

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1363 of 2012

Plaintiff : Syed Ghulam Waris Ali
Through Mr. Muhammad Qutubuzzaman,
Advocate, (absent)

Defendant No.1 : Mrs. Shahnaz Shahid
Through Mr. Muhammad Junaid Aziz,
Advocate, (absent)

Defendant No.2 : DDO Land Management (Defunct KDA),
CDGK. (Plaint struck off)

Date of hearing : 12.02.2015.

Hearing of CMA No.10598/2012
And Final Disposal.

ORDER

NAZAR AKBAR, J. This is a suit for Specific Performance of a Contract dated 16.08.2012 for sale of immovable property bearing House No.B-117, Block-10, Gulistan-e-Jauhar, Scheme No.36, Karachi, Ad-measuring 400 square yards. Today it is listed for final disposal as the Defendant No.1 who is the owner of the suit property has been debarred on **11.12.2014** from filing written statement. In the cases, where Defendants are not served or even served but they do not appear to save their valuable properties, it is the duty of the Court to be more careful as on many occasions I have noticed and found a foul play. It always gives me a feeling that may be the concerned Defendant has been kept out of the proceeding purposely. Therefore, for proper administration of justice, a thorough scrutiny of proceedings before the Additional Registrar in terms of Sindh Chief Court Rules (hereinafter referred as "SCCR") is a must and if the defendant was once represented by a counsel, his conduct too,

has to be carefully examined by the Court before passing an adverse order disposing of the case in variably in favour of plaintiff and condemning the defendant unheard.

2. In the case in hand, Defendant No.1 seems to have never been properly served. TCS receipts of legal notice annexed with plaint shows different address of defendant No.1 from the address on the plaint. At Page-67 of the plaint, the address of defendant No.1 on TCS receipt is shown as B-117, Block-10, Gulistan-e-Jauhar, Karachi while at page 69, on another TCS report in the same address of defendant No.1, Sher Muhammad Baloch Goth, has been added. However, in the plaint the address provided to the TCS for sending legal notice has not been mentioned by the plaintiff. TCS report of delivery of notice has not been filed.

3. The suit was filed on **05.10.2012**. The perusal of diaries of Additional Registrar suggest that the first date for returns of process was **06.12.2012**. But summons were not issued for the said date as cost was not paid. However, summons for **28.03.2013** were issued and bailiff reported that defendant No.1 was served through her son as summons were received by his son Fahad. There was no proof of the fact that who identified Fahad as son of defendant No.1, to the bailiff nor the bailiff obtained CNIC from him. The signatures of son of defendant No.1 are in urdu while mother of Fahad who has allegedly executed the sale agreement has affixed her signatures on it in English. However, on 28.03.2013 one Muhammad Junaid Aziz, advocate appeared before the Additional Registrar and filed his Vakalatnama on behalf of defendant No.1 and claimed copy of plaint, therefore, plaintiff was directed to supply copy of plaint within a

week. However, copy of plaint was not supplied from 28.03.2013 to 01.11.2013 and the diary of Additional Registrar shows that on **01.11.2013** the plaintiff was again directed to supply copy within two weeks. The record does not show that order of supply copy of plaint was complied with. Then how the case was fixed for filing of written statement without supplying copy of plaint since 28.03.2013.

4. On the other hand, the learned counsel, Mr. Mohammad Junaid Aziz, who had filed power on behalf of Defendant No.1, never appeared in Court on 28.10.2014, 28.11.2013, 08.01.2014. He, however, on **16.06.2014** filed a statement pleading no instructions from his client. The statement reads as follows:-

“It is respectfully stated that the undersigned pleading no instructions in the instant suit from his client (the defendant No.1) although numerous letters in this regard have been sent to the client/defendant No.1 but none of the same has been served all are return un-served with quotation that the consignee left the residence therefore the undersign is withdrawing his Vakalatnama.
Kindly struck the name of undersign from the file cover.”

Perusal of above statement shows that he has sent numerous letters, which were said to have been returned un-served to him but he has not filed any of such letters or envelope alongwith the statement. The most strange thing is that what has prompted the said counsel for defendant No.1 to make a statement of “**no instructions**” during summer vacations of the Court. In any case, the responsibility of an advocate is not absolved unless he has complied with the requirement of Rule 50 of the Sindh Chief Court Rules, which reads as under:-

“**50. Notice of discharge to a client.** An advocate on record in a suit or matter desiring to obtain an order for his discharge, **shall** first give notice of his intended application for discharge to his client and the fact of such notice having

been served **shall** be stated in the affidavit in support of such application.”

Mr. Muhammad Junaid, advocate, who has filed Vakalatnama on behalf of defendant No.1 has not complied with the mandatory requirement of Rule 50 of the Sindh Chief Court Rules and abandoned the case. The use of word “shall” twice in the rule 50 of SCCR, first for prior notice to client for discharge; and secondly for proof of service of such notice through an affidavit on oath in support of application for discharge, cast mandatory duty on the counsel for obtaining his/her discharge. Mere statement was not enough. In the case in hand, it appears that the learned counsel has failed to discharge his duty towards his client, if at all, he was engaged. He has not even bothered to obtain order of proper discharge by the Court. This conduct of a lawyer is not in furtherance of cause of justice rather it helps in perpetuating the injustice.

5. The above facts indicate that how defendant No.1 has been kept out of the proceedings and debarred from filing written statement. I have noticed in several cases that without verifications and proper service, advocates file their Powers on behalf of the defendant or receive summons from the bailiffs and then stop pursuing the case just to give an impression that defendant has been served. In suit No.557 of 2013 (Re: Anwer Ahmed and Waqar Ahmed) I have passed a very detailed order highlighting the mischief played by the litigants and members of the bar at the stage of service of summons to obtain *ex parte* order adversely affecting the valuable rights of citizen in expensive properties by abuse of the process of

Court. In my humble view the suit in hand is also another example of such cases.

6. In view of the above facts, this suit cannot be finally disposed of on the basis of record which, in my humble view, is indicative of some foul play in keeping defendant No.1 out of the proceedings. Therefore, in the first place, as the plaintiff has sought relief of specific performance and he himself has pleaded that he has yet to pay a sum of Rs.27,00,000/= to defendant No.1, which he was supposed to pay on or before **25.09.2012**, therefore, before proceeding further, the plaintiff is directed to deposit a sum of **Rs.27,00,000/=** with the Nazir of this Court within **fifteen days** from date of passing of this order and in case of his failure to deposit the same, not only the application (CMA No.10598/2012) shall be treated as dismissed but even suit will also be treated as dismissed on the ground that the plaintiff himself was incapable of performing his part of the contract. However, in case said amount is deposited by the plaintiff within fifteen days, the Nazir should invest the same in some governments profit bearing scheme and thereafter summons/notices may be issued to defendant No.1 for personal appearance not only through bailiff but also through registered post A/D and TCS at the addresses given in the memo of plaint and also at the addresses mentioned on TCS receipts available at page 67 and 69 of the plaint. Notices and summons should not be issued unless the plaintiff deposits the amount of Rs.27,00,000/= with Nazir of this Court as stated above. This case should **not** be listed for final disposal, unless proper service is affected on defendant No.1 strictly in accordance with SCCR. Also issue notice to Mr. Mohammad

Junaid Aziz, advocate, to appear in Court alongwith the original letters returned unserved to him. He is still under legal obligation to attend the Court on behalf of Defendant No.1 as his power has neither been discharged nor he has complied with the requirement of Rule 50 of SCCR. In case of his failure to file the record of his correspondence with defendant No.1 or failure to attend this case, then the conduct of advocate shall be referred to the Sindh Bar Council, for appropriate action against him according to law.

JUDGE

Karachi
Dated:19.2.2015