

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench:

Mr. Justice Munib Akhtar

Mr. Justice Jamal Khan Mandokhail

Civil Appeal No. 102-L of 2017

(On appeal from the judgment of the Lahore High Court, Lahore dated 24.03.2017 passed in C.R. No. 2095 of 2012)

Said Rasool

.....**Appellant(s)**

Versus

Maqbool Ahmed etc

....**Respondent(s)**

For the Appellant(s): Ch. Iqbal Javed Dhillon, ASC

For the Respondent(s): Mr. Zafar Iqbal Chohan, ASC
(through video link from Lahore)

Date of hearing: 17.05.2023

JUDGMENT

Jamal Khan Mandokhail, J.- The predecessor of the respondents filed a suit for specific performance of an agreement for sale dated 18.10.1994. The suit was decreed by the Trial Court *vide* judgment and decree dated 19.11.2009. The appeal filed by the appellant was partly allowed by the Additional District Judge, Kamalia *vide* judgment dated 06.06.2012. The respondents filed a Revision Petition before the Lahore High Court, Lahore, which was allowed, hence, this appeal.

2. Arguments heard and have perused the record. The agreement was objected upon by the appellant for the reason that it was unsigned, hence, is invalid and could not be performed. Section 2(h) of the Contract Act, 1871 ("**Contract Act**") states that an "*...agreement enforceable by law is a contract*". Similarly, section 10 of the Contract Act stipulates that "*All agreements are contracts, if they are made by the free consent of the parties,*

competent to contract, for a lawful consideration with a lawful object, and not hereby expressly to be void." Therefore, the basic elements required to be proved for a valid agreement to be legally enforceable are mutual consent, expressed by a valid offer and acceptance; adequate consideration; capacity; and for it to be subject to the laws of the jurisdiction. These may be determined by looking at the objective manifestations of the intent of the parties as gathered by their expressed words and deeds, as well as objective evidence establishing that the parties intended to be bound. An agreement may be oral or in writing. A written agreement is an instrument whereby parties perform the act of declaring their consent as to any act or thing to be done by some or all parties through the process of writing. Where the parties to an agreement intend not to be bound until their agreement is reduced to writing and signed, neither party is bound until the writing is executed. If the written agreement pertains to financial or future obligations, it is to be compulsorily attested by two men or one man and two women, as provided by Article 17(2) of the Qanun-e-Shahadat Order, 1984 ("**QSO, 1984**") which is *sine qua non* for a valid agreement. Such written document should not be used as evidence until the attesting witnesses are called for the purpose of proving its execution in a manner enumerated in Article 79 of the QSO, 1984.¹

3. However, this situation must be distinguished from that in which the parties intend to bind themselves orally or by their conduct, but have the further intention of reducing their agreement to a writing after the oral agreement is made. In such case, the written agreement of the completed oral contract remains unaffected even if it is not signed by either party. The requirement of signing the agreement by the parties is to show their free consent and intention to be legally bound by their oral offer and acceptance. In circumstances where the agreement is reduced into writing and is not signed by either or one of the parties, it may still be valid and enforceable, however, its legal effect will be limited

¹ PLD 2021 SC 538

and the enforceability may be more difficult to establish in such case. It is, therefore, necessary that it must be pleaded in the pleadings and the requirements of a valid contract must be proved through cogent evidence by the party relying upon it.² These factors will be considered by the courts in determining the intent of the parties and steps partially taken for giving effect to the agreement. Thus, if the courts are satisfied that the party relying upon an unsigned agreement has proved the necessary ingredients for its validity, it may be enforced in favour of the party claiming its performance.

4. The record reveals that the respondents in their plaint have pleaded the execution and the fact of part payment of the consideration for the subject matter of the agreement in advance. In order to prove the validity and existence of the agreement between the parties with their free will and consent, the respondents produced marginal witnesses before the Court. They were cross-examined at length by the learned counsel for the appellant, but nothing favourable was extracted therefrom. Rather the witnesses have confirmed the contents of the plaint and the terms and conditions of the agreement between the parties, on the basis whereof the Trial Court decreed the suit. The appeal filed by the appellant was partly allowed by the Appellate Court, directing him to return the amount received by him from the predecessor of the respondents as part of the consideration. By not challenging the judgment of the Appellate Court, the appellant has accepted the part payment made by the predecessor of the respondents; which was one of the terms and conditions of the agreement. The intention of the appellant to enter into a valid agreement is evident from his deeds, by accepting the amount and signing the agreement with his free will and consent, which bound both of the parties. The steps taken for the part performance of the agreement prove its execution. Under such circumstances, irrespective of the absence of the signatures of the respondent's predecessor on the agreement, it is held to be valid, therefore, the appellant cannot

² PLD 1971 SC 784; 2006 SCMR 721; 2017 SCMR 98; 2020 SCMR 832

deny its existence and enforceability. The findings of the High Court and the Trial Court are based on proper appreciation of the evidence and material available before them. The learned counsel for the appellant has not been able to point out illegality, irregularity, or any substantial question of law and fact in the impugned judgment, warranting interference.

Thus, for the foregoing, this Civil Appeal is dismissed.

Judge

Judge

Islamabad,
17th of May, 2023
K.Anees/Ammar, LC
APPROVED FOR REPORTING