



consummated by both parties by 15.08.2003. The possession of the subject property was transferred to Shabbir A. Halai in accordance with the stipulations of the agreement to facilitate the completion of the remaining 20% of the construction work. Mrs Anjum Ara contends that Shabbir A. Halai unlawfully and without her consent appropriated the subject property and commenced residing therein with his family while failing to remit the outstanding balance sale consideration of Rs.52,50,000. Since time was of the essence under the agreement, the Respondent's failure to discharge the balance sale consideration constitutes a fundamental breach. In light of the Respondent's fraudulent misrepresentations and breach of contract, the sale agreement dated 02.04.2003 is rendered unenforceable against the Appellant and, consequently, is liable to be rescinded. The Appellant is entitled to reclaim possession of the subject property along with compensatory damages.

3. The disquietude presented on record in HCA No.185/2020 challenges the Judgment and Decree insofar as issue No.13 is concerned, wherein the learned Single Judge mandated the Respondent (Appellant in HCA No.185/2020) to remit a simple interest at the rate of 10% per annum on the outstanding sale consideration of Rs.52,50,000/- from the date of the suit's initiation, and Rs.50,000/- per month from July 2003 until the adjudication of the suit by the learned Single Judge, representing the monthly rent for the utilization of the subject property by the Respondent. The Respondent contends that he fulfilled his obligations under the Sale Agreement and disbursed a substantial portion of the consideration, enabling the Appellant to redeem the subject property encumbered with the Bank.

4. The learned Single Judge, after an exhaustive review of the pleadings presented by the parties, articulated the following consolidated issues for adjudication: -

*1. Whether the Plaintiff or the Defendant committed breach of sale agreement dated 02.04.2003, if so, its effect?*

*2. Whether due to acts and deeds of the Defendant, sale agreement dated 02.04.2003 has lost its legal sanctity and the same is no more valid and enforceable against the Plaintiff?*

*3. Whether the Plaintiff is entitled to claim rental at the rate of Rs.50,000/-per month with effect from 17.07.2003 as compensation for illegal occupation and use of the suit property by the Defendant as his family's residence without consent of Plaintiff and without making payment of balance sale consideration of Rs.52,50,000- and for causing losses to the Plaintiff, till final disposal of the suit or possession of the suit property is handed over to the Plaintiff?*

*4. Whether the Plaintiff entered into an agreement of sale dated 04.04.2003 with one Muhammad Shamim [Annexure Y at page 151 of Suit No.90/2004] for purchasing a fully constructed bungalow No.364, measuring 600 square yards, Scheme No.1, DHA, Malir Cantt., for a total sale consideration of Rs.65,00,000/- and whether the Plaintiff*

*could not fulfil her obligations under the said agreement due to Defendant's breach of sale agreement dated 02.04.2003 in respect of suit property, if so, its effect?*

*5. Whether the agreement to sell dated 02.04.2003 between Plaintiff and the Defendant in respect of suit property is liable to be cancelled?*

*6. Whether the Plaintiff is entitled to claim possession of the suit property?*

*7. Whether suit No.443/2004 filed by Defendant Shabbir A. Halai against Plaintiff Mrs. Anjum Ara for specific performance of agreement to sell dated 02.04.2003 is not maintainable?*

*8. Whether the Defendant is not entitled to seek relief of specific performance of the contract/agreement 02.04.2003 in Suit No.443/2004?*

*9. Whether the Plaintiff in Suit No.90/2004 was unable to redeem her mortgage on the subject property due to paucity of funds with her and such redemption of the mortgage loan was done with money paid to her by the Defendant under the Sale Agreement?*

*10. Whether the Defendant in Suit No.90/2004 as buyer has invested / incurred expenditure of Rs.20,00,000/- on the subject suit property to render it habitable and sale worthy?*

*11. Whether in the part performance of the Sale Agreement dated 02.04.2003 the Defendant was put in possession of the property and whether the Defendant has indicated through evidence his willingness to comply with his obligations contained in the agreement?*

*12. To what relief, if any, the Plaintiff is entitled?*

*13. What should the Decree be?*

5. The respective parties duly presented their evidence, and following the culmination of the final arguments in the suit, the impugned Judgment and Decree were duly rendered.

6. The learned Single Judge of this Court, vide an Impugned Judgment, was pleased to adjudicate both suits filed and vice versa. The pertinent constituents of the Impugned Judgment & Decree are delineated hereunder: -

*“17. **ISSUE NO.13:** In view of the peculiar circumstances of the case, and the foregoing discussion as well as my findings on issues No. 1,2 and 4 to 12, I am of the opinion that the Plaintiff has failed to substantiate her claim for cancellation of agreement [Exh.P/6], possession and damages. However, she is entitled to the rentals as compensation whereas the Defendant has established his claim for specific performance of the contract subject to payment of balance sale consideration and monthly rentals for utilizing the suit property from the month of July 2003 till the decision. Accordingly, the above suits are disposed of in the following terms:*

*i) The Suit No.90 of 2004 filed by the Plaintiff [Mrs. Anjum Ara] is dismissed, whereas Suit No.443 of 2004 filed by the Defendant [Shabbir A. Halai] for specific performance of the sale agreement dated 02.04.2003 is decreed. Consequently, the Defendant is directed*

*to deposit with the Nazir of this Court within 45 days hereof the balance sale consideration of Rs.52,50,000/-[in terms of the sale agreement dated 02.04.2003] along with 10% per annum simple markup from the date of filing of the case and Rs.50,000/- per month from July 2003 till the decision of this case being monthly rentals for utilizing the suit property.*

*However, in the event the Defendant fails to comply with the above order, then the Plaintiff will be entitled to recover the physical possession of the suit property through Nazir of this Court and the amount paid by the Defendant towards advance part payment and the amount incurred towards cost of remaining construction shall be forfeited.*

*ii) Upon deposit of the above amount, the Plaintiff will execute a conveyance deed in favour of the Defendant and will also handover all its original title documents including completion certificate, B Lease (99-years) and paid bills as well as challan in respect of utilities and taxes etc., up to the month of June 2003 to the Defendant under the supervision of the Nazir of this Court within a period of thirty (30) days and in lieu thereof the amount so deposited by the Defendant shall be handed over/released to the Plaintiff upon proper verification and identification.*

*However, in the event the Plaintiff fails to comply with the above order, then the Nazir of this Court shall enquire first from the concerned quarters about the completion certificate and execution of B-Lease in favour of the Plaintiff and once it is confirmed that B-Lease has been executed in respect of the suit property, execute a conveyance deed in favour of the Defendant on behalf of the Plaintiff. However, in the event if it is found that B-lease in respect of the suit property has not been executed then the Nazir will get B-lease executed first in favour of the Plaintiff and then execute a conveyance deed in favour of the Defendant.*

*iii) All the expenses in respect of obtaining completion certificate and the B-Lease (99-years) and or payment of utilities and taxes up to 30th June 2003 shall be borne by the Plaintiff and/or may be deducted from the amount so deposited by the Defendant with the Nazir. However, for obtaining completion certificate, if the construction of the suit property is required to be altered and amended the same will be done without delay at the cost and expenses of the Defendant. As well as the charges for registration of the conveyance deed and Nazir's fee for supervision shall be borne by the Defendant.”*

7. In this milieu, the respective learned counsel presented exhaustive arguments to adjudicate the issue framed pursuant to Order XLI Rule 31 C.P.C, scrutinizing whether the Impugned Judgment & Decree was rendered in strict adherence to the Law.

8. Learned counsel for the Appellant contended that sufficient grounds, corroborated by the authoritative judgments of the Superior Courts, demonstrated that the Appellant was entitled to the Decree sought in her suit. The principal argument of Mr. Badar Alam, learned Senior Counsel for the Appellant, is that although the Appellant's suit was dismissed, the learned Single Judge, in the Impugned Judgment & Decree, allowed the Appellant's prayer as sought in the suit. This included directing the Respondent to deposit the balance sale

consideration and an amount of Rs.50,000/- as rent from the inception of the suit until its decision. Considering this, separate decrees prepared in pursuance of the impugned Judgment & Decree would be contradictory and unsustainable. He further argued that the Appellant, in support of her claim, produced substantial documentary evidence and the testimony of her witnesses, which were duly recorded. He also contends that the learned Single Judge erred in failing to recognize that, until the filing of the Respondent's suit for specific performance, the Respondent had only remitted Rs.1,650,000/- as advance token money out of the total consideration of Rs.6,900,000/- and the Respondent willfully and egregiously neglected to deposit the remaining balance of Rs.5,250,000/- with the Court, nor did he file an application seeking permission to deposit the said balance during the pendency of the suit. However, the learned Single Judge failed to appreciate their testimony and, without considering the evidence introduced by the Appellant, rendered the impugned Judgment & Decree, which is unsustainable and liable to be set aside, while decreeing the suit filed by the Appellant.

9. In response, the learned counsel for the Respondent contended that the HCA filed by the Appellant is liable to be dismissed, and the HCA filed by him, challenging the legality of the impugned Judgment & Decree regarding the requirement to deposit Rs.50,000/- per month as rent, should be allowed. According to the learned counsel, the Respondent fulfilled all his obligations under the sale agreement, whereas it was the Appellant who failed to honour her obligations by not executing the necessary documents, including Sub-Lease B, in favour of the Respondent. He further contended that the Respondent, in accordance with the terms of the agreement, completed the construction strictly in line with the approved building plan issued by the DHA. Moreover, he argued that the Appellant published a public notice defaming the Respondent to subvert the contract's true nature. Therefore, the HCA filed by the Appellant should be dismissed.

10. Having carefully heard the learned counsel and meticulously perused the record, it is apparent that the core of this Judgment hinges on the Sale Agreement dated 02.04.2003, wherein the parties reached consensus ad idem.

11. To respond to the contentions made by the learned counsel for the Appellant, it is essential to highlight the following points based on the discussion of the specific performance suit, property document completion, and associated legal principles. Firstly, the argument that the Appellant was entitled to the Decree sought in her suit, supported by authoritative judgments, does not hold ground in this case. The learned Single Judge rightfully dismissed the Appellant's suit due to the failure of the Appellant to fulfil her obligations as the vendor. Specifically, the Appellant was required to obtain the completion certificate and B-Lease from the Defence Housing Authority (DHA) to establish a marketable title. The failure to

secure these documents meant that the subject property did not have a marketable title, complicating the registration of the conveyance deed. The obligation to provide a clear and marketable title was not met, which justifies the dismissal of the Appellant's suit.

12. The contention that the learned Single Judge allowed the Appellant's prayer by directing the Respondent to deposit the balance sale consideration and an amount of Rs.50,000/- as rent is firmly rooted in contractual obligations and established legal principles. It is critical to note that the sale transaction was initiated between the Appellant and the Respondent on 02.04.2003. Despite this, the Appellant had only remitted Rs.1,650,000/- out of the total agreed consideration of Rs.6,900,000/-, leaving a substantial portion of the amount unpaid. During this period, the Respondent subsequently remained in possession of the subject property after completion of construction work and continued to benefit from its use. Complicating the matter, there have been significant economic changes, such as currency devaluation and an appreciation in the property's value, which further exacerbates the Appellant's position. The Supreme Court of Pakistan has deliberated on similar issues, particularly in the case of Mst. Mehmooda Begum<sup>3</sup>, wherein it has been held as follows: -

*"As we have also pointed out above this Court is competent to consider the conduct of the parties to the agreement and circumstances attending its execution and if specific performance will give an unfair advantage to the Plaintiff over Defendant. It should be refused as held in the case titled Jethalal N. Modi v. Bachu (AIR 1945 Bom, 481). However, the judicial consensus seems to be and it is otherwise a well-entrenched legal proposition that inadequacy of consideration is by itself not a ground for refusing specific performance of an agreement. There is no justification for relieving one of the parties from its obligation only for the reason that it might give some monetary loss to the other. Although section 22 of the Specific Relief Act, 1877, does empower the Court to refuse specific performance of the agreement in cases of hardship, the hardship contemplated by that provision is of the nature which could not be foreseen by the parties at the time of the agreement. In the case of Imanakchand v. Purna (AIR(sic.) Madh. Par. 235), it was held that where the price is so grossly inadequate as to shock the conscience of the Court and either by itself or in conjunction with other circumstances such as illiteracy, oppression, etc., it evidences fraud or that undue advantage was taken by the other side, the Court will refuse specific performance."*

13. The learned counsel for the Appellant contends that the learned Single Judge egregiously failed to recognize that, until the filing of the Respondent's suit for specific performance, the Respondent had remitted only Rs.1,650,000/- out

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<sup>3</sup> Mst. Mehmooda Begum v. Syed Hassan Sajjad and 2 others (PLD 2010 Supreme Court 952)

of the total consideration of Rs.6,900,000/- as advance token money. Furthermore, the Respondent willfully and egregiously neglected to deposit the remaining balance of Rs.5,250,000/- with the Court, nor did he seek permission to deposit said balance during the pendency of the suit. This argument must be judiciously addressed in light of the Supreme Court of Pakistan's decision in the case of Meer Gul<sup>4</sup>, which elucidates pivotal legal principles governing the deposit of balance sale consideration, wherein it is clarified that there is no statutory mandate under the Specific Relief Act, 1877, compelling the Plaintiff (vendee) to tender the outstanding sale consideration in Court at the time of filing or presenting the plaint, nor at the admission of the suit before the issuance of summons to the Defendant. The Supreme Court of Pakistan unequivocally held that the deposit of the sale consideration or balance thereof in Court is not an automatic or statutory precondition. Instead, such deposit necessitates a specific court order, accompanied by a stipulated timeline and repercussions for non-compliance. The Respondent's initial failure to deposit the remaining balance does not inherently disqualify him from seeking specific performance, as long as the Court's directive to deposit the balance consideration. The relevant findings of the Supreme Court of Pakistan are reproduced as follows: -

*“No doubt, the relief of specific performance of a contract is discretionary which cannot be exercised arbitrarily or unreasonably. There is also no skepticism that the person seeking specific performance should demonstrate that he is all set and passionate to perform his part of obligation but the other side is avoiding the performance. Appendix "A" of the First Schedule of the C.P.C. focuses on the specimen and modules of pleadings in which Form-47 relates to the "Suit for Specific Performance". According to paragraph (3), a specific condition required to be incorporated in the plaint is that "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". Initial burden lies on the Plaintiff to show his willingness and readiness unequivocally and while asserting for any injunctive relief or otherwise, during the pending adjudication, the Plaintiff may offer to deposit the balance amount in Court and at the same, the Court has to consider bona fide of the Plaintiff i.e., whether he is ready and willing to perform his part of the contract and if the Plaintiff does not offer to deposit the balance sale consideration in Court, even then, the Court in order to determine and find out the seriousness or unseriousness or bona fide or mala fide of the Plaintiff who lodged the claim of specific performance of contract, may pass the Order for depositing the amount in Court to protect the interest of the Defendant as check and balance with a certain timeline for compliance of such order with adverse consequence on account of non-compliance within the*

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<sup>4</sup> Meer Gul vs. Raja Zafar Mehmood (2024 SCMR 1496)

*stipulated time [Ref: Messrs DW Pakistan (Private) Limited v. Begum Anisa Fazl-i-Mahmood (2023 SCMR 555)]”*

*[Emphasis is supplied]*

14. The assertion that the learned Single Judge failed to consider the testimony of the Appellant's witnesses and disregarded the documentary evidence is devoid of substantive merit. The adjudications of the learned Single Judge are predicated upon a meticulous and exhaustive evaluation of the evidentiary material adduced. The Appellant's dereliction in procuring the indispensable property documents and the Respondent's partial performance were determinative factors that decisively influenced the Judgment. The decision to dismiss the Appellant's suit while concurrently mandating the Respondent to discharge his financial obligations epitomizes an equitable and jurisprudentially sound resolution of the dispute.

15. The upshot of the above discussion is that we do not find any illegality or infirmity in the impugned Judgment and Decree. Hence, the present appeals, devoid of merit, are **dismissed**.

**JUDGE**

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