

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No.340 of 2008

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DATE                      ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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1. For hearing of CMA No.661/2007
  2. For Examination of the parties / settlement of issues
- 27.02.2015**

Mr. Iftikhar Javed Qazi, advocate for the Plaintiff.  
Mr. Ayaz Ali, advocate for the Defendant.

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*Nazar Akbar.J*, 1. This suit for specific performance was filed on 20.11.2006. It is alleged that the Plaintiff has paid only Rs.7,30,000/- and as per her own showing she was required to pay an amount of Rs.59,70,000/- towards balance sale consideration which she has neither deposited in Court nor she offered to deposit the same. She claims that she is in possession of the suit property in part performance of an oral contract of sale. Therefore, she would not be bothered even on dismissal of her application under Order XXXIX Rule 1 & 2 CPC. Being in possession she is not even paying rent in respect of the suit property to Defendant No.1 though before the alleged sale, the suit property was on rent with one Abdul Wahab @ Rs.30000/- per month and a school was being ran herein by said Abdul Wahab. The Plaintiff now claiming to be in possession of suit property and running the same school which was on rent @ Rs.30000/-per month but she is not pay even single penny under the cover of agreement of sale. The school management is not paying rent either.

The Defendant has contended that he has not entered into any agreement of sale with the Plaintiff nor hand over possession to her and the Plaintiff has filed this suit to frustrate the ejectment proceeding filed by Defendant No.1 against Abdul Wahab, his actual tenant in the suit premises, who were running school. The Defendant has filed rent case

against the tenant Abdul Wahab in 2005, who was required to deposit rent in R.C No.322/2005 in terms of order dated 11.7.2005 and on his failure even application under Section 16(2) of SRPO, 1979 was also filed for ejectment. The rent proceeding were pending against the actual tenant when the Plaintiff has filed a frivolous suit to frustrate the rent proceeding against the actual tenant. She is running same school under the same management and has become intervener in the rent proceeding merely on the basis of alleged unwritten agreement of sale.

On perusal of plaint I noticed that even the contents of plaint itself confirm that there is no written agreement of sale and admittedly Abdul Wahab as per para-4 of the plaint was tenant from whom she also purchased school (annexure 'J' to plaint). Interestingly enough this agreement to purchase school is in writing but agreement to purchase the school premises (suit property) is not in writing. The Plaintiff not even disclosed the name of the witnesses, if any, before whom she entered into oral agreement of sale, therefore, prima facie, her possession of suit premises cannot be termed as a possession in terms of part performance of the agreement to sell. The so-called different receipts of various payments towards sale consideration include three Debit Voucher which cannot be termed as payment receipts as neither these are stamped nor witnessed by any one. Same is the status of annexure J/1 which is neither stamped as payment receipt nor discloses who has issued the same. With reference to annexure J/1, I must quote the following observation of Mr. Justice Nadeem Azhar Siddiqui (as he then was) from the order dated **25.02.2008**

“While considering the document (Annexure J/1) I have noticed that the signature of the defendant appearing in this document is totally different from his signature appearing Annexure J/2, which is the ejectment application filed by the defendant against one Abdul Wahab. The signatures appearing at Annexures J/1 and J/2 have been compared with

the signature of the defendant on the notice issued for 16.4.2007 and again the said signature is different from the signatures appearing at Annexure J/1 and J/2.”

It is pertinent to mention here that the present suit was filed on **20.11.2006** and objection was raised by the office which was reply by counsel on **28.11.2006** but it remained under office objection till 25.02.2008 as it suited the scheme of Plaintiff. The written statement was filed on **09.02.2009** since then once suit was dismissed for non-prosecution on **08.09.2011** and even application for restoration of suit under Order IX Rule 9 CPC was also dismissed on **08.11.2012** and ultimate suit was restored on **21.11.2013** on nominal cost. The conduct of the Plaintiff in pursuing the case and the above discussion on the facts and perusal of documents, the Plaintiff has no prima face case, nor she can claim any inconvenience on the basis of such kind of documents.

In view of the above facts, in the first place, it is ordered that the Plaintiff shall deposit occupancy rights or tenancy whatever it may be termed for enjoying possession of the suit property and using it commercially pending the suit merely on the basis of an oral sale agreement which does not confer any ownership rights on her in the suit property. She cannot be allowed to even retain possession without equitable security is provided by her for the actual owner, Defendant No.1 who is deprived of his ownership right since 2006 or even before on the pretext of an oral agreement of sale and the Plaintiff is enjoying ownership rights on alleged payment of Rs.7,30,000/- in various installments. The Plaintiff, therefore, in terms of **Order XXXIX Rule 2(2) CPC** is directed to deposit a sum of Rs.50,000/- per month from the date of filing of the suit to 31<sup>st</sup> March 2015 within two months from the date of this order and continue to deposit the same amount of Rs.50,000/- per month from 10<sup>th</sup> of each calendar month

from April, 2015 onwards in the office of Nazir of this Court pending the suit as security to retain possession. Plaintiff is also directed to deposit balance sale consideration of Rs.59,70,000/- within 20 days from the passing of this order. The amount of money at the rate of Rs.50,000/- per month from the date of filing of this suit to March 2015 together with the balance sale consideration, if deposited, by the Plaintiff shall be invested by the Nazir in some government profit bearing scheme. In case of failure of the Plaintiff to deposit the sum mentioned herein with the Nazir of this Court, the Nazir shall seal the suit premises without notice and in case of resistance, Nazir may obtain police aid without making any reference to Court in this regard. However, since a school is being run at the suit premises, the sealing should be effected in the first week of summer vacations of the school as per government schedule of summer vacations and the Defendant or anyone on whatsoever pretext shall not be allowed to run school in the suit premises from next academic session pending the suit.

This order is without prejudice to the rights of the parties under Sindh Rent Premises Ordinance 1979. If ejectment has already been ordered or if it is ordered during pendency of these proceeding that may be carried into effect without seeking any explanation about the effect of this order on the rent proceeding or any other order in the instant suit since it is the settled law that ejectment proceeding are independent to the proceeding of a suit for specific performance of a contract of sale and order passed in civil suit cannot defeat the orders of ejectment passed by Rent Controller on the ground of pendency of civil suit. The CMA No.661/2007 is disposed of in above terms.

2. The Plaintiff has filed following issues on 19.12.2013. These issues are adopted by the Court.

- i. Whether the Plaintiff agreed to purchase and the Defendant agreed to sell the property No.100-J Block-2, PECHS, Karachi for a total sale consideration of Rs.67,00,000/-?
- ii. Whether the Plaintiff paid and the Defendant received a total sum of Rs.Seven Lacs Thirty thousand as part payment toward the sale consideration?
- iii. Whether the Plaintiff is in possession of the ground floor or said property as part performance of the sale agreement between the parties?
- iv. Whether the Defendant is bound to handover the property documents as well as the reaming portion / first floor of the property to the Plaintiff and liable to execute the relevant documents before the concerned Registrar in favour of the Plaintiff?
- v. Whether the Defendant is avoiding specific performance of the agreement on one pretext or the other, if so, to what effect?
- vi. Whether the Plaintiff is entitled to the relief claimed, if so to what effect and extent?
- vii. What should the decree be?

List of witnesses to be filed within one week and list of documents, if any, within one month.

To come up on 10.3.2015 for appointment of Commissioner for recording evidence in the shortest period of time as per roster.

JUDGE