

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
HCA NO. 170 / 2015

Date	Order with signature of Judge
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- 1) For orders on CMA No. 1647/2015.
- 2) For orders on Misc. No. 1577/2015.
- 3) For katcha peshi.
- 4) For orders on Misc. No. 1578/2015.

1.6.2015.

Mr. Muhammad Arif Advocate for the Appellant.

- 1) Granted.
- 2) Granted subject to all just exceptions.
- 3 & 4) Through instant Appeal, the appellant has impugned order dated 27.2.2015, whereby the Suit for specific performance filed by the appellant bearing No. 1828 of 2010 has been dismissed by a learned Single Judge of this Court for default in compliance of directions of the Court dated 31.1.2011, whereby, the appellant was directed to deposit balance sale consideration with the Nazir of this Court within 20 days.

The learned Counsel for the appellant submits that the appellant had not complied with the orders of the Court for deposit of balance sale consideration, for the reason that a part of the land was under encroachment, and, had thereafter filed application seeking review of the said order and therefore, impugned order for dismissal of Suit is not proper and legal and prays that the same may be set aside.

We have heard the learned Counsel and have perused the record. It would not be out of place to observe, that in a Suit for Specific Performance, the party seeking specific performance of an agreement, must come before the Court with a clear intention to perform its part of the agreement, and shall always be available and willing to act further,

on the basis of agreement of which the Specific Performance is being sought. It is of paramount importance to note that such relief being discretionary in nature, grant of which is always dependent on the conduct of the party seeking such relief. Once the Court had directed the appellant to deposit the balance sale consideration on 31.1.2011, it was obligatory upon the appellant to either deposit the same within the period specified therein, or in the alternative, seek extension in time and review of the order. Though it has been stated that the appellant had filed application for Review of the said order, however, we may observe, that mere filing of such application, without pursuing it or having it decided, either way, does not entitle the appellant to continuously remain in default of such compliance and also seek further remedy from the Court.

The Hon'ble Supreme Court in the case of ***Haji Abdul Hameed Khan vs. Ghulam Rabbani (2003 SCMR 953)***, has also upheld the order of dismissal of Suit, on failure to deposit the balance sale consideration.

In view of herein above facts and circumstances of the instant case, we are of the view that the impugned order has been correctly passed, and does not require any interference by this Court. Accordingly, instant appeal being misconceived in facts and law, is hereby, dismissed in limine along with listed application.

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