

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE JAMAL KHAN MANDOKHAIL
JUSTICE SHAHID BILAL HASSAN

C.P.L.A. No.1748 of 2023

[Against the judgement dated 20.02.2023 passed by the Lahore High Court, Multan Bench in C.R. No.1646 of 2017]

a/w

C.A. No.298 of 2023

[Against the judgement dated 20.02.2023 passed by the Lahore High Court, Multan Bench in R.S.A No.229 of 2017]

*Ghulam Mujtaba (Deceased) through LRs
(in both cases)*

***...Petitioner(s/
Appellant(s)***

Versus

Ghulam Murtaza (in both cases)

...Respondent(s)

**For the Petitioner(s)/
Appellant(s)** : Agha Muhammad Ali, ASC
(in both cases)

For Respondent No. 1 : Moulvi Anwar-ul-Haq, ASC.
(in both cases)

Date of Hearing : 05-10-2026

J U D G M E N T

SHAHID BILAL HASSAN, J:

C.P.L.A. No.1748 of 2023

Brief facts germane to the filing of the instant petition are as such that an agreement to sell dated 30.11.2004 (Exh.P-1) was executed between Ghulam Mujtaba, predecessor-in-interest of the Petitioners, and Ghulam Murtaza, Respondent No.1, whereby the suit property was agreed to be sold for a total consideration of Rs.7,312,500/-. An amount of Rs.500,000/- was paid as earnest money, while the remaining consideration was agreed to be paid in installments, and the sale deed was to be executed by 15.07.2005.

The agreement also contained stipulations regarding payment of further amounts and delivery of possession of portions of the property.

2. Respondent No.1 instituted a suit for specific performance of the agreement on 29.11.2007. In his plaint, he asserted that, pursuant to the agreement, he had paid a total sum of Rs.2,500,000/- to the predecessor-in-interest of the Petitioners, including the earnest money, and that despite his readiness to perform his part of the agreement, the sale deed was not executed. The predecessor-in-interest of the Petitioners contested the suit, disputing the alleged payments and maintaining, inter alia, that the Respondent No.1 had failed to pay the balance consideration and that the suit was otherwise not maintainable.

3. The learned trial Court, after recording the evidence of the parties, decreed the suit vide judgment and decree dated 31.05.2011, directing the Plaintiff/Respondent No.1 to deposit the remaining sale consideration of Rs.6,812,500/- within one month, while holding that the Plaintiff/Respondent No.1 had failed to establish payment of the additional amount of Rs.2,000,000/-, claimed by him.

4. Both parties preferred appeals before the learned High Court. The appeals were consolidated and decided through judgment dated 29.03.2016, whereby the matter was remanded to the trial Court for a fresh decision on the question of the alleged additional payment, while the findings on the questions of limitation and maintainability were maintained. The matter thereafter proceeded before the trial Court. During the post-remand proceedings, the Petitioners were proceeded against ex parte, and the learned trial Court, vide judgment and decree dated 02.11.2016, held that the Plaintiff/Respondent No.1 had established payment of Rs.2,000,000/- and consequently determined the amount payable towards the remaining sale consideration as Rs.5,312,500/-.

5. The Respondent No.1/Plaintiff challenged the said determination in appeal, contending that the earnest money of

Rs.500,000/- had not been deducted from the remaining consideration. The appeal was allowed and the remaining sale consideration was determined as Rs.4,812,500/-. The Petitioners, on the other hand, sought setting aside of the ex parte proceedings and the judgment and decree passed thereafter. Their challenge ultimately travelled to the learned High Court, which, through separate judgments/orders, dismissed the Civil Revision and decided the connected Regular Second Appeal.

6. The Petitioners have now invoked the jurisdiction of this Court against the judgment dated 20.02.2023 passed by the learned High Court in Civil Revision No.1646 of 2017, whereby their challenge to the proceedings culminating in the decree for specific performance was dismissed.

7. Learned counsel for the Petitioners contended that the proceedings conducted by the learned trial Court after remand were vitiated for non-compliance with the mandatory procedure prescribed under Order V, Rules 16 to 20, C.P.C. It was argued that the Petitioners were never duly served and that, without first exhausting the ordinary modes of service and recording the requisite satisfaction regarding their impracticability, the learned trial Court proceeded straightaway to order substituted service through publication in a newspaper. Learned counsel maintained that the ex parte proceedings, and consequently the judgment and decree passed thereupon, were therefore without lawful authority. It was further contended that the learned High Court failed to appreciate these material procedural irregularities and erroneously dismissed the Petitioners' challenge. Reliance was placed on the record of proceedings to submit that the Petitioners had neither been served nor afforded an effective opportunity of hearing.

8. Conversely, learned counsel for Respondent No.1 supported the impugned judgment and submitted that the decree for specific performance had been passed after due adjudication of the dispute and that the Petitioners had failed to demonstrate any prejudice warranting interference in the exercise of jurisdiction under Article

185(3) of the Constitution. It was contended that the Petitioners' challenge was essentially directed against findings already recorded by the Courts below and that no question warranting interference by this Court had been made out. Learned counsel maintained that the Respondent No.1/Plaintiff had duly proved the agreement to sell and the payments made pursuant thereto, whereas the Petitioners had failed to establish any lawful ground for disturbing the decree. He accordingly prayed for dismissal of the petition.

9. We have heard learned counsel for the parties and have examined the record with their assistance.

10. The controversy, in our view, can be resolved on a short question, namely, whether the learned trial Court, after remand of the matter, could validly proceed against the Petitioners ex parte without first ensuring their service in accordance with law.

11. The record, particularly the order sheet, reveals that after remand the case was taken up when process was issued to the Petitioners. On the subsequent date, the process server reported the inability of the counsel, who had earlier represented the Petitioners, to appear on account of lack of instructions. The said statement, appearing on the order sheet itself, could by no stretch of circumstances be treated as service upon the Petitioners. More importantly, there is nothing on record to establish that the Petitioners themselves were served or that any valid and effective process was thereafter effected upon them before the learned trial Court proceeded to adopt substituted service and ultimately passed the ex parte judgment and decree.

12. The distinction between knowledge of proceedings and due service cannot be lost sight of. A counsel who expressly states that he has no instructions cannot, merely by virtue of his earlier appearance in the matter, be regarded as having accepted service on behalf of the party, particularly where the record does not disclose any subsequent authorization or appearance on behalf of such party. Once the learned trial Court was apprised that the counsel had no instructions, the proper course was to ensure service upon

the Petitioners in accordance with the procedure prescribed by law before proceeding further against them.

13. The position of law concerning substituted service is no longer res integra. In Messrs Mobiserve Pakistan (Pvt.) Limited v. Messrs V-Tech and others **(2025 SCMR 1936)**, this Court held that substituted service can only be resorted to after the Court has adhered to the prescribed procedure for ordinary service and has satisfied itself that the defendant cannot be served through ordinary modes or is deliberately avoiding service. Where the mandatory requirements preceding substituted service are not fulfilled, the process of service is rendered a nullity and the superstructure built thereon automatically collapses. The Court further emphasized that every litigant must be afforded a fair opportunity to plead and defend his case and that no person should be condemned unheard.

14. The same principle was reiterated by this Court in Hashim Khan and others v. Mst. Musarat Begum and others **(2025 SCMR 564)**, wherein it was held that the Court, before resorting to substituted service under Order V, Rule 20, C.P.C., must satisfy itself that ordinary service could not be effected and must adhere to the mandatory procedure prescribed by law. This Court found that where the prescribed procedure for procuring service had not been followed, the proceedings founded upon such defective service could not be sustained. The judgment also reiterated the fundamental requirement that a litigant must be afforded a fair opportunity of hearing and that an inadvertent lapse of the Court ought not to prejudice a party.

15. Applying the above principles to the case before us, we find that the Petitioners were not duly served after remand. The order sheet itself demonstrates that the counsel who had earlier represented them expressed his inability to appear for want of instructions. In these circumstances, the learned trial Court was required to take appropriate steps for service upon the Petitioners themselves. Instead, the proceedings proceeded towards substituted service and, ultimately, an ex parte adjudication. Such proceedings,

having been undertaken without securing due service upon the Petitioners, cannot be sustained in law. The subsequent judgment and decree, being founded upon proceedings in which the Petitioners were not afforded an effective opportunity of hearing, are consequently liable to be set aside.

16. It is also pertinent that the defect in question is not a mere technical irregularity. The right of a party to receive due notice and an opportunity to contest the proceedings lies at the very foundation of a fair adjudication. Where the record itself demonstrates absence of due service, the Court cannot presume that the party had knowledge of the proceedings merely because a counsel who had represented the party at an earlier stage happened to be before the Court and stated that he had no instructions. The principle of audi alteram partem requires that the party against whom an adverse adjudication is to be made must be given a meaningful opportunity to participate.

17. For the foregoing reasons, we are of the considered view that the Petitioners' challenge merits acceptance. Leave to appeal is, therefore, granted and the present petition is converted into an appeal and allowed. The impugned judgment dated 20.02.2023 passed by the learned Lahore High Court, Multan Bench, Multan, in Civil Revision No.1646 of 2017, as well as the consequential judgments/orders passed in the post-remand proceedings, including the ex parte judgment and decree dated 02.11.2016, are set aside. The matter is remanded to the learned trial Court for decision afresh, strictly in accordance with law, after ensuring due and effective service upon all concerned parties and affording them full opportunity to file their pleadings, produce evidence and address arguments.

18. The learned trial Court shall endeavour to decide the suit expeditiously, preferably within a period of four (04) months from the date on which the parties first appear before it pursuant to this order. The learned District Judge concerned shall ensure that the record is transmitted to the learned trial Court forthwith and shall

fix the matter before the appropriate Court. The parties shall appear before the learned District Judge concerned on 26.10.2026, without awaiting any further notice.

19. It is clarified that this Court has expressed no opinion on the merits of the controversy between the parties. The learned trial Court shall decide the matter independently, on the basis of the pleadings and evidence brought before it, uninfluenced by any observation made herein touching upon the merits of the suit.

C.A. No.298 of 2023

This connected Civil Appeal arises out of the judgment and decree dated 02.11.2016 passed by the learned trial Court in the post-remand proceedings, whereby the suit for specific performance was decreed ex parte against the Petitioners/Appellants and the rights and liabilities of the parties were determined on the basis of the evidence recorded in their absence. Since, for the reasons recorded hereinabove, the ex parte proceedings and the judgment and decree founded thereon cannot be sustained and have been set aside, this connected Civil Appeal is also allowed in the same terms. The impugned judgment and decree dated 02.11.2016, along with the judgments/orders affirming the same, are accordingly set aside and the matter is remanded to the learned trial Court for fresh decision in accordance with law, subject to the directions contained in paragraphs 17-19 of this judgment.

JUDGE

JUDGE

Islamabad, the
05th of October, 2026
“Approved for Reporting”
M.A. Hassan