

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

R.A. No. 236 of 2000

[Muhammad Luqman v. Muhammad Usman]

Applicant: Muhammad Luqman through Mr. Abdul Malik
Shaikh, Advocate.

None present for respondent

Date of hearing : 17.04.2023

Date of Judgment : 26.05.2023

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. Through this civil revision application, the applicant has called in question the legality of judgment dated 18.7.2000 and decree dated 19.7.2000 passed by Vth Additional District Judge, Hyderabad in Civil Appeal No.61 of 2000 whereby the learned Judge while dismissing the appeal maintained the judgment dated 6.3.2000 and decree dated 15.3.2000 passed by 1st Senior Civil Judge, Hyderabad in F.C. Suit No. 94 of 1998.

2. Brief facts of the case as per memo of plaint are that the plaintiff purchased Shop No.5, ground floor, situated in Basim Chambers, built on Survey No. 50/1316, Gari Khatta Hyderabad from defendant, such sale agreement dated 30.11.1991 was reduced into writing for sale consideration of Rs.1,35,000/-; the plaintiff paid Rs.10,000/- as advance on 20.11.1991 and rest of the amount of Rs.1,25,000/- was payable in installments at the rate of Rs.10,000/- per month, and final installment of Rs.15,000/- was required to be paid on 20.12.1992; that physical vacant possession of the said shop had been delivered to the plaintiff and he started running his business of Book Seller and Publisher; that the plaintiff made the payment of installments as per details mentioned in para-2 of the plaint; that at the time of final installment of Rs. 15,000/- the plaintiff asked the defendant that he is ready and willing to make payment and he should execute the registered sale-deed, but the defendant asked him that there was/is a dispute over payment of Bank loan, which he had taken for construction of the building in which the disputed shop is located and he will accept the final installment and will execute the final sale deed when the dispute with the Bank will be settled; that subsequently the plaintiff time and again approached the defendant for acceptance of final installment and registration of final sale deed, but he refused on the pretext of dispute over payment of bank loan and the matter was pending before Banking

Tribunal; that about three months ago from the date of filing of suit, he came to know that the dispute of defendant with the Bank has been settled by the Tribunal so he met with the defendant and told him about final installment of Rs.15000/- in respect of final sale deed of the suit property, but the defendant asked him that the value of suit property had been increased with the passage of time, hence he will charge Rs.3,00,000/- from him, instead of settled price of Rs.135,000/-; the plaintiff refused to pay the enhanced price to the defendant, who issued him threats of forcible dispossession from the suit property; therefore, the plaintiff filed the above suit with following prayer:-

- a) Direct the defendant to accept the final installment of Rs. 15,000/- from the plaintiff and get the final sale deed registered in respect of Shop No.5 ground floor, Basim Chambers, Gari Khatta Hyd: in the name of plaintiff above named and/or in the alternative plaintiff may be allowed to deposit the final installment of Rs. 15,000/- with the Nazir of the Court and he may be directed to get the final sale-deed registered in the name of plaintiff through Sub-Registrar, Hyderabad.

3. On admission of suit, summons were issued to the respondent/defendant who filed written statement admitting the execution of sale agreement between the parties but denied the payment of final installment towards payment of the disputed shop but asserted that the payment was made against domestic appliances purchased by the plaintiff from M/s Erum Enterprises in the name of his wife namely Mst. Ashraf-un-Nisa and in the name of plaintiff; the defendant also stated that the plaintiff never approached him in respect of sale agreement and further the suit was/is time-barred and the court had no jurisdiction to proceed the same and prayed for dismissal of the suit.

4. From the pleadings of the parties, the trial court framed the following issues:-

ISSUES

1. Whether the court has no jurisdiction?
2. Whether the suit is time barred?
3. Whether an amount of Rs. 1, 20,000/- has not been paid by the plaintiff to the defendant towards the sale consideration of Rs. 1, 35,000/- of the disputed property?
4. Whether there was no Bank loan towards the defendant in respect of the suit property?
5. Whether the defendant has not shown his inability to execute final sale-deed in favour of the plaintiff in respect of suit property on account of pendency of dispute in Banking Tribunal over the loan taken by the def: on the suit property?

6. Whether the def: has no failed in performing his part of sale agreement by avoiding accepting the final installment and executing final sale deed?
7. Whether the demand by the def: of sale price of Rs. 3, 00,000 of the suit property is not arbitrary and thus illegal?
8. Whether the plaintiff is entitled for any relief?
9. What should the order be?

5. The plaintiff in order to prove his claim examined himself at (Ex-30) and produced original copy of sale-agreement at Ex.31, original installment card at (Exh-32/1 to 32/13) and after cross-examination the side of plaintiff was closed on 23.9.1999. The defendant was examined at (Exh-36), and after cross-examination his side was closed on 28.10.1999.

6. The trial court after hearing the parties and considering the evidence brought on record decreed the suit. An excerpt of the judgment is reproduced as under:-

“ Issue No.7.

The plaintiff has stated in his deposition that he is ready to pay remaining amount to the defendant. Now the defendant has enhanced the sale consideration amount and demanded Rs. 3,00,000/-(three lacs). This stand of the plaintiff is not shattered by the defendant's side and goes unchallenged and un-rebuttal. Even otherwise, the defendant has examined at (Exh-36) but he did not deny the above facts, hence my finding on this issue is accordingly in affirmative.

Issue No.8.

In view of my above findings on issues No.1 to 7, the plaintiff is entitled to the relief claimed with costs.

Issue No.9.

The suit is decreed for the Specific performance of the Agreement of sale dated 30.11.1991, together with cost. The plaintiff will deposit Rs. 15, 000/- in Court within a month from today and on the money being depositing the defendant shall execute the sale deed within one month from the date of deposit of money in favour of the plaintiff, failing which the plaintiff will be entitled to have the sale deed executed through Court. If, however, the plaintiff fails to deposit the amount within the time allowed the suit will stand dismiss with cost to the defendant.

7. Applicant being aggrieved by and dissatisfied with the above judgment and decree filed Civil Appeal No.61 of 2000 which was also dismissed vide judgment dated 18.7.2000, an excerpt whereof is reproduced as under:-

“For the reasons, Respondent / Plaintiff has succeeded in proving that appellant / defendant entered into agreement Ex. 31 for sale of Shop No. 5 for the sum of Rs. 1, 35,000/- and respondent / plaintiff had paid Rs. 1, 20,000/- in the shape of installments and his suit is within time as the

dispute of the appellant / defendant with Banking Tribunal is settled on 17.9.1997 and thereafter, suit is filed on 12.3.1998. Respondent / Plaintiff has paid the installment as per Credit Account Card of M/s. Irum Enterprises Ex. 32/1 and as per Receipt Ex. 32/2 to Ex. 32/13 and the learned trial Court has rightly decreed the suit. I, therefore, find no merits in the appeal and dismiss the same with no order as to costs”.

8. Mr. Abdul Malik Shaikh counsel for applicant argued that the finding of both the Courts below are against the facts, law, equity; that the judgments and decrees of both the Courts below are against the provisions of Civil Procedure Code; that both the courts below had erred in holding that the respondent had paid installment to M/s. Erum Enterprises and the said payment is binding upon the petitioner; that respondent had failed to prove that M/s. Erum Enterprises were given any power of attorney by the petitioner to receive an installment or M/s. Erum Enterprises was authorized to accept any amount towards installment on behalf of the petitioner; both the courts below had committed material irregularity in holding that M/s. Erum Enterprises was authorized to receive installments in respect of disputed shop; that both the courts below failed to appreciate the evidence of the petitioner and in relying upon the evidence of respondent; that both the courts below have miserably failed to take into consideration that the suit was time-barred as the matter was settled between the petitioner and the Bank Authorities in the year 1993 as such the time for specific performance will run from the year 1993 and the suit was to be filed within three years, but on the contrary, the suit had been filed in the year 1998, as such the suit itself was hopelessly time barred; that both the courts below had miserably failed to take into consideration that the respondent had got private dealing with M/s. Erum Enterprises from where they used to take technical instruments / articles on installment basis and the payments made to the respondent are towards the said articles; that both the courts below failed to take into consideration that any amount received by M/s. Erum Enterprises will not be binding upon the petitioner as M/s. Erum Enterprises had got no concern whatsoever with the business of petitioner; that the courts below wrongly ordered for specific performance of contract which in the circumstances of the case is unwarranted and uncalled for. He lastly prayed for allowing the instant revision application and setting aside the judgments and decrees of both the courts below.

9. No body has turned up on behalf of the respondent to assist this court, in such circumstances; I have heard counsel for the applicant and perused the record with his assistance.

10. It is an established principle of law that when agreement is in relation to an immovable property, the agreement does not come to an end upon the expiry of

the time for performance; and that the seller is required to serve a notice atleast 30 days to the purchaser calling upon him to complete the transaction, and after service of such notice, if the purchaser still fails to come forward and complete the transaction within 30 days period, only then the contract for specific performance comes to an end and the purchaser becomes disentitled to seek specific performance. In the present case, the evidence of the respondent/ plaintiff explicitly shows his willingness to perform his agreed part of contract within the time stipulated in the Agreement. The evidence on record shows that it was the applicant/defendant who kept on avoiding to complete the sale, and finally he refused to do so by taking the plea that by time the price of the subject property has been increased and demanded Rs.3,00,000/-(three lacs) from the respondent at enhanced rate, without looking into the agreement signed by him. The question whether this could be done by the applicant, the answer is in negative for the reason that once the sale agreement is signed by and between the parties, the same could only be modified with the consent of the parties and not otherwise, therefore the applicant was precluded to enhance the amount of sale consideration as set forth in the sale agreement.

11. The overall effect of the above discussion is that, execution of the agreement and receipt of amount of the agreed sale consideration except 15000 is admitted by the applicant; admittedly, the applicant/defendant never issued any written demand or notice to the respondent/plaintiff calling upon him to pay the balance sale consideration, nor did he issued any notice for cancellation of the agreement or for forfeiture of the advance part payment; and the applicant/defendant has not been able to prove that there was any delay or breach on the part of respondent/plaintiff, or that he asked for termination of agreement. On the contrary, the respondent/plaintiff has established his willingness to perform his agreed part of contract within the time specified in the agreement, although in cases of immovable properties, time is not the essence of contract even if it is mentioned therein. There is no contradiction on this point in his plaint and evidence, and his stand has all along remained the same. The evidence produced by the plaintiff in order to show that he was ready to pay the balance sale consideration, has remained unshaken as such the trial court rightly decreed the Suit and maintained by the appellate court, no further reappraisal of evidence is required at revisional stage. Resultantly this revision application is dismissed with cost.

JUDGE