

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

**R.A. No.130 of 2004**

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For hearing of main case.

**07-08-2023**

Mr. Abdul Hameed Bajwa advocate for the applicant.

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The findings of the appellate court are based on the conclusion that the appellant has not been able to prove the agreement itself whereas the witnesses produced that is Khatomal and Mohammad Jamil were only in relation to a payment of Rs.20,000.

I have heard learned counsel for applicant whereas respondents' counsel is absent. It seems that prima facie in the written statement the execution of the agreement was not denied. The subject agreement of sale was executed on 12.02.1984 however all that was said about it was that it stood with the consent of the parties and such cancellation agreement was reduced into writing on 10.02.1992.

The trial court did not agree with such statement of the defendant / respondent that it was mutually cancelled. So far as such findings of mutual cancellation are concerned it has not been challenged independently or even by way of cross appeal when an appeal was preferred before learned Additional District Judge by the appellant of the main judgment. So the facts with regard to the agreement having been executed prior to its alleged cancellation remain undisputed and there was no question of proving the agreement when the written statement itself says that it was once executed. The consequential findings of the appellate court are based on the conclusion that there was no payment at all including the first payment of Rs.45,000. It may be noted that such payment of Rs.45,000 was mentioned in the agreement itself which agreement was not

disputed, hence, this first payment of Rs.45,000 cannot be disputed by the defendant as well whereas its cancellation did not inspire the Additional District Judge. I am of the view that this finding by the appellate court is contrary to the material and evidence available on record hence within frame of Section 115 CPC, however there are consequential reliefs which ought to have been considered in the light of evidence available.

In view of the above I therefore deem it appropriate to set-aside the judgment of the appellate court and remand it back for deciding afresh strictly in terms of the material and evidence available on record after hearing the parties/ their counsel.

The revision application stands disposed of.

**JUDGE**

Irfan Ali