

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

**Suit No. 1030 of 2007**

---

Order with signature of Judge(s)

---

- For evidence

**25.08.2021**

Mr. Jamroz Khan Afridi, Advocate alongwith the defendant  
-----

This suit for specific performance of contract, possession and permanent injunction is filed on 17.08.2007 in respect of an agreement dated 05.05.2006 with regards the property bearing plot No.206-207/A Roidad Nagar, Nazimabad No.5, Karachi, admeasuring 133 square yards where, after paying the advance of the sum of Rs.1,650,000/- plaintiff was to make payment of Rs.25,000/- per month to satisfy the balance sale consideration of Rs.4,500,000/. By his own admission, he has only paid twelve of such monthly payments after taking possession of the subject property. The dispute arose as to whether the sum of Rs.25,000/- was inclusive of the rent of Rs.15,000/- per month that the plaintiff was to pay over and above the sum of Rs.25,000/- per month, as the defendant only admitted payment of Rs.10,000/- towards satisfaction of the sale agreement, as Rs.15,000/- was to be paid for rent of the property being enjoyed by the plaintiff.

2. On account of such dispute, the plaintiff filed the instant suit and sought specific performance of the said agreement. However, perusal of the last couple of orders suggests that on account of the absence of the counsel for the plaintiff issues could not be framed timely, order insight is dated 10.05.2018, however, the matter was called thereafter on 16.09.2021 when the plaintiff was present in person and stated that he wishes to engage a new counsel. Similar was the case on 09.10.2019, when the counsel for the defendant was called upon to pay prosecution

fee in respect of CMA No.1038/2019 for the appointment of the Commissioner for recording the evidence, which was deterred by the plaintiff's conduct. On 02.12.2019, when the matter came before this Court, none was present. An urgent application was made by the counsel for the defendant, which was dismissed by order dated 31.01.2020. On 07.09.2020, both the parties were present in person in the absence of their counsel, the matter for appointment of the Commissioner remained undecided. In these circumstances on 25.09.2020 when neither the plaintiff nor his counsel was present, the defendant to expedite the matter chose not to press his aforementioned CMA and rather requested that the evidence be recorded in Court. Thereafter, the matter came up for such purposes on 13.08.2021, when none was present for the plaintiff and counsel for the defendant sought a fixed date.

3. The matter came up for recording of evidence today, when neither the plaintiff nor his counsel were present. On the contrary, the defendant to assist his counsel was available on the wheel chair being a frail and aged person. Learned counsel for the defendant drew Court's attention to the aforementioned orders and stated that this suit of specific performance, which a discretionary relief, has been pending since the year 2007 where the plaintiff has failed to lead any evidence and the defendant being incapacitated is put to serious perils. By drawing Court's attention to order XVIII rule 1 CPC, counsel contended that the plaintiff has right to begun and to state his case and adduce his evidence in support of the issues, which he is bound to prove. By referring to 1990 MLD 2094 [Re: Rana Allah Ditta v. Muhammad Shaft and others] and 1990 MLD 1794 [Sindbad Traveler (Pvt.) Ltd and 6 others v. Pakistan International Airlines Corporation], the counsel stated that contracted trial of suit are to be avoided and in this case despite lapse of over thirteen years, not a single shered of evidence has been brought forward by the plaintiff, who is enjoying the property and only made

payment of the balance amount in the Court, which is of no benefit to the defendant. Serious malafide on the part of the plaintiff is alleged, who seemingly has dispossessed the defendant and had taken over the suit property by force despite having failed to perform his part of the agreement in a gentlemen like manner.

4. After hearing the learned counsel and perusing the file, being cognizant of the fact that the relief to be granted in the specific performance, is discretionary in nature and largely depends on the conduct of the plaintiff, which in the case at hand, is dismayful as despite lapse of more than thirteen years, the plaintiff has not even commenced recording of evidence supporting his claim.

5. In the given circumstances, I see the instant litigation an utter misuse of the process of law, causing serious disadvantage to the defendant. Thirteen years is a long time for the plaintiff to prove his case by adducing compelling evidence, which lacks in the case at hand. In the given circumstances, this suit is dismissed for want of prosecution. Nazir is directed to return any sums which the plaintiff has deposited with him alongwith any profit accrued thereon.

JUDGE