

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Yahya Afridi, CJ
Justice Irfan Saadat Khan
Justice Aqeel Ahmed Abbasi

Civil Petitions No.1971 and 2395 of 2022

(Against the judgment dated 31.03.2022 passed by the Islamabad High Court, Islamabad in C.Rs. No.257 & 272/2019)

Bashir Ahmad (in C.P. No.1971/2022)
Javed Iqbal (in C.P. No.2395/2022)

...Petitioners

Versus

Javed Iqbal and others (in C.P. No.1971/2022)
Muhammad Saleem and others (in C.P. No.2395/2022)

...Respondents

For the Petitioners: Mr. Mudassar Khalid Abbasi, ASC
(in C.P. No.1971/2022)

Barrister Umar Aslam, ASC
Syed Rifaqat Hussain Shah, AOR
(in C.P. No.2395/2022)

For the Respondents: Barrister Umar Aslam, ASC
Syed Rifaqat Hussain Shah, AOR
(in C.P. No.1971/2022)

N.R.
(in C.P. No.2395/2022)

Date of Hearing: 17.07.2026

JUDGMENT

AQEEL AHMED ABBASI, J.- The Above Civil Petitions for Leave to Appeal arise from combined judgment dated 31.03.2022 passed by the learned Single Judge of Islamabad High Court, Islamabad in two Civil Revision Petitions i.e. C.R. No.257/2019 titled Bashir Ahmed v Javed Iqbal and two others and C.R. No.272/2019 titled Javed Iqbal v Muhammad Saleem and two others which were filed against the judgment and decree dated 17.05.2019 passed by the learned Additional District Judge-VI(East), Islamabad, whereby both the Civil Revision Petitions were dismissed and the judgment passed by learned Additional District Judge-VI(East), Islamabad was maintained.

2. Since the facts and the law points involved in both the petitions are common whereas, both the cases have been decided

through a combined judgment impugned by both the parties through above petitions, therefore, we intend to decide both these petitions through a common judgment.

3. For the sake of brevity, Bashir Ahmed i.e. petitioner captioned in CPLA. No.1971/2022 is hereinafter referred to as **“defendant”** whereas Javed Iqbal i.e. petitioner captioned in CPLA No. 2395/ 2022 is hereinafter referred to as **“plaintiff”**.

4. The relevant facts as recorded by the learned Single Judge of Islamabad High Court, Islamabad are that Javed Iqbal (plaintiff of original suit) entered into an agreement to sell, dated 19.03.2002, with Muhammad Saleem (respondent No. 2 in CPLA No. 1971/2022 and respondent No. 1 CPLA No. 2395/2022, hereinafter referred to as **“the respondent”**) and the defendant-Bashir Ahmed regarding Plots No.311 and 312, measuring 36x50 each, Margalla Town Phase-II, Islamabad, respectively, against sale consideration of Rs.1,400,000/- out of which a sum of Rs.220,000/- was paid as earnest money with the concurrence that balance sale consideration would be paid at the time of transfer of the plots after security clearance/verification and payment of dues of CDA to be cleared by the sellers, as such, the sellers namely defendant-Bashir Ahmed and respondent-Muhammad Saleem failed to transfer their respective plots in favour of plaintiff-Javed Iqbal, who consequently filed a suit for specific performance and permanent and mandatory injunction against the said sellers, which was decreed vide judgment and decree dated 25.10.2018 by the learned Civil Judge 1st Class (East), Islamabad. Feeling aggrieved thereof, the defendant-Bashir Ahmed and respondent-Muhammad Saleem preferred an appeal, which was partially allowed to extent of latter by the Additional District Judge-VI (East), Islamabad vide judgment and decree dated 17.05.2019. Feeling aggrieved of the said decision, civil revision petitions were filed in the Islamabad High Court, Islamabad by both the parties which were dismissed and the judgment passed by learned Additional District Judge-VI(East), Islamabad was maintained. Hence instant petitions.

5. Learned counsel for the defendant-Bashir Ahmed contends that the High Court erred in partially enforcing a joint agreement (Exh. P-1), arguing that because the lower Courts found the vendee plaintiff-Javed Iqbal committed fraud by forging co-seller

Muhammad Saleem's signature, the entire contract is tainted under Section 17 of the Contract Act, 1872 and cannot be selectively executed. He further contends that time was of the essence regarding defendant-Bashir Ahmed requiring the vendee to pay the remaining amount of Rs.1 million within a month of file clearance. He further argues that the vendee's failure to adhere to these terms despite a notice dated 25.08.2004 and non-deposit of the balance sale consideration upon filing the suit disentitles him to a decree for specific performance.

6. Conversely, learned counsel for the plaintiff-Javed Iqbal has contended that the learned Appellate Court as well as the learned Judge in Chambers of Islamabad High Court, with respect, have failed to consider that if the plaintiff had not deposited the amount, the plot of respondent-Muhammad Saleem would never have been restored and remained cancelled since the deposit was never made by the respondent in time. He further contends that the non-deposit by the respondent is clearly evincing from cross-examination of respondent, which has completely escaped the attention of learned High Court and learned Appellate Court. He argues that the original register produced by CDA, exhibited as Exh. DW-3/1, clearly demonstrates that the payment for both the plots restoration was made by the plaintiff-Javed Iqbal and not by the respondent-Muhammad Saleem and defendant-Bashir Ahmed as relevant entries of pay orders reflect at serial No 2136 and 2137 of the original register. He further argues that the statement of PW-4 which was not shaken in the cross-examination establishes that the respondent-Muhammad Saleem had signed the agreement as he himself appeared to obtain stamp paper and his signatures were obtained on the back of stamp paper (Exh.P1/1) and register of stamp vendor (Exh.P1/2). Per learned counsel, the single agreement (Exh.P1) covering both plots was validly accepted regarding the defendant-Bashir Ahmed, making it an error to reject it for respondent-Muhammad Saleem. Learned counsel contends that despite inconclusive FIA handwriting expert opinions, respondent failed to explain how the agreement, acknowledged by his own brother Bashir Ahmed, was fabricated, praying for the restoration of the Trial Courts original decree.

7. Heard the parties, examined the judgments of the fora below and perused the record.

8. Perusal of the record reflects that the parties entered into an agreement to sell dated 19.03.2002 regarding Plots No.311 (owned by respondent-Muhammad Saleem) and 312 (owned by defendant-Bashir Ahmed) in Margalla Town, Phase-II, Islamabad, for a total sale consideration of Rs.1,400,000/-, out of which Rs.220,000/- was paid as earnest money. The plaintiff-Javed Iqbal also deposited two pay orders amounting to Rs.90,000/- each with CDA in lieu of the remaining installments of the subject plots in compliance with the terms of agreement. Upon failure of the sellers to perform their contractual obligations, the plaintiff-Javed Iqbal instituted a suit for specific performance and permanent and mandatory injunction. The Trial Court initially decreed the suit partially regarding Plot No.312 but the plaintiff-Javed Iqbal feeling aggrieved filed an appeal. In appeal, the Appellate Court decreed the suit in full resulting to the filing of Civil Revision No.99 of 2014 by the defendant in the Islamabad High Court, Islamabad. The learned High Court remanded the matter to the Trial Court with directions to examine the validity of signatures under Article 84 of the Qanun-e-Shahadat Order, 1984 as the respondent-Muhammad Saleem flatly denied his signature, execution of the agreement, and receipt of any earnest money. Post-remand, despite the Federal Investigation Agency (FIA) returning an inconclusive opinion regarding the questioned signatures of respondent-Muhammad Saleem through report dated 06.04.2018 due to insufficient standard comparison material, the learned Trial Court decreed the suit in full in favor of the plaintiff vide judgment dated 25.10.2018. Feeling aggrieved with this decision, the defendant-Bashir Ahmed and the respondent-Muhammad Saleem preferred an appeal. However, in appeal, the learned Additional District Judge-VI (East), Islamabad, vide judgment dated 17.05.2019, partially modified the decree by maintaining it against defendant-Bashir Ahmed while dismissing the suit to the extent of respondent-Muhammad Saleem. Both aggrieved parties assailed the appellate judgment through cross civil revision petitions (C.R. No.257/2019 and C.R. No.272/2019), which were ultimately dismissed through the impugned combined judgment dated 31.03.2022 by the learned Single Judge in Chambers of the Islamabad High Court, Islamabad.

9. We have observed that the execution of the agreement to sell (Exh. P-1) stands fully proved to the extent of defendant-Bashir

Ahmed on account of his express admission in his written statement. Addressing his contention regarding non-payment of installments and time being of the essence, the learned High Court held that contracts relating to immovable property do not ordinarily treat time as of the essence unless specifically intended by the parties. Furthermore, the plaintiff-Javed Iqbal adequately substantiated the payment of installments towards CDA through pay orders (Exh. P-2 to Exh. P-4) and entries in the CDA register (Exh. DW-3/1). Conversely, as regards respondent-Muhammad Saleem, the High Court concurred with the Appellate Court's finding that the plaintiff failed to discharge the primary onus under Article 177 of the Qanun-e-Shahadat Order, 1984 to establish the execution of Exh. P-1, given that his signatures/thumb impressions were not proven, marginal witnesses failed to support the plaintiff's stance, and the FIA report remained inconclusive. Consequently, finding no misreading, non-reading, or jurisdictional error in the First Appellate Court's judgment, the High Court rightly dismissed both the civil revisions.

10. The primary contention of the learned counsel for the defendant-Bashir Ahmed is that since execution of the single, composite agreement (Exh. P-1) was held unproven against co-seller Muhammad Saleem, the contract stood invalidated in its entirety and could not be enforced piecemeal. We find this argument without any merit. It is a settled principle of law that where a vendor executes an agreement in respect of his own distinct property, his contractual liability remains intact to the extent of his own interest, provided the contract is severable. Defendant-Bashir Ahmed explicitly admitted entering into the agreement, receiving earnest money, and agreeing to sell Plot No.312. Having made such solemn admissions in his pleadings, he cannot be permitted to escape his obligations merely because the transaction failed regarding Plot No.311 owned by respondent-Muhammad Saleem. Regarding the issue of default in paying CDA dues and the assertion that time was of the essence, the learned High Court correctly applied the well-established legal maxim that time is not presumed to be of the essence in contracts involving immovable property unless explicit stipulative intent and prejudice are established. The record demonstrates that the plaintiff-vendee deposited the requisite pay orders to clear CDA installments, as reflected in the bank certificates and CDA records produced in evidence. Defendant-Bashir Ahmed, having failed to demonstrate that

he had cleared the file or performed his reciprocal obligations to enable final transfer, cannot unilaterally claim rescission of the contract.

11. Now adverting towards the cross-petition filed by plaintiff-Javed Iqbal seeking enforcement of the agreement against respondent-Muhammad Saleem, we observe that the Appellate Court and the High Court have rightly held that the onus to prove execution of Exh. P-1 rested heavily upon the plaintiff pursuant to Article 177 of the Qanun-e-Shahadat Order, 1984. The plaintiff failed to produce convincing, independent evidence to verify Muhammad Saleem's signatures or thumb impressions on the agreement. The marginal witnesses did not substantiate the execution against Muhammad Saleem, and the FIA opinion remained inconclusive. In the absence of cogent evidence establishing *consensus ad idem* and valid execution, specific performance cannot be decreed against a party who consistently denies execution. The learned High Court has correctly exercised its revisional jurisdiction under Section 115 CPC by declining to disturb the findings of fact recorded by the learned First Appellate Court, which were supported by the evidence on record and free from any legal infirmity. No misreading or non-reading of material evidence, nor any jurisdictional error, could be pointed out in the impugned judgment.

12. In view of hereinabove discussion, both Civil Petition No. 1971/2022 (filed by Bashir Ahmed) and Civil Petition No.2395/2022 (filed by Javed Iqbal) are found to be devoid of any merit. Consequently, both the petitions are dismissed and leave to appeal is refused.

Chief Justice

Judge

Judge