

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
Civil Revision Application No.S-212 of 2022

Date	Order with signature of Judge
------	-------------------------------

1. For hearing of main case
2. For hearing of CMA No.1046/2023.

**24.11.2023**

Mr. Nasir Ali Rajput, Advocate for the Applicant  
Mr. Achar Khan Gabol, Advocate for the Respondent No.1  
Mr. Mehboob Ali Wassan, AAG

\*\*\*\*\*

Facts of the case as accumulated in this revision application are that Respondent No.1 had filed F.C Suit No.87 of 2019 for specific performance of contract, compensation for breach of contract and permanent injunction in respect of suit property, i.e. Survey No.723 (0-13), 708/3 (0-08) total area 0-21 ghuntas of Deh Chaniyari Taluka and District Naushahro Feroze (hereinafter suit property) seeking enforceability of two unregistered sale agreements dated 06.11.2017 and 12.09.2018.

The Suit of Respondent No.1 was dismissed vide impugned judgment and decree dated 05.11.2021; however, Respondent No.1 preferred an appeal bearing Civil Appeal No.149 of 2021, which was partly allowed by learned Appellate Court vide judgment and decree dated 14.11.2022 directing the Applicants to pay Rs.640,000/- to the Respondents as compensation of breach of contract.

Learned Counsel representing the applicants submits that learned Appellate Court has partly allowed the appeal while granting relief of compensation and recovery of earnest money amounting to Rs. 640,000/- to the Respondent No.1 (Defendant therein) and failed to appreciate there was no specific issue framed by the trial court regarding compensation and breach of contract under which Appellate Court held that Appellants has violated the terms and conditions of sale agreements and failed to execute the sale deed. Besides, he urged that there is a

specific denial in their written statement; sale agreements have been cancelled. They had returned the earnest money and were ready to pay the outstanding amount of Rs.40,000/- but in any case, the learned Appellate Court ought to have framed a particular issue and remit the case under which the findings were rendered in the impugned judgment. He further argued that there was no such finding of a learned trial Court under which appeal is partly allowed. However, the learned Appellate Court illegally exercised the jurisdiction by awarding Rs.640,000/-.

Learned Counsel for Respondent No.1, after arguing the matter at some length, conceded the above legal aspect of non-framing of issues by the learned trial Court and stated that additional issues may be framed and remand the case to the trial Court to decide on merits.

Learned AAG stated that there is a private dispute between the parties and the government has no nexus or interest in the matter.

Under the above circumstances, I am of the view that in the light of the claim of Respondent No.1 regarding compensation and refund of earnest money, an issue must be framed, because without framing the relevant issues, it cannot be inferred that parties have definitely produced their whole evidence regarding their claims. The object of framing issues is that the controversies put by the parties are narrowed to particular points to be settled and determined by the Court. Issues determine the nature of onus and right of party to open evidence. The sole purpose is to invite the attention of the parties to the real part needing consideration, so it is the primary duty of the Court to frame appropriate issues arising from the pleadings. It is worth mentioning that the Court could frame any issue, even if not raised in the pleadings. Nonetheless, it would come to the notice during the course of evidence. If a Court settles correct and accurate issues, it is possible to reach at a just decision within a shortest possible time. Inaccurate issues may kill valuable time. If correct and accurate issues are not framed, it leads to gross injustice, delay and waste of the Court's time in deciding the matter. The duty in regard to framing

of the issue is of the Court, which it has to discharge because it has to try the suit and it has to give notice to parties to lead evidence with reference to the issues framed. In the case of Haji Farmanullah v. Latif-ur-Rehman (2015 SCMR 1708), it was held by the August Supreme Court of Pakistan that:

*“It may be pertinent to mention here that the purpose of framing issues in a civil litigation is that the parties must know the crucial and critical factual and legal aspects of the case which they are required in law to prove or disprove through evidence in order to succeed in the matter on facts and also the points of law”*

Keeping in view the overall circumstances, it deems necessary that issues regarding compensation, refund of earnest money, breach of contract in order to achieve the said purpose and additional issues need to be framed which follows as: -

- i) Whether the defendants committed a breach of contract and the plaintiff is entitled to compensation and refund of earnest money in terms of sale agreements dated 06.11.2017 and 12.09.2018; if so, what's its effect?
- ii) Whether the plaintiff received earnest money from the defendants and the remaining amount of Rs.40,000/- is outstanding?

The crux of the above discussion is to determine the real and whole controversy involved in the suit. With the consent of learned Counsel for the parties, both impugned judgments and decrees are set aside and the case is remanded to the trial Court as additional issues have already been framed with direction to record the evidence and decide the suit at the earliest, after affording proper opportunity of hearing to both the parties.

This revision application stands **disposed of** in the above terms.

**JUDGE**