

ORDER SHEET

HIGH COURT OF SINDH, KARACHI

Suit No. 1666 of 2012

<i>Date</i>	<i>Order with signature of the Judge</i>
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For final disposal**16-12-2014****None present**

NAZAR AKBAR---J., Plaintiff on 03.12.2013 filed suit for specific performance of contract which is listed for final disposal. The plaintiff claimed that he entered into an agreement of sale with the attorney of defendant No.1 namely Muhammad Abid on **20.07.2011** to purchase her Bungalow No.14/E, Survey Sheet No.35-P/1, measuring 595 sq.yards, Muhammad Ali Memorial Cooperative Society, Karachi, (hereinafter the suit property).

2. The Court record shows that the plaintiff seems to have manipulated the Court proceedings at every stage to bring it at the level of final disposal. The Registrar's diary dated **14.02.2013** shows that he held service good on the defendant on the basis of bailiff report that on **18.12.2012** he had delivered summons to the **maid** of defendant namely Fatima. The plaintiff and his counsel are supposed to be aware of the legal position about service of summons on a maid of defendant in a suit for specific performance or for that matter in any other suit of civil nature is not proper service and the plaintiff's counsel on **14.02.2013** did not request the Additional Registrar (OS) to repeat notices/summons. Not only that the learned counsel for the plaintiff was required to deposit cost of notice on his application under Order 39 Rules 1 & 2 CPC (CMA No.12988/2012). But he repeatedly failed to pay the cost for issuance of

notice. Order sheet dated **20.12.2012** shows that the counsel for the plaintiff was directed to repeat notice for **11.01.2013**, but he never paid the cost of notice. The order sheet dated **23.12.2013** reflects that last chance was given to the plaintiff for payment of cost but again on **08.09.2014** after more than 8 months office note was that the notice was not repeated as “cost was not paid” and time was sought by Plaintiff counsel for compliance. Again from **08.09.2014** to **16.12.2014** plaintiff has not complied with order for payment of cost of notice on CMA No.12988/2012. This willful repeated failure of plaintiff’s counsel to pay cost of notice on application indicates that bailiff report dated **20.12.2012** that bailiff had delivered summon to the maid was manipulated that is why the plaintiff did not dare to issue notice on Court order to the defendant for the fear that if served, the effort of getting service held good would be frustrated as the plaintiff and their lawyer knew that service on **maid** is no service. Therefore to ensure that no other notice be sent to the Defendant, he did not pay the cost for notice on his application.

3. Be that as it may, since the case is listed for final disposal. I have to examine the plaint and finally dispose of the suit on the basis of record. The sale agreement was said to have been entered into by and between the Plaintiff and the attorney of defendant on **20.07.2011** (annexure E page 69) and power of attorney indicates that sometime in March, 2009, an undertaking (page 43 of court file) was given by the said attorney to the Plaintiff that he has filed relevant documents for registration of power of attorney. Para 2 of the undertaking is worth taking note of. It is reproduced below:-

“2. That on the documents of General Power of Attorney submitted for registration before the Sub-Registrar, the Photo Graphs of the Executant of this power does not mach with the photo graphs of her CNIC, a little difference”

However; after more than 2½ years on **03.12.2012** when the plaintiff filed present suit, he failed to place on record any registered power of attorney. It is well settled law that the purpose of alienation of immovable property, seller's (owner) title document should be registered, if it is leased property, the lease deed should be duly registered in terms of the Registration Act, 1908, with the relevant Registrar of Properties and if the immovable property is sold through power of attorney then the power of attorney unless registered in terms of **section 17(b)** of the Registration Act, 1908, the attorney cannot be deemed to have been duly authorized to sell the property. If any authority is needed, **PLD 1991 Karachi 377** (Zafarul Islam vs. Mrs.Azra Malik) is direct authority on the need of compulsory registration of power of attorney for the purpose of sale, assignment or alienation of immovable property. The general power of attorney (annexure-A) is not a registered document and therefore, the agreement of sale through the attorney of actual owner on the basis of said power of attorney is not enforceable in law. Besides, this legal lacuna which is fatal to the suit for specific performance, the so-called power of attorney placed on record has many question marks. (1) The executant has affixed two signatures on each page and both the signatures appear to be of an illiterate person as both are different from each other. Thus this becomes a case of an immovable property of an illiterate woman and therefore, the Court has to be even more careful (2) The property mentioned in the power of attorney is **residential plot** whereas in reality it is not a plot but a fully constructed bungalow on the said plot (3) The recital of power of attorney mentions that it was for consideration but no consideration is mentioned.

4. This is not the case of the Plaintiff that the power of attorney was coupled with interest such as an agreement of sale with the original

owner, though in the event of non-registration of power of attorney, even a sale agreement could not have improved the case of plaintiff for specific performance.

5. In view of the above facts and law, this suit for specific performance and possession is dismissed.

6. While parting with this order I am again constrained to seek written explanation from the Additional Registrar (OS) that on **14.02.2013** while holding service good on the maid of the defendant whether he had examined the bailiff report and discharged his duty in terms of Rules 139 to 146 of the Sindh Chief Court Rules which require an speaking order for holding service good. The explanation be submitted to the Registrar who should inform this Court.

JUDGE

Imran/PA