

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.136 of 2012

Date	Order with signature of Judge
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| | 1. For hearing of CMA No.1205/2012.
2. For hearing of CMA No.1206/2012.
3. For examination of the parties/settlement of issues. |
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01.12.2014.

Mr. Muhammad Irfan, advocate for the Plaintiff.
Mr. Ejaz Khattak, advocate for DHA.

Learned counsel for the Plaintiff has filed this Suit for Specific Performance of Contract initially against five defendants, four official defendants and one Iftikhar Ahmed Qureshi, resident of USA. However, subsequently, the Defendants No.1 to 3 were deleted. The Defendant No.4 is DHA. Learned counsel for the Plaintiff says that the Defendant No.4/DHA has no objection for transfer of the property in favour of the Plaintiff and therefore, on the basis of no objection this Court may be pleased to direct the DHA to execute the documents in favour of the Plaintiff. The Plaintiff is also present in person and insisting that such order may be passed.

It is indeed very unfortunate that there is no objection from Defendant No.4/DHA, however, DHA wants directions from the Court to execute the documents, which means that Defendant No.4/DHA knows that there is a lacuna in the execution of such documents, but they want an endorsement of the Court to cover up the lacuna or illegality for transfer of the property in absence of the original owner of the property. In fact Defendant No.4/DHA should not have been the party in the Suit for Specific Performance when the DHA is not party to the sale agreement sought to be enforced by the Plaintiff against Defendant No.5.

The DHA though was not required to file written statement, but they have filed a written statement to extend maximum favour to the Plaintiff. Mr. Ejaz Khattak, learned counsel for DHA is also present in the

Court and kept silent and hopping for an order from the Court so that whatever favour may be extended by the DHA to the Plaintiff under the cover of directions of this Court should be availed.

I have examined Paragraph-3 of the written statement filed by Defendant No.4/DHA, according to which the record of the Defendant No.4/DHA shows that the property does not stand in the name of the Defendant No.5 and the actual person in whose name the property exists neither he is the party to the Suit nor any document showing his obligation has been filed. Therefore, in presence of the written statement showing different name of owner and assurance given by Defendant No.4/DHA that they can transfer the property in favour of the Plaintiff on the directions of the Court is indeed an attempt to misuse the process of the Court both by the plaintiff and the Defendant No.4/DHA.

Today, the Suit is listed for framing of issues and the Issue No.1 should have been whether the Suit is maintainable or not?

The Plaintiff is directed to satisfy the Court regarding maintainability of the Suit on the next date of hearing.

Adjourned to a date in office.

JUDGE

MUBASHIR