

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
Suit No.724/2009

<u>Date</u>	<u>Order with Signature of Judge</u>
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Date of hearing : 22.10.2014

Plaintiff : Suhail Usman Khan, through
Mirza Adil M.Beg, Advocate.

Defendant No.1 : Messrs Super Drive-in (Pvt) Ltd.,

Defendant No.2 : Rajab Ali Motani through
Mr. Asraf Ali Butt,
Advocate (absent)

JUDGMENT

NAZAR AKBAR, J:- The plaintiff has filed this suit for declaration, injunction, recovery of Rs.5.1 Million and damages/compensation of Rs.25 Million. The Plaintiff claimed to have paid a sum of Rs.1,00,000/- as token money through cheque No.0625302 to the Defendants for the purchase of land admeasuring 10 acres surrounded by boundary wall under 105 Na-class, Deh Thoming, Scheme No.33, Main Super Highway, Karachi. The total sale consideration was agreed as Rs.2,00,00,000/- and subsequently a further sum of Rs.50,00,000/- was paid by the Plaintiff to the Defendants through pay order bearing No.6000160 of Muslim Commercial Bank dated 26.01.2008 and receipt thereof dated 28.1.2008 was issued. This payment was made on the condition that Defendant No.1 shall withdraw the CP No.3078 of 1992 pending before this Court through the Defendant No.2 as Chief Executive of the Defendant No.1 and both the Defendants shall indemnify the Plaintiff jointly and severally in case of non-compliance of the same. Consequently an agreement of sale dated 15.2.2008 between

Defendant No.1 through Defendant No.2 purportedly under company's Resolution dated 24.3.2008 was executed with the Plaintiff. In clause-3 of the said Agreement the defendants acknowledged the payment of Rs.51,00,000/- out of the total sale consideration of Rs.2 crores and by virtue of clause-4, the remaining balance amount of Rs.1,49,00,000/- was to be paid to the Defendants by cheque / pay order / cash on the day of withdrawal of the above mentioned petition pending adjudication before the Hon'ble High Court of Sindh at Karachi and further the Defendants shall hand over all the original documents pertaining to the title etc. of the suit plot.

2. The Plaintiff has further contended that Defendant No.2 despite repeated demands from the Plaintiff to provide the copy of the Resolution dated 24.03.2006 or any other Resolution which authorized him to execute the Agreement of Sale and receive the payments of the entire sale consideration on behalf of the Defendant No.1 on the promise to withdraw the above said petition failed and neglected to fulfill his commitment and in fact stopped receiving even phone calls made to him by the plaintiff on one pretext or the other. Therefore, the Plaintiff got suspicious and on enquiries from SECP at Karachi it transpired that the Defendant No.1 in 1981 had taken two loans of Rs.1,00,00,000/- and Rs.45,00,000/- from the then Dubai Bank Limited at Karachi on deposit of title deeds of the suit plot which was neither revealed by the Defendants nor the plaintiff was ever apprised of the same and thus the defendant committed fraud upon the Plaintiff.

3. Therefore, the plaintiff filed instant suit with the following prayers:

- a) Permanent Injunction restraining the Defendants their Agents, servants or persons acting under them and on their behalf from disposing of, alienating, transferring or creating third party interest in the Suit Property bearing No.105-NA-Class, Deh Thoming, Scheme No.33, Main Super Highway, Karachi admeasuring 10 acres in any manner whatsoever.
- b) Decree for a sum of Rs.5.1 million being the amount paid by the Plaintiff to the Defendants in respect of the Suit Property with markup/profit from the date of filing of the Suit till the amount is fully realized.
- c) Decree for a sum of Rs.25 million as damages/compensation with mark-up profit from the date of filing of the Suit till the amount is fully realized.
- d) Cost of the Suit.
- e) Any other relief or reliefs this Hon'ble Court deems fit and proper under the circumstances of the case.

4. The notices issued to the defendants, which were served on them but nobody appeared on behalf of the defendants. The perusal of diary if learned Additional Registrar, dated 29.4.2000, shows that service was held good and on 24.5.2010 it was ordered "*let the matter proceed exparte against the defendants.*"

5. In support of his pleadings the plaintiff has filed affidavit-in-exparte proof as Exh.PW-1/3 and other documents as Exh.PW-1/4 to Exh. PW-1/8.

6. I have examined the evidence and also heard learned counsel for the Plaintiff. The plaintiff has produced original documents which are sufficient to accept the claim of the plaintiff as nobody has ever challenged the claim of the plaintiff. Even otherwise the plaintiff's evidence has gone unrebutted and unchallenged. Therefore, there is

no option but to believe the unchallenged version of the plaintiff. However, the plaintiff has not proved damages suffered by him and the balance sale consideration was neither paid nor deposited in court, therefore, the plaintiff suit is decreed only to the extent of prayer clause 2 i.e. the defendants are jointly and severally liable to pay a sum of Rs.5.1 millions to the plaintiff with 10% markup per annum from the date of payment through pay order dated 26.1.2008 till realization with cost of suit.

JUDGE

Karachi,
Dated: 29.10.2014

SM