

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Civil Revision No.S-53 of 2021
Abdul Ghani Soomro Versus Bhajan Lal and others

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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Applicant: Abdul Ghani Soomro
Through Mr. Abdul Rehman Bhutto, Advocate

Respondents No 1 & 2: Bhajan Lal and another
Called absent despite of service through all modes

Respondents No 3 to 5: Province of Sindh and others
Through Mr. Munwar Ali Abbasi, Assistant AG.

Date of hearing 22-09-2025
Date of order 22-09-2025

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JUDGMENT

NISAR AHMED BHANBHRO, J.- This Civil Revision Application filed under section 115 of C.P.C., is directed against the judgment and decree (impugned judgment and decree) dated 28-05-2021 passed by the Court of learned District Judge Kashmore at Kandhkot (Appellate Court), in Civil Appeal No 43 of 2021 Re – “Bhajan Lal and another Versus Province of Sindh and others”, whereby the judgment and decree dated 13-03-2021 passed by the Court of learned Senior Civil Judge Kashmore (Trial Court) in F.C Suit No 55 of 2020 Re- “Bhajan Lal and another Versus Province of Sindh and others was set aside and the suit filed by the respondent No.1 and 2 was decreed.

2. In nutshell the facts giving cause to file this Civil Revision Application are that the respondent No.1 and 2 (Plaintiffs in the Suit) filed suit for Specific Performance and Permanent Injunction before Learned Trial Court, averring therein, that a piece of plot admeasuring about 3000 square feet in Eidgah

Muhallah Kashmore (the Suit Property) with boundaries described in the plaint was purchased by them from Applicant (Defendant No 4 in the suit) vide agreement to sell dated 05-07-2018 under sale consideration amount of Rs.25,20,000/-. The Respondents No 1 & 2 paid an amount of Rs.500,000/- and Rs.700,000/- as 2nd installment and possession of the suit property was delivered to them. That the applicant was bound to mutate the Khata of the suit property in favor of Respondents No 1 & 2 on payment of balance consideration of Rs.13,20,000/- on 10.01.2019. That the Respondents No 1 & 2 approached the applicant to perform part of contract but he kept them on false hopes. The Respondents No 1 & 2 approached Mukhtiarkar Revenue Kashmore for intervention and settlement of the dispute but to no avail. Respondents were shocked to receive the summons in FC Suit No. 341 of 2019 filed by Applicant for DECLARATION, CANCELLATION AND PERMANENT INJUNCTION before Learned Trial Court seeking annulment of the contract dated 05.07.2018. Applicant later on withdrawn the Suit. For this reason, the Respondents No 1 & 2 filed suit seeking performance of the contract and prayed for a decree of specific performance by manifesting the willingness to deposit in the Court or pay to the applicant balance consideration amount.

3. The applicant on service of summons appeared before Learned Trial Court and filed written statement, wherein, he stated that respondents No.1 & 2 had no Locus Standi to file the instant suit as they failed to perform the part of contract. Applicant asserted that Respondents No 1 & 2 were required to pay balance consideration amount on 10-01-2019 which they failed. Applicant averred that it was specifically mentioned in the agreement to sale that if Respondents No 1 & 2 failed to pay the balance consideration amount on due date viz. 10-01-2019, the sale consideration amount would stand forfeited in favor of the applicant and contract would stand cancelled.

4. Based upon the pleadings of the parties learned trial court framed 05 issues. Issue No.2 and 3 being relevant are reproduced hereunder:

2. Whether the plaintiffs had entered into the lawful written sale agreement dated 05-07-2018 in respect of plot admeasuring about 3000 square feet, situated in Eidgah Mohalla, Kashmore, against the total sale consideration of Rs.25,20,000/- with the defendant No.4 namely Abdul Ghani, so the defendant No.4 namely Abdul Ghani is legally bound for the performance of such agreement dated 05-07-2018 according to law?

3. Whether the defendant No.3 namely Abdul Ghani had sold out the suit plot to the plaintiffs through written sale agreement dated 05.07.2018, therefore, the defendant No.4 namely Abdul Ghani is legally bound to get execute registered sale deed in the favor of plaintiffs?

5. Respondents No 1 & 2 in support of their claim examined Bhajan Lal and Khameeso, Applicant Abdul Ghani examined himself, representative of Mukhtiarkar Office (Defendant No 3 in the suit) namely Muhammad Murad was examined, thereafter, parties closed side for evidence.

6. Learned trial court vide its judgment and decree dated 13-03-2021 dismissed the suit of the Respondents No 1 & 2 (plaintiffs) on the ground that the balance consideration amount of Rs.13,20,000/- was not paid to the applicant and even after institution of the suit the same was not deposited before trial court, therefore, plaintiffs were not entitled for relief claimed.

7. Respondents No 1 & 2 preferred Civil Appeal No.43/2021 “Bhajan Lal and another Versus Province of Sindh and others” before learned appellate Court viz. District Judge Kashmore @ Kandhkot. Learned appellate court after hearing the arguments of the parties allowed the appeal, set aside the judgment and decree dated 13.03.2021 passed by trial court and decreed the suit of Respondents No 1 & 2 vide judgment and decree dated 28-05-2021. Hence this Civil Revision Application.

8. Notices for service of instant revision application were issued against the Respondents No.1 & 2 through ordinary mode of service, but they failed to turn up. Therefore, they were ordered to be served through publication which was published in daily Kawish dated 23-09-2023. Vide order dated 25-04-2024 the service against the Respondents No 1 & 2 was held good.

9. Mr. Abdul Rehman Bhutto learned counsel for the applicant contended that Respondents No.1 and 2 were required to pay the balance consideration amount by 10-01-2019, which they failed, therefore, the sale agreement between the parties stood expired and cancelled automatically. He further contended that the agreement to sell was not enforceable as the Respondents No 1 & 2 failed to perform their part of the contract. He argued that even after filing of the suit, the balance consideration amount was not deposited with learned trial court. He

further contended that the marginal witnesses of the agreement to sell were not examined, therefore, the sale agreement was not proved. He contended that the findings of the fact arrived at by appellate court caused serious prejudice to the case of applicant, there was misreading and nonreading of the evidence by learned appellate court warranting indulgence by this Court. He prayed to set aside the impugned judgment and decree passed by the appellate court and dismiss the suit of respondent No.1 and 2 by maintaining the judgment and decree of learned trial court.

10. Mr. Munwar Ali Abassi Learned Assistant Advocate General contended that there was no illegality or irregularity in the impugned judgment and decree, therefore, Civil Revision Application merits no consideration and liable to be dismissed.

11. Heard arguments. Perused material available on record.

12. The core issue involved in the present lis as agitated by learned counsel for the applicant are the effect of non-examination of the marginal witnesses of sale agreement; Respondents No 1 & 2 did not pay the balance consideration on the date stipulated under the contract, and non – deposition of the balance sale consideration at the time of the institution of suit; which per learned counsel for the applicant made the contract non-enforceable.

13. Since there are conflicting findings of fact rendered by the Courts below on the issues highlighted by Learned Counsel for the applicant, which necessitated to re-examine the evidence of parties.

14. From the re-appraisal of the evidence, it transpired that the sale agreement executed by the parties was not disputed. The applicant in written statement and evidence conceded the fact that he sold out the suit property to Respondents No 1 & 2 under sale consideration of Rs.25,20,000/- through sale agreement dated 05.07.2018, but the balance consideration amount was not paid within stipulated time on 10-01-2019 as mandated under sale agreement, therefore the sale agreement was not enforceable. The applicant further averred and deposed that Respondents No 1 & 2 violated the terms and conditions of sale agreement and failed to perform their part of contract, thus not entitled for the relief claimed. The

relevant portion of the evidence of the applicant is reproduced for the sake of convenience:

"I am defendant No.4 in this suit. On 05-07-2018, the both plaintiffs jointly purchased the suit plot admeasuring 3000 square feet from me in the consideration amount of Rs.25,20,000/- through sale agreement dated 05-07-2018 and paid an amount of Rs.500,000/- at the time of sale agreement and the remaining amount was agreed to be paid through different installments, thereafter, they paid an amount of Rs.700,000/- on 25-08-2018 as second installment, but the possession of the suit plot was not handed over to them on the condition that if the plaintiffs would give the surety for the payment of sale consideration amount then the possession will be given to them. It was also agreed in the such sale agreement that the plaintiffs will pay the remaining sale consideration amount of Rs.13,20,000/- on 10-01-2019, but the plaintiffs failed to pay the remaining sale consideration amount at the given date as per terms and conditions of the sale agreement. I also obtained the sale certificate from the concerned Mukhtiarkar as per terms and condition of the sale agreement and as per terms of the agreement the plaintiffs have failed to perform their part of the contract, therefore, I pray that instant suit of the plaintiffs may kindly be dismissed".

15. This piece of evidence sufficiently answers the contention of by Learned Counsel for applicant regarding non-examination of marginal witnesses. Since the sale agreement was not disputed by applicant himself, which stood admitted throughout the proceedings right from the filing of written statement to recording of evidence, therefore, sale agreement stood established and in such situation examination of marginal witnesses was not the requirement of law to establish the existence of factum of sale agreement. It is settled principle of law that admitted facts need not to be proved. Respondents No 1 & 2 cannot be non-suited for non-examination of the marginal witnesses of the sale agreement, as issue of proving the sale agreement stood resolved on account of admission by applicant himself as to its genuineness.

16. Strength in this regard is derived from the dicta laid down by Honorable Supreme Court in the case of Muhammad Iqbal Versus Mehboob Alam reported as 2015 S C M R 21, wherein it is held that:

3. Heard. Before proceeding to examine the pleas urged by the learned counsel for the appellant, it is expedient to state that the execution of the agreement to sell (in question) and the terms and conditions thereof are admitted in the written statement filed by the appellant/defendant. Besides,

no defence has been specifically set out therein (written statement) alleging that the respondent was not ready and willing to perform his part of the agreement or that he lacked the capability to do so. Obviously, therefore, no issue was framed by the trial Court in this regard, and even throughout the pendency of this lis the appellant never pressed for framing of such an issue. Thus the findings of the first two courts (particularly trial court which was not reversed by the first appellate court) that the respondent should be non-suited for non-production of the agreement in evidence and their concurrent view that he was not ready and willing to perform his part of the agreement, are in fact contrary to the position averred by the appellant/defendant in the written statement itself. It is a settled principle of law that a fact admitted needs no proof, especially when such admission has been made in the written statement (see PLD 1975 SC 242), and it is also settled that no litigant can be allowed to built and prove his case beyond the scope of his pleadings. Therefore, only plea that remained to be determined; as set out by the appellant in his defence (written statement) was if the time was the essence of the contract or not. But neither from the contents of the agreement nor from the intent and conduct of the parties and/or from any evidence led by the appellant it has been established to be so. In relation to contracts of immovable property the rule is that time ordinarily is not the essence, however, this by no means is an absolute rule and it is always open to the party, who claims exception thereto, to establish otherwise from the contents/text, letter and spirit of the agreement and/or from the intent and conduct of the parties, as well as the attending circumstances. The appellant/defendant has failed to do so in the instant case.

17. In the case of Muhammad Rafique and others Versus Manzoor Ahmad and others reported as 2020 S C M R 496 Honorable Supreme Court of Pakistan has held that:

2. Before us the principal point taken for the petitioners was that the agreement to sell was not properly proved in evidence. Indeed, in the leave petition four questions of law are said to arise out of the impugned judgment, and the first two relate to this point. Now, the record and in particular the pleadings of the parties clearly show that the vendor (i.e., the original contesting defendant) did not deny execution of the agreement to sell. A fact admitted need not be formally proved. Reliance in this regard was correctly sought to be placed on Muhammad Iqbal v. Mehboob Alam 2015 SCMR 21, where (at pg. 25) this settled principle of law has been reiterated. Indeed, the cited judgment was also in relation to a suit for specific performance and the admission of the agreement to sell in the written statement. It was also sought to be argued that the relief of specific performance, being discretionary in nature, could not be claimed as of right and could be withheld in appropriate circumstances. It was submitted that such was the case at hand. With respect, we are unable to agree. Nothing has been shown as would lead to such a conclusion on the facts and circumstances of the case, as established by the pleadings of the parties and the evidence led at the trial. In our view, the learned appellate forums have

reached the correct conclusions and the impugned judgment of the learned High Court does not call for any interference.

18. The contention of Learned Counsel for the applicant, that Respondents No 1 & 2 were required to pay the balance consideration on 10-01-2019, the date stipulated in the agreement to perform the part of contract. In case the applicant refused to receive, the Respondents were required to deposit the same before Learned Trial Court. This point was also dealt with by Learned trial court while recording its findings on issue No.2 and 3 in following manner:

“It is also claim of the plaintiffs that they are ready to pay the remaining sale consideration amount of Rs.13,20,000/- and the defendant No.4 namely Abdul Ghani failed to execute the registered sale deed in their favor, but as per record no such payment of remaining sale consideration amount was deposited before the Nazir of this court at the time of filing of instant suit as per requirement of law”.

19. Under section 12 of the Specific Relief Act, 1877, the deposit of balance sale consideration was not a *sine qua non* to institute the suit for specific performance of contract. Deposit of the amount of balance sale consideration is always subject to the directions of the Court during the pendency of the suit or appeal as the case may be. Learned counsel for the applicant failed to produce any document on record to say that the trial court directed Respondents No 1 & 2 to deposit the balance sale consideration, which was not complied with entailing the penal consequences of dismissal of suit. In absence of such direction dismissal of the suit was not tenable under the law.

20. The issue with regard to the deposit of the balance consideration to seek the performance of the part of contract under section 12 of the Specific Relief Act 1877 has been comprehensively dealt with by the Honorable Supreme Court in various pronouncements. In the case of **Hamood Mehmood v. Mst. Shabana Ishaq (2017 SCMR 2022)**, it was held that it is mandatory for the person, to seek enforcement of an agreement under the Specific Relief Act, that he on the first appearance before the Court or on the date of Institution of the Suit, apply to the Court for permission to deposit the balance consideration, and any omission in this regard would result in dismissal of the Suit. In the case of **Allah Ditta v. Beshir Ahmad (1997 SCMR 181)**, **Messrs Kuwait National Real Estate Company (Pvt.) Ltd. v.**

Messrs Educational Excellence Ltd. (2020 SCMR 171) and Haji Abdul Hameed Khan v. Ghulam Rabbani (2003 SCMR 953), failure of vendee to deposit the balance consideration pursuant to court orders was held as a sufficient ground to non-suit the vendee. In the case of **Muhammad Asif Awan v. Dawood Khan and others reported as (2021 SCMR 1270)** a three-member bench of Honorable Supreme Court held that unless the party was put to notice that the non-deposit of the balance sale consideration would be deemed to be a deficiency in performing his part of the contract as envisaged under section 24(b) of the Specific Relief Act rendering the contract non-enforceable, the suit could not have been dismissed. It was further held that the order directing deposit of balance sale price did not stipulate the consequences for non-deposit which normally are the vacation of injunctive order or the dismissal of the suit. In the case of Respondents No 1 and 2 there was no any direction by Learned Trial Court requiring the deposition of balance sale consideration, therefore, dismissal of the suit on the said account was not warranted under the law.

21. Honorable Supreme Court in the case of *Meer Gul Versus Raja Zaffar Gul through legal heirs and others reported as 2024 SCMR 1496* conducted a detailed survey of the case law on the point of deposition of balance consideration at the time of institution of Suit or on the first date of hearing and held that

9. The primary wisdom of the courts in directing the plaintiff in a suit for specific performance to deposit the sale consideration in Court in fact conveys that the plaintiff/vendee has the capacity to pay the sale consideration or balance sale consideration and is ready and willing to perform his obligations arising from the contract which is a condition precedent for claiming relief of specific performance but there is no mandatory provision under the Specific Relief Act wherein, come what may, the plaintiff has to tender the outstanding sale consideration in Court at the time of instituting or presenting the plaint or even at the time of admission of the suit by the Court before issuing summons to the defendant or defendants. So for all intent and practical purposes, the deposit of the sale consideration or balance sale consideration in the Court is not an automatic or precondition by fiction of law but there must be an order of the Court for deposit with certain timeline with repercussions of non-compliance, and in case of genuine and satisfactory grounds pleaded for non-compliance within the stipulated time, the Court, in exercise of powers conferred under Section 148, C.P.C., may extend and accord some reasonable time for compliance, with or without cost, if a justifiable and satisfactory case for extension is made out.

22. No doubt, the relief of specific performance of a contract is discretionary and this discretion cannot be exercised by the Court arbitrarily or unreasonably. To exercise such discretion, the examination of the evidence, the assessment of the evidence including other factors was essential. In the present case it revealed that the applicant did not deny the sale agreement dated 05.07.2018, he did not deny payment of an amount of Rs 12,00,000, so also did not deny the transfer of possession of the suit property to Respondents No 1 & 2, the reason for filing of the suit for specific performance was that the applicant had refused to receive the balance sale consideration and transfer the Khatta per the terms and conditions of the sale agreement which evidenced from the fact that the vendor (applicant) attempted to shift the burden of part of performance on the vendee (Respondents No 1 & 2) by filing a suit No 341 of 2019 seeking a decree for the cancellation of the contract. It is important to note that vendor did not get the adjudication of the suit on merits but withdrawn the same when vendee appeared and manifested his willingness to deposit the balance consideration. This fact reinforces the stances of Respondents No 1 & 2 that they (vendee) were ever ready and willing to fulfill the contractual obligations, leading to the equitable inference that the scales of justice lean favorably towards the vendee in this matter.

23. Reappraisal of the evidence on record reflects that learned trial court failed to exercise its jurisdiction vested in it and declined to grant the relief of specific performance which was not available. The Learned Appellate court was justified in holding that nothing transpired from the appraisal of the evidence that the Respondents No.1 and 2 were not willing and ready to perform the part of their contract, particularly when they had already paid a huge amount to the extent of almost 50% of sale consideration and were in possession of the suit property.

24. For the forgoing reasons no case for indulgence of this court under supervisory and corrective jurisdiction conferred under Section 115 C.P.C is made out. This Civil Revision Application, therefore, fails and is accordingly dismissed along with listed applications if any.

JUDGE

Asghar Altaf/P.A

Approved for reporting

Larkana