IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.194 of 2024

(*Land Mark Associates v. Abdul Malik & Others*)

Present:
Muhammad Shafi Siddiqui &
Sana Akram Minhas JJ

Appellant:	Land Mark Associates Through Mr. Umer Lakhani, Advocate
Date of Hearing / Short Order:	22-5-2024
Date of Reasons:	29-5-2024

O R D E R

1. **Sana Akram Minhas, J:** The instant High Court Appeal **("HCA")** was dismissed by us *in limine* through a short order dated 22.5.2024.

2. The Appellant is aggrieved by an order dated 29.4.2024 **("Impugned Order")** of a learned Single Judge passed in Suit No.593/2006 (*Land Mark Associates v. Abdul Malik & Others*) **("Suit 593")**. This Suit was instituted by the Appellant (as Buyer) for "*Specific Performance*" and is based on a Sale Agreement dated 20.1.2005 in respect of House No.IV-G-4, Nazimabad, Karachi (Plot No.4, Row No.4, Sub-Plot No.G, Block No.4) measuring 451 sq. yards. The total sale consideration was Rs.5,800,000/-, of which the Appellant paid Rs.580,000/- in November 2004 (i.e. prior to the execution of the Sale Agreement). The Impugned Order directs the Appellant (Plaintiff in Suit 593) to:

> **"** *… … … …. However, as an application under Section 94 CPC has been filed requiring interim orders let the Plaintiff deposit with the Nazir the balance amount as was payable alongwith profit at the bank rate thereon from the date of payment / suit filed till the present date in the first place in order to establish his bonafides in filing these applications within two weeks thereafter the matter be put up before the Court*.**"**

3. When questioned why the Appellant had not deposited the balance amount at the time of filing Suit 593 or soon thereafter, the learned Counsel for the Appellant responded that, prior to issuance of the Impugned Order, there were no court directions to deposit any balance amount. When asked again if the Appellant had ever taken any initiative and applied to deposit the

balance sale consideration, he responded in the negative. The Counsel stated that now that an order had been passed (i.e. the Impugned Order), the Appellant was ready to deposit only the actual amount of the balance sale consideration without the accrued profit/mark-up. When further confronted with the fact that the Sale Agreement is from January 2005 and the Suit 593 is from May 2006, and whether the Appellant's offer to deposit the actual amount of balance sale consideration only could be termed as serious and equitable, the Counsel had no response, let alone a satisfactory one.

4. The Counsel then referenced PLD 1973 SC 39 (*Essabhoy v. Saboor Ahmad*) and argued that this judgment directs a buyer to deposit the balance amount only after determining whether the buyer is at fault. This judgment is inapplicable and can be easily distinguished for two reasons. Firstly, the judgment in question does not establish a precedent that mandates the deposit of the balance amount to be contingent upon a preliminary determination of the buyer's fault in every case. Secondly, the context and circumstances of the cited case are markedly different from the current situation. The case before the Supreme Court was an appeal that arose from a judgment and decree passed in a suit initiated by the buyer (Saboor Ahmad), where issues were framed and evidence was recorded. The central issue was determining which party had breached the agreement. The Supreme Court found that the seller (Essabhoy) was at fault as he had agreed to sell a residential plot but failed to fulfil his obligation to get the plot converted and obtain the necessary permissions for conversion.

5. A suit for specific performance of a contract for the sale of land is a straightforward suit. To succeed, the plaintiff must show he has fulfilled his contractual obligations or he has been prevented from doing so by the other party. Additionally, the plaintiff must demonstrate his ability and readiness to fulfil his commitment as outlined in the contract[1].

6. Unlike section 24 of the *Punjab Pre-emption Act, 1991* (which obligates the court to require the plaintiff to deposit one-third (1/3rd) of the sale price in a pre-emption suit), the *Specific Relief Act, 1877* **("SRA")** does not impose any such statutory obligation on the court. There is no requirement for the buyer to deposit the balance sale consideration when filing a suit for specific performance of a contract related to immovable property. However, since the SRA is grounded in principles of equity and specific performance is a discretionary remedy rather than an entitlement, the court may impose

[1] 2021 SCMR 1241 (*Muhammad Yousaf v. Allah Ditta*)

conditions at any stage of the proceedings to ensure the buyer's good faith[2]. The perception that the deposit of the sale consideration is to be made only after the court's directive, is misguided[3].

7. In suits for specific performance, it is common for both parties to point fingers at each other for failing to adhere to contractual terms. Section 24(b) of SRA states that specific performance cannot be enforced for those who are incapable of performing or who violate essential contract terms. Thus, a buyer seeking specific performance must demonstrate he has either fulfilled his contractual obligations or has consistently shown readiness and willingness[4] to do so from the agreement date up to the filing of suit, or beyond it if circumstances require. The buyer must establish his bonafides and declare this readiness and provide evidence such as pay order, cashier's cheque, bank statements or other material to prove his ability to fulfil the contract, ensuring the suit is not an attempt to cover up a default or gain time. Additionally, the court may require the buyer to deposit the remaining sale consideration to demonstrate his intent and capability, thereby indicating that any failure to complete the contract was not his fault[5]. This deposit serves as evidence of the buyer's capacity, preparedness, and willingness to fulfil his contractual obligations – a prerequisite for seeking specific performance. Simultaneously, this measure offers protection to the seller's interests, safeguarding and balancing the interests of both parties involved in specific performance cases, promoting fairness and the equitable resolution of disputes. Failure to meet this requirement may disqualify the buyer from obtaining the relief of specific performance, as its grant is inherently discretionary which is to be exercised fairly and reasonably[6]. The courts, however, are not bound to grant such relief merely because it is lawful to do so[7]. This principle is enshrined in section 22 of SRA.

8. In this instance, the Sale Agreement is dated 20.1.2005, while the lawsuit was initiated on 11.5.2006. Fast forward to 2024, a span of approximately nineteen (19) years, it would be grossly inequitable and profoundly unjust if the Appellant (Buyer) was allowed to remit the same sum to the Respondent No.1 (Seller). It is evident that the value of land in Pakistan has surged over

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[2] 2021 SCMR 1270 (*Muhammad Asif Awan v. Dawood Khan*); 2021 SCMR 686 (*Inayatullah Khan v. Shabir Ahmad Khan*)

[3] 2021 SCMR 686 (*Inayatullah Khan v. Shabir Ahmad Khan*)

[4] Form-47 in Appendix "A" of First Schedule of CPC, 1908 pertains to "Suit for Specific Performance" and delineates the templates and components of pleadings. Its paragraph (3) provides: "*The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice*". See: 2023 SCMR 555 (*DW Pakistan v. Anisa Fazl-i-Mahmood*)

[5] 2021 SCMR 1270 (*Muhammad Asif Awan v. Dawood Khan*)

[6] 2020 SCMR 171 (*Kuwait National Real Estate v. Educational Excellence Ltd*)

[7] 2017 SCMR 1696 (*Muhammad Abdur Rehman Qureshi v. Sagheer Ahmad*)

time, coupled with the continuous depreciation of the rupee. Consequently, granting a decree in favour of the Appellant now would confer an unfair advantage, effectively granting it the plot at a lower cost (in real terms) than initially agreed upon. Moreover, the Appellant would have retained and utilized Rs.5,220,000/-, constituting the balance of the sale consideration (since Appellant has only paid Rs.580,000/- out of total sale consideration of Rs.5,800,000/-). The amount purportedly paid by the Appellant to the Respondent No.1 (Seller), is a fraction, a meagre 10% (ten percent) of the total sale consideration, pales in comparison.

9. Given the circumstances, the Appellant's proposal to deposit only the actual remaining balance of the sale consideration, excluding the profit or mark-up, could be considered facetious and indicative of a lack of seriousness and unwillingness on its part. Exercise of jurisdiction by this Court could result in a miscarriage of justice and unfairly benefit the Appellant, who, through a minimal payment, has effectively entangled the Respondent No.1 for nearly two decades.

10. We, therefore, affirm the Impugned Order dated 29.4.2024 and hold it to be completely sound and unassailable.

11. It is clarified that the observations made herein are solely for disposing of the present HCA and do not affect the rights and contentions of the parties at the time of final adjudication of Suit No.593/2006.

12. By our short order dated 22.5.2024 we had dismissed the instant HCA along with all pending applications. These are the reasons for doing so.

JUDGE

JUDGE

Karachi
Dated: 29th May, 2024