the physical and vacant possession of both the flats to the plaintiff along with connections of all utilities etc. within a period of eight (08) months, that is, in January 2009. The plaintiff has alleged that she repeatedly requested the defendant to complete his part of the contract by delivering vacant and physical possession of both the flats to her and also by executing sub-leases in respect thereof in her favour, but the defendant on every such occasion avoided and then finally refused to perform his agreed part of the contract.

3. The plaintiff has submitted that by paying the entire agreed sale consideration to the defendant, the plaintiff completed her agreed part of the contract at the time of execution of the agreements, and that nothing remained or remains to be done by her. In the above background the plaintiff filed this Suit praying for a decree against the defendant seeking specific performance of both the agreements and delivery of peaceful and vacant possession of both the flats. The plaintiff has also prayed that in

case the decree to the above effect cannot be passed in her favour, then the defendant be ordered to refund to her the entire sale consideration of Rs.5,000,000.00 with markup / profit thereon, as well as to pay a sum of Rs.500,000.00 to her as damages. Permanent injunction has also been sought by the plaintiff that the defendant be restrained from the alienating or disposing of any of the two flats.

4. Summons were issued to the defendant initially through bailiff, which were returned unserved. Thereafter, summons were issued through bailiff and were published in the Urdu daily '*Jang*' of 28.05.2009 and 09.06.2009. Simultaneously summons were issued through other modes as well. Accordingly, service on the defendant was held good by the Additional Registrar (O.S.) on 13.08.2009. Despite all the above attempts including publication, the defendant did not appear to contest this Suit nor did he file his written statement. Vide Order dated 22.09.2012, the Suit was ordered to be proceeded ex-parte against the defendant.

5. The plaintiff examined her husband / attorney as her witness who produced as Exhibit PW-1/3 the original power of attorney granted in his favour by the plaintiff, and as Exhibits PW-1/4 and PW-1/5 the originals of the aforementioned two agreements of sale executed by the defendant in favour of the plaintiff in respect of the flats in question. The contents of the plaint and those of the affidavit in ex-parte proof have been reiterated by the plaintiff's witness, which have remained unrebutted. The documents produced by the plaintiff clearly show that there were agreements in respect of the flats in question between her and the defendant, and that the plaintiff performed her agreed part of the contract by paying the entire agreed sale consideration to the defendant in full and final settlement at the time of execution of the agreements. Under Clause 9 of the agreements, the defendant specifically undertook to handover vacant and physical possession of both the flats to the plaintiff within a period of eight (08) months, that is, in January 2009. Even after receiving the entire agreed sale consideration from the plaintiff, the defendant committed breach of the agreements by not performing his agreed part of the contract.

6. In view of the averments made by the plaintiff in her plaint, the original documents / evidence produced by her as well as in view of the breach committed by the defendant, the plaintiff has successfully proved her case. I do not see any reason for disbelieving the plaintiff especially when the case set up by her and the evidence produced by her have remained unchallenged / unrebutted. Therefore, the plaintiff is entitled to the reliefs sought by her in this Suit against the defendant. It is unfortunate that the plaintiff, who is an old lady of about 72 years of age and who paid the entire agreed sale consideration of Rs.5,000,000.00 to the defendant in

April 2008, is pursuing this Suit for relief for the last three years and nine months.

Foregoing are the reasons for the short Order announced by me on 01.11.2012 whereby this Suit was decreed with costs against the defendant as prayed by the plaintiff. All pending applications, including CMA Nos.1465/2010, are disposed of in view of this judgment.

J U D G E