

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date	Order with signature of Judge
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Suit No. 1966 of 2019

1. For hearing of CMA No. 16205/2019.
2. For hearing of CMA No. 17548/2019.
3. For hearing of CMA No. 512/2020.
4. For hearing of CMA No. 1777/2020.

Suit No. 1967 of 2019

1. For hearing of CMA No. 17550/2019.
2. For hearing of CMA No. 16209/2019.
3. For hearing of CMA No. 516/2020.
4. For hearing of CMA No. 1778/2020.

08th December 2021.

Mr. Zayyad Khan Abbasi, advocate for the plaintiff in both suits.
Mirza Sarfaraz Ahmed, advocate for defendants No. 1 to 3.
Mr. Nisar Ahmed Metlo, advocate for intervener.

Through listed application under Section 148 CPC, plaintiff seeks extension of time to deposit the balance sale consideration amounting to PKR 8 Millions. Admittedly, by order dated 03.12.2019 notices were issued with direction that in both suits plaintiff shall deposit the balance sale consideration with the Nazir of this Court within two weeks, which shall be invested in government profitable scheme and the matter was adjourned to 19.12.2019, but the plaintiff failed to deposit the same. On 19.12.2019, the following order was passed:

“Mr. Nisar Ahmed, advocate, undertakes to file Vakalatnama on behalf of Defendants No. 1,2 and 3 in both Suits and seeks some time. As per last order, balance sale consideration in both Suits amounting to Rupees Twenty Million should be deposited within ten days from today, failing which, adverse consequence will follow in view of the reported Judgment of Hon'ble Supreme of Pakistan already mentioned in the last order as well as a recent unreported Judgment of this Court handed down in the case of *Shahzad Nabi v. Naseer Turabi and others* [Suit No. 1680 of 2015]. Comments filed by Defendant No.4/SHO are taken on record.”

Though further 10 days' time was granted to the plaintiff but even then he failed to deposit the balance sale consideration with the Nazir of this Court. In cases reported as 1997 SCMR 181, 2003, SCMR 953, 2015 MLD 49, 2017 SCMR 222, 2020 SCMR 171, 2020 YLR 2024 and 2019 SCMR 524, it is categorically held that in the suit for specific performance of contract if balance sale consideration is not being paid, the suit is liable to be dismissed.

Learned counsel for the plaintiff while relying upon the judgment reported as 2021 SCMR 1270 seeks further time and contends that suit cannot be dismissed when there is no injunctive order. Hence, he seeks further 30 days' time to deposit the balance sale consideration. However, learned counsel has failed to substantiate that he has arranged sum and will pay the same within a week.

In a suit for specific performance, it is always of paramount consideration that the plaintiff seeking equitable remedy of specific performance must be always willing and ready to perform his part of contract, presuming that he is having money in his pocket and sitting outside the Court awaiting directions of the Court. In the present case, admittedly directions were given with rider while referring case law but plaintiff failed to comply with such directions and even today the plaintiff has not arranged to deposit balance sale consideration but rather he is again seeking further time. The request appears to be misconceived. Accordingly, both suits are dismissed alongwith listed applications.

Sajid

J U D G E