

IN THE HIGH COURT OF SINDH AT KARACHI
Suit No. 1042 2013

Date	Order with signature of Judge
1.	For hearing of CMA No.13610/2013 (U/o. 39 Rule 1 & 2 CPC)
2.	For hearing of CMA No.8692/2013 (U/o. 39 Rule 1 & 2 CPC)
3.	For hearing of CMA No.12904/2013 (U/o. 39 Rule 14 CPC)
4.	For hearing of CMA No.13611/2013 (Application for modification of order dated 4.12.2013)

20/12/2013:

Mr. S. Ali Kausar Shah, advocate for the Plaintiff.
Mr. Karamatullah, Advocate for the Defendant No1.
Mr. Iftikharul Hassan, Advocate for the Defendant No.2.
Mr. Khalid Mehmood Siddiqui, Advocate for the Defendant No.3.

Plaintiff has filed this suit for specific performance of the contract dated 17.4.2013. On 4.12.2013 order has been passed on the application filed by the Plaintiff bearing CMA No.8692/2013 whereby the plaintiff was required to fulfill his obligation of payment of Rs.5,300,000/- to the defendant within 15 days. Today he has filed an application bearing CMA No.13611/2013 and plaintiff himself has admitted that he is not in a financial position to arrange / deposit the required amount in the office of Nazir of this Court within a period of 15 days. He seeks three months' time to despite only Rs.33,00,000/- and dispute that he has already paid Rs.20,00,000/-. Today during course of arguments learned counsel for the Defendant has pointed out that in terms of clause-7 of the agreement the plaintiff has also agreed to clear bank installment @ Rs.1,20,000/- per month from May 2013 onwards. The bank is also party in this case filed by the plaintiff and the counsel for the bank Mr. Khalid Mehmood Siddiqui has categorically stated that neither the plaintiff nor the defendant have deposited amount mentioned in para-7 of the agreement. The

Plaintiff is present in Court and he has instructed the counsel that he will start depositing the said amount w.e.f January 2014. It is indeed and very unfortunate that the plaintiff was required to fulfill the financial obligations but he has failed to discharge and has filed this suit for specific performance. On account of nonpayment of installment to bank as stated in para-7 of the agreement, the plaintiff has also burdened the defendant with the interest to be paid to the bank on account of the default of monthly installment. In all these circumstances, the suit for specific performance is not maintainable since the plaintiff is at fault in discharging his obligation under the agreement. However, today this case is fixed for hearing of application, which includes one application under Order 39 rule 1 & 2 CPC and two applications under Order 39 Rule 4 CPC. In the above circumstances, the plaintiff has failed to establish prima face case for grant of interim order. This application is dismissed alongwith all other pending applications the plaintiff is left without any injunction orders in his favour. Therefore, it is ordered that plaintiff should immediately stop raising construction on the premises and Nazir is directed to inspect the premises, take photographs of the premises that no further construction should be allowed from today onwards. Nazir should file a reference with regard to possible expenses for removal of structure illegally raised by the plaintiff on the suit premises. Once the report is placed in Court by the Nazir further order will be passed regarding removal of structure. Nazir to submit report within 15 days and fee of the Nazir is Rs.10,000/- to be paid by the Defendant No.1 in advance.

Plaintiff is directed to satisfy the Court on the question of maintainability of the suit on the next date of hearing.

JUDGE

SM

