

ORDER SHEET  
 IN THE HIGH COURT OF SINDH, KARACHI  
 Suit No.1192 of 2008

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Date Order with signature of Judge

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1. For hearing of CMA No.8380/08 (U/S 151 CPC.)
2. For re-hearing/Final Disposal.

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07.12.2016.

Mr. Abdul Wajid Wyne, Advocate for the plaintiff.

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**MUHAMMAD JUNAID GHAFAR J.-** This is a Suit for Declaration, Injunction and Possession, wherein, the plaintiff seeks the following prayers:-

- a) To declare and adjudge that the defendant had committed breach of contract dated 24.03.2004 Annexure H to the plaint and in consequence thereof the defendant be ordered by this Honourable Court to deliver up vacant and peaceful possession of Bungalow No.A-55, Block-II, measuring 200 Sq. Yards, Chapal Sun City, Plot No.29/1, Sector 29, KDA Scheme No.33, Karachi.
- b) For possession of the said Bungalow No. A-55, Block-II, measuring 200 Sq. Yards, Chapal Sun City, Plot No.29/1, Sector 29, KDA Scheme No.33, Karachi be delivered to the plaintiff.
- c) Permanent injunction restraining the defendant, his employees, agents, subordinates and any one working under his from selling, transferring, alienating or creating any encumbrances of the suit to any third party or to deliver possession of the said Bungalow No. A-55, Block-II, measuring 200 Sq. Yards, Chapal Sun City, Plot No.29/1, Sector 29, KDA Scheme No.33, Karachi.
- d) Cost of the suit.
- e) Any other relief(s) which this Honourable Court may deem fit and proper under the circumstances of the case.

2. Briefly stated facts of the case are that plaintiff pursuant to announcement of a Project by the plaintiff, the defendant booked and purchased a Bungalow No.A-55, measuring 200 Sq. Yards, Block-II, Chapal Sun City, Scheme-33, Karachi and furnished an Application Form dated 21.06.2000 for a total sale consideration of Rs.30,30,000/-. It is further stated that an Agreement was reached by the parties on 24.03.2004, whereby, defendant was put into possession of the property in question as up to such date he had paid a sum of Rs.12,06,600/- and Rs.18,23,400/- was agreed upon as a

loan which was required to be paid in equal instalments on 10<sup>th</sup> of each month in advance from April, 2004 onwards. It is the case of the plaintiff that thereafter the defendant defaulted and time and again was reminded to make balance payment and up to 25.5.2007 a total of Rs.19,79,600/- was paid by defendant and thereafter he defaulted continuously, hence instant Suit.

3. Summons and notices were issued in this matter whereafter despite filing of Vakalatnama, no written statement was filed and defendant was debarred on 08.09.2011. Subsequently, an application was filed on 22.12.2015 for recalling of the Order dated 08.09.2011, which was dismissed vide Order dated 10.11.2016 and today again nobody is in attendance on behalf of defendant.

4. Learned Counsel for the plaintiff submits that the averments in the plaint as well as through affidavit-in-evidence made by the plaintiff have gone unchallenged, whereas, admittedly the defendant has defaulted, therefore, instant Suit be decreed as prayed. Learned Counsel has further submitted that if the possession of the Suit Property is handed over to the plaintiff by decreeing instant Suit, the plaintiff undertakes to return the amount paid by the defendant alongwith mark-up as prescribed by State Bank of Pakistan. He has relied upon the cases reported as **2003 CLC 1294 (Abdul Sattar and others v. Mst. Sardar Begum)**, **2001 SCMR 1700 (Muhammad Akhtar v. Mst. Manna and 3 others)**, **2008 MLD 755 (Trading Corporation of Pakistan (Pvt). Ltd. V. Messrs Al-Noor (Pvt) Ltd., 1986 MLD 243 (Mst. Sarwat Jehan Begum v. Syed Usman and another)**.

5. I have heard learned Counsel and perused the record. It appears that defendant entered into an agreement with plaintiff after booking of the suit property and making payment of Rs.12,06,600/- and thereafter he was put in possession. Subsequently, he defaulted in paying loan/balance sale consideration to the plaintiff regularly, and time and again reminders were sent to him and subsequently lump sum payments were made by him. The plaintiff has led its evidence and has exhibited Application Form as PW-1/6, Various Receipts as PW-1/7, PW-1/9 to PW-1/32. The witnesses also exhibited Final Demand Notices as well as Notice of Cancellation of

the allotment as well as Agreement and so also Agreement dated 24.03.2004 as Ex.PW-1/37. The witnesses also exhibited Acknowledgement of Possession by the defendant as Ex.PW-1/38. After going through the record placed before the Court and the evidence led by the plaintiff, it seems that the defendant has no ground to controvert the assertion of the plaintiff and has chosen to remain absent and has also forgone his right of evidence by filing written statement within time, whereas, an application was belatedly filed for seeking permission to file Written Statement, which has also been dismissed. In the circumstances, it appears that the defendant has got nothing to defend in this matter.

6. In view of hereinabove facts and circumstances of the case, instant Suit is decreed as prayed in respect of prayer clause(s) **a, b & c**, however, it is subject to refund/return of the amount so far paid by defendant along with 10% yearly profit (but not on compoundable basis). See **Shahida Bibi & Others v. Habib Bank Limited (PLD 2016 SC 995)**.

7. Suit stands decreed in the above terms.

JUDGE