

JUDGMENT SHEET**PESHAWAR HIGH COURT
ABBOTTABAD BENCH
(Judicial Department)****CR No. 65-A/2024****J U D G M E N T**

Petitioner(s) (Qazi Ejaz) by Mr. Nadeem Khan, Advocate.

Respondents (Hizbullah) Ms. Haseena Advocate on behalf of Mr. Muhammad Zubair Khan, Advocate.

Date of hearing: 11.03.2024.

MUHAMMAD IJAZ KHAN, J. Through this civil revision petition filed under section 115 of *The Civil Procedure Code, 1908*, petitioner has challenged the judgment/order dated: 06.11.2023 passed by the learned Additional District Judge-Abbottabad in civil appeal No. 13/6 of 2023, whereby, his application filed for extension of time for payment of balance sale consideration amount in civil appeal No. 40/13 was dismissed.

2. Facts of the case in brief are that the petitioner/plaintiff had filed a suit for specific performance of an agreement dated: 29.05.2013 to the effect that

respondent/defendant may be directed to receive the balance sale consideration amount of Rs. 25,000/- and to attest the mutation in his favor and that the mutation No. 1404 attested on 21.11.2013 by the defendant No.1 namely Sajjad Ahmed in favor of respondent/defendant No.2 namely Hizbullah, is illegal, unlawful and thus in-effective upon his rights. The aforesaid suit was duly contested by the respondents/defendants No.1 and 2 (Sajjad Ahmed and Hizbullah) by filing their written statements. From the divergent pleadings of the parties the learned trial Court framed issues, recorded pro and contra evidence and ultimately, the suit of the petitioner/plaintiff was decreed in the following terms:-

In the light of above issue-wise discussion, it is held that plaintiff has got cause of action and thus, the suit of plaintiff is decreed subject to payment of the remaining balance amount of Rs. 25,000/-.

3. The respondents/defendants namely Hizbullah and Sajjad Ahmed being aggrieved of the aforesaid judgment and decree preferred their respective appeals bearing No. 40/13 of

2022 and 42/13 of 2022. Both these appeals were consolidated and after hearing the parties, the impugned judgment and decree of learned trial Court dated: 15.03.2022 was maintained, however, the same was modified to some extent. The operative part of the said judgment/decreed is reproduced as under:

In the light of what has been discussed, instant appeal No. 40/13 alongwith connected appeal No. 42/14 are dismissed. Consequently, impugned judgment and decree dated: 15.03.2022 is maintained. However, modified to the extent of sale consideration plaintiff/ respondent No. 01 is directed to deposit amount of Rs. 3,00,000/- received through deposit slip and remaining amount of sale consideration of Rs. 25,000/- total 3,50,000/- with in 30 days of this judgment before the learned lower Court, otherwise his suit shall be treated as dismissed.

4. The aforesaid judgment and decree has challenged by the respondent/defendant namely Hizbullah through connected CR No. 18-A/2024, whereas, the same has also been challenged by the defendant namely Sajjad Ahmed through CR No. 19-/2024.

5. It is further spelling out from the aforesaid operative part of the judgment of the appellate Court dated: 15.03.2022 that the

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petitioner/plaintiff was directed to deposit the outstanding amount within period of 30 days, otherwise, his suit shall be treated as dismissed, however, it was on 10.05.2023 i.e after 78 days when the present petitioner submitted an application to the learned Additional District Judge, Abbottabad in the pending appeal No. 40/13 titled Hizbullah-Vs-Qazi Ejaz for extension of time to deposit the balance sale consideration amount, which application was duly contested by the respondents/defendants and the same was dismissed by the learned Additional District Judge, Abbottabad vide impugned judgment/order dated: 06.11.2023, which order has now been challenged by the petitioner before this Court by filing the instant revision petition.

6. Arguments of learned counsel for petitioner as well as learned counsel appearing on behalf of respondent present in the Court on pre-submission notice, were heard in considerable detail and record perused with their able assistance.

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7. The record would show that the petitioner/plaintiff namely Qazi Ejaz had approached to the learned trial Court for specific performance of an agreement dated: 29.05.2013 executed between him and defendant No. 2 namely Sajjad Ahmed. The record further indicates that the said suit was decreed in favor of petitioner/plaintiff, however, while deciding the consolidated appeals of respondents/defendants No. 1 and 2 on 23.02.2023 by the learned appellate Court it was directed to the petitioner/plaintiff to deposit the balance sale consideration amount i.e Rs. 350,000/- within a period of 30 days otherwise his suit shall be treated as dismissed but as per record he did not deposit the said amount within stipulated 30 days, and it was on 10.05.2023 i.e after 78 days (two months and 18 days) when he submitted an application before the learned appellate Court for extension of time for the deposit of said amount, which application has been turned down by the learned Additional District Judge, Abbottabad, therefore, in view of given facts

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and circumstances, there are two questions before this Court *firstly*, that as to whether the condition attached to the decree (to deposit the balance sale consideration amount within 30 days) was mandatory or not? and *secondly*, as to whether the time as set in the said decree could be extended or modified by a Court, when once, it has passed a decree and it has becomes *functus officio*?

8. As far as the question No. 1 is concerned, any condition attached to a decree is mandatory and its non-compliance will fallow the event. As in this case it was specifically directed by the learned appellate Court that the petitioner/plaintiff will deposit the balance sale consideration amount within 30 days, otherwise, his suit shall be treated as dismissed, which he did not and thus, he will be liable to suffer the entail consequences of dismissal of his suit. This question had already been answered by the apex Court in **Muhammad Wahid's case**, reported as **2016 SCMR, 179**, whereby, it has specifically been held that condition attached to the decree is



mandatory in nature and the violation thereof would be fatal for the delinquent party, the relevant part of judgment is reproduced as under:-

It is an admitted fact that the trial Court had passed the ex parte decree on 13.7.2008 with a direction to the Appellants to deposit the remaining sale consideration in Court within 40 days, failing which the suit filed by them shall stand dismissed. Admittedly, the Appellants had made application for extension of time for deposit of balance sale consideration on 14.10.2008 after lapse of 40 days. Such Application, in the given circumstances, could not have been granted by the trial Court in exercise of its powers under section 148, C.P.C., as on the said date the trial Court had become functus officio by virtue of its judgment/decreed dated 31.7.2008. The issue that the trial Court had passed a preliminary decree on the said date which became final on 31.10.2008, has no nexus with the condition incorporated in the decree of the trial Court which had specifically stated that in case of non-deposit of balance sale consideration within the stipulated time, the suit shall stand dismissed. Such a decree could have only been challenged by the Appellants in appeal and the Appellate Court was competent to allow an Application of the nature if justifiable grounds were found in such an Application seeking extension of time for deposit of balance sale consideration. The jurisdiction with the trial Court was available only within the stipulated period of 40 days, and the moment this period of 40 days was over, it ceased to have jurisdiction and had become functus officio, in view of the condition incorporated in the decree.

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9. As far as question No. 2 is concerned, the answer to the same is in negative as when once a Court passed a decree, then it has become *functus officio*, and thus it would not be competent to bring about any alteration or modification in terms of the decree and in the present case, the learned Additional District Judge could have been extended the time provided the petitioner/plaintiff had approached it within 30 days but the day, that period expired then thereafter, the learned Additional District Judge becomes *functus officio* and thus it cannot vary the time as set in the decree for payment of the balanced sale consideration amount. In Muhammad Waheed's case supra, the apex Court has laid the aforesaid dicta in very clear terms, therefore, the learned Additional District Judge, Abbottabad has rightly refused to extend-cum-change the time so set in the decree for payment of the said amount.

10. Even otherwise, it is settled law that an agreement to sell does not create any right and even at the time of entertaining the plaint or

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during the pendency of the suit the Court could ask a plaintiff(s) who seeks enforcement of an agreement to sell to deposit the outstanding sale consideration amount in the Court, so that it may be ensured that the plaintiff is interested and capable in of enforcement of the agreement, albeit, in this case, a decree qua specific performance of an agreement was passed in favor of petitioner/plaintiff and a condition was attached therein that the petitioner/plaintiff has to deposits the remaining sale consideration amount of Rs. 350,000/- within thirty days (30) otherwise the suit of petitioner/plaintiff shall be treated as dismissed. In the *Inayat Ullah Isa's*, reported as *2021 SCMR 686*, it is held that a person seeking the specific performance of a contract must first show that he is ready, able and willing to perform his obligations under the contract. The law does not require that the balance sale consideration must be tendered or deposited in court, but such tender/deposit helps to establish that the buyer was not at fault. Similarly, in

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Muhammad Yousuf's, case reported as 2021 SCMR, 1241, it is held that a suit seeking specific performance of contract for the sale of land is a simple suit wherein to succeed the plaintiff is required to demonstrate that he has performed his obligations under the contract or that he has been prevented to do so by the other side and if this be so to then demonstrate his ability and readiness to perform the commitment undertaken by him in the contract. Further reliance can also be placed on in case of Muhammad Asif Awan reported as 2021 SCMR, 1270.

11. During the course of arguments, learned counsel for petitioner made much emphasis on section 148 of *The Civil Procedure Code, 1908*, the same being relevant is reproduced as under:

Enlargement of time:--Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may in its discretion, from time to time enlarge such period, even through the period originally

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fixed or granted may have expired.

however, mere reading of aforesaid section of law manifestly show that extension of time may be given by the Court during the pendency of *lis*, however, since in the present case after passing the decree and expiration of the period so fixed therein for the payment of outstanding sale consideration amount, the Court had become *functus officio* and it has no hold over the *lis*, therefore, in such an eventuality section 148 of CPC would not be applicable to the case of the present petitioner.

12. In view of the above discussion and exposition of law, the instant revision petition being bereft of any merit is hereby dismissed and consequently, the conditional decree granted to the petitioner/plaintiff by the learned trial Court and maintained by the learned appellate Court, is set-aside and as result thereof the same shall have no legal & binding effect and consequently, the suit of the petitioner/plaintiff shall be deemed and treated

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to have been dismissed throughout. Order
accordingly.

Announced.
11.03.2024.

Tahir PS


JUDGE