

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.678/2010

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

For Final Disposal

29.10.2014

Mr. Sajid Latif, advocate for the Plaintiff.

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Plaintiff has filed present suit on **04.5.2010** for declaration and / or specific performance of an agreement dated **02.8.2007**. The agreement is a **deed of partnership** between Plaintiff and Defendant and the Plaintiff claims that by default he is entitled for the purchase of the property on a presumed price of **Rs.40,000,000/-** (Rupees Forty Million Only) (clause 3 of agreement). His further claim in the plaint is that he has advanced **Rs.10,000,000/-** (Rupees Ten Million Only) to the Defendant which include cash of Rs.50,00,000/- and three cheques of various sums against receipt. I have examined the receipt filed by the Plaintiff (annexure P-2). It is undated and not even witnessed by anyone that the same has been executed by the Defendant. The Plaintiff has become entitled to purchase suit property because the Defendant has defaulted in repayment / refund of loan amount within a period of one year. The Defendant had issued a cheque on **02.9.2008** towards refund of the loan has been dishonored. Be that as it may, the first and a most responsibility of the buyer who seek specific performance of a contract of sale is to establish that he was ready and willing and capable to perform his part of the contract. The record and conduct shows that the Plaintiff is not capable to perform his part of the contract even today i.e after seven years of contract. He has filed the suit after two years of the cause of action which was accrued on **2.9.2008**. In fact he should have first offered **Rs.30,000,000/-** (Rupees Thirty Million Only) to the Defendant for purchasing the suit property in terms of agreement and on refusal of the Defendant he

should have approach the Court but the plaint is silent on the offer of payment of balance sale consideration to the Defendant and their refusal. Not only that this Court by order dated **10.5.2010** has directed him to deposit balance sale consideration with the Nazir of this Court but he failed. After 03 years and 06 months on **18.11.2013**, his application under Oder 39 rule 1 & 2 CPC was dismissed on account of his failure to deposit the balance sale consideration in Court in terms of the order dated 10.5.2010 and after almost one year on **23.10.2014** the case was adjourned for today with directions to satisfy the Court that how this suit for specific performance is maintainable when the Plaintiff has no funds to perform his part of the contract. Today learned counsel for the Plaintiff has failed to satisfy the Court that without showing his ability to purchase the suit property even at the **presumed price** of 2007, he can seek specific performance of contract. He says that his client is ready and willing to buy this property even now. Admittedly this is a suit for specific performance of the contract in which the price is presumed and not agreed and it has been shown as **Rs.40,000,000/-** (Rupees Forty Million Only) in 2007. Despite the fact that after 07 years the Plaintiff has not been able to show his ability to perform his part of the contract, Plaintiff suit is decreed subject to deposit of entire balance sale consideration amounting to **Rs.30 Million** within 24 hours in the office of the Nazir of this Court for specific performance of the contract dated **02.8.2007** otherwise the suit shall be deemed to have been dismissed.

JUDGE