

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana

C. P. No. D – 5340 of 2024

Petitioner: IQ Properties, through Mr. M. Asad
Ashfaq, Advocate

Versus

Respondent No.1: Zulfiqar Ali Bhutto. Nemo

Respondent No.2: Managing Director, Bahria Town,
Karachi. Nemo

Respondent No.3: Sub-Registrar, Gadap Town, Karachi.
Nemo

Date of Hearing
and Short Order: 16.12.2024

Date of Reasoning: 11.01.2025

ORDER

JAWAD AKBAR SARWANA, J.: This writ petition has been filed by the appellant, IQ Properties (Pvt.) Ltd. ("Petitioner Company"), on the ground that the trial Court and the Revisional Court did not appreciate that the suit for specific performance filed by respondent No.1/Plaintiff, Zulfiqar Ali Bhutto ("ZAB"), in Suit No.869/2022, did not specifically conform to Form-47 & 48 of Appendix-A of CPC 1908, and Section 24-B of the Specific Relief Act and for these reasons the two Courts below ought to have rejected the plaint. Additionally, Petitioner's Counsel, in support of his contention, relied on unreported judgments of (i) the Supreme Court of Pakistan dated 04.04.2024 passed in Civil Appeal No.51-K/2021 in Meer Gul v. Raja Zafar Mehmood through Legal Heirs & Others, and (ii) the Division Bench of the High Court of Sindh dated 29.04.2024 passed in H.C.A. No.194/2024 in Land Mark Associates v. Abdul Malik and others, and a reported case of the Division Bench of the Islamabad High Court in Abdus Salam Khan Barki and Another v. Mian Pervaiz Akhtar and Another, PLD 2022 Islamabad 346. Counsel for the

Petitioner contended that ZAB's plaint should have been rejected in light of the above case law, too. He contended that the impugned orders passed by the two forums below were "without lawful authority" and were "of no legal effect". Hence, the Petition should be allowed, and ZAB's plaint should be rejected.

2. Heard Counsel and perused the documents available on record, including the trial Court's order dated 01.03.2024 and the Revisional Court's impugned order dated 25.09.2024.

3. It appears that in September 2022, ZAB filed a Suit for Specific Performance, Declaration, Possession, Damages, Mense Profit and Permanent Injunction concerning a suit property described as Villa No.3, ad-measuring 200 sq. yds. in Sports City, Bahria Town, Karachi ("Suit Property"). ZAB claims in his pleadings filed with the said Suit that the Suit Property was awarded to him by ARY Residencia and its officers (Defendant Nos.3 to 5) on ARY Digital TV Network's (Defendant No.2) cable/TV program/show titled "Eidi Sab Ke Liye" through the Petitioner Company (Defendant No.1), but the Petitioner Company cum Bahria Town (Project Super Highway)(Defendant No.7), apparently subsequently kept raising the sale consideration from time to time, allegedly interse, hence ZAB contended, he was compelled to file Suit No.869/2022 against the Defendants mentioned above.¹ Subsequently, on 26.10.2022, Bahria Town (Defendant No.7) filed its Written Statement contending that there was no privity of contract between ZAB and Bahria Town. No Written Statement was filed by ARY Digital TV Network and ARY Residencia and its officers except that on 14.03.2023, Defendant Nos.1 to 4 filed the application under Order 7 Rule 11 read with Section 151 CPC.

4. The Revisional Court, in its Order dated 25.09.2024, observed that it was essential for the trial Court to assess the case on merits.

¹ The Petitioner Company did not implead ARY Digital TV Network and ARY Residencia and its officers in the Revision and consequently has not impleaded them in this Petition

The Revisional Court recorded that according to the trial Court, when ZAB filed his suit on 05.09.2022, he had paid Rs.400,000/- on 25.12.2019 against the seventh (7th) instalment of Rs.12,50,000/-. In the wisdom of the Revisional Court, the dispute required proof and the absence of ZAB's undertaking to pay the balance sale consideration from the plaint alone did not appear to be valid grounds for rejection of the plaint. The Revisional Court observed that ZAB's contentions and others articulated in the plaint, involved mixed questions of law and facts that could only be resolved by recording evidence. The plaint could not be rejected summarily. The Revisional Court rejected the Petitioner's Civil Revision Application for these reasons.

5. Meanwhile, earlier, the trial Court, in its impugned Order dated 01.03.2024, had observed that at the time of hearing of the Petitioner's application under Order 7 Rule 11 read with Section 151 CPC, ZAB had filed an application for amendment of the plaint on the ground that there was a clerical error in the same. The trial Court observed that while the Petitioner Company contended that the framing of the plaint was incomplete according to the provisions of the civil procedure code, and therefore, the plaint as framed was liable to be rejected, however, at the same time, the application for the amendment to the plaint for removal of the technical error which could be cured was still ripe for hearing. The trial Court observed that there appeared to be a factual controversy between the parties, too, on account of ZAB's claim that he had been subjected to an unlawful increase in the sale consideration on the part of the Petitioner Company, Respondent No.2 (Bahria Town), and others. The trial Court noted that no written statement was available on behalf of the Defendants impleaded in the Suit, i.e. the Petitioner Company, ARY Digital TV (Defendant No.2), and ARY Residencia and its officers (Defendant Nos.3 to 5) except for Bahria Town (Respondent No.7). There were no comments available on record from Defendant Nos.2 to 5. The trial Court concluded that the points of fact and law raised by ZAB in his pleading could only be decided

after the recording of evidence and could not form the basis for the rejection of the plaint at the preliminary stage, including on the grounds of failure to deposit balance sale consideration. With these observations, the trial Court rejected the Petitioner's Application.

6. After hearing Counsel and review of the documents filed with the petition, we concur with the observations made by the Revisional Court and the trial Court. ZAB's contentions in his plaint required evidence and an evaluation by the trial Court of a case of specific performance of contract emerging from ARY Digital's TV program/show, actions on the part of their agent and the developer, Bahria Town. ZAB's claim was/is not a cut-and-dry case of specific performance. As set out in the plaint, the case appears to be one involving more than just an agreement of sale of immoveable property. There appear to be several moving parts in the sale transaction, including, inter alia, perhaps back to back contracts. We are mindful of making any further observations so as not to prejudice the trial, which is ongoing, notwithstanding that the observations made by us to decide this petition are tentative and cannot be relied upon by the parties or the trial court. Be that as it may, both forums were cognizant of the distinguishing background of the case set up by the Plaintiff and have rightly rejected the Petitioner Company's plea to reject the plaint at the preliminary stage for the reasons articulated therein. We are further fortified of our opinion by the fact that the Application under Order 7 Rule 11 read with Section 151 CPC was jointly filed by the Petitioner Company, ARY Digital TV Network and ARY Residencia and its officers (Defendant Nos.1 to 4), and the two Defendants ARY Digital TV Network (Defendant No.1), and ARY Residencia and its officers (Defendant Nos.3 to 5), accepted the decision of the trial Court as they did not prefer any appeal/revision. Only the Petitioner Company (Defendant No.1) proceeded to challenge the orders of the trial Court and the Revisional Court. The pleader for Defendant Nos.1 to 4 accepted the trial Court's Order dated 01.03.2024. Consequently, the Petitioner Company cannot solely challenge the orders of the two

forums, which articulate ZAB's claim to be one made against all the Defendants, jointly and severally. ZAB's plaint cannot be dismissed against the Petitioner Company (Defendant No.1 in Suit No,869/2022) alone, in piecemeal, as the presence of the Petitioner Company too is necessary for the proper, and complete adjudication of ZAB's claim. We now turn to the case law the Counsel for the Petitioner Company relied upon.

7. At the outset, all three judgments/orders the Counsel for the Petitioner Company relied on are distinguishable on facts compared to this petition. The Supreme Court of Pakistan's case in Meer Gul, the Sindh High Court's Division Bench decision in Land Mark Associates and the Judgment of the Division Bench of the Islamabad High Court in Abdus Salam – all three cases involved aspects of specific performance of an agreement of sale and the implications of deposit of balance sale consideration. As mentioned above, albeit briefly, the background of the case at hand, is not so simple. Each case must be examined within the contours of its own set of facts, and the Court should apply principles of law in that context, too. Regarding Form-47 & 48 in Appendix "A" of the First Schedule of CPC, 1908, in the present facts and circumstances of the case, as set out in the plaint, this articulation of expressing a readiness and willingness to perform the contract in this case specifically was perhaps difficult to comply with strictly and arguably was a nuanced one. The sale of the Suit Property involved seemingly three separate entities/defendants: (i) the first defendant was ARY Digital TV Network (ZAB's first claim to the Suit Property arose when he won the villa as part of a prize on ARY's TV program/show), (ii) the second defendant was ARY Residencia, a separate legal entity from ARY Digital TV Network, which managed the real estate business of the ARY Group; and, (iii) the third defendant, impleaded as Defendant No.7 was Bahria Town, the developer and ultimate lessor of the Suit Property. Yet the distinguishing features of ZAB's claim did not end here. Additionally, as set up in his plaint, his first sale contract with the first Defendant is/was apparently an oral-verbal contract which was presumably

aired on national/cable TV. The second sale contract with the second defendant was in writing, and a copy of the same was attached to the plaint as available in the Petition. Finally, as per documents attached to the plaint, the second defendant apparently raised/revised the schedule of payments seemingly based on the property developer, Bahria Town's own pricing schedule, and Bahria Town's defence in the Written Statement was/is that there was no privity of contract with ZAB. Form-47 & 48, formulated and developed in 1908, could not have envisaged every single exigency that could crop up in a suit for specific performance. Even though the proforma represents the minimal articulation of a readiness and willingness of the plaintiff to form his/her part of the contract at the most basic level of the pleadings, yet no hard and fast rule can be laid down for its omission. Given the background discussed herein, the fact that ZAB had moved an application for amendment to the plaint, which was still pending when the trial Court heard the Petitioner Company's application for rejection of the plaint and that no injunctive relief had been granted to ZAB at the material time, we cannot find how the three judgments/orders regarding payment of balance consideration relied upon by the Petitioner's Counsel could be applied to facts at hand and ZAB's plaint is rejected summarily. With great respect, all three judgments/orders carry weight but are not applicable to the facts and circumstances of the case.

8. Last, but not least, no case for intervention of the Revisional Court's impugned Order of 25.09.2024 is made out under Article 199(1)(a)(ii) of the 1973 Constitution.

9. Given the above, we did not find any reason to interfere with the impugned judgment passed by the trial Court; hence, this petition was dismissed by a short order dated 16.12.2024. The above are the reasons for the dismissal of C.P. No.D-5340/2024 with no order as to costs.

JUDGE

CHIEF JUSTICE