

ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.1932/2010.

Muhammad Islam Sheikh & another Vs. Pakistan Railway & others.

S.No. Of order/ Proceeding	Date of order/ Proceeding	Order with signature of judge, and that of parties or counsel, where necessary
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19.09.2017 Mr. Umair Khan Niazi, Advocate for the petitioners.
Ch. Muhammad Ashfaq Bhullar, Advocate for respondents.

This revision petition is directed against the judgments dated 16.07.2009 and 13.01.2010 passed by both the learned Courts below whereby suit of the petitioners was dismissed concurrently on account of lack of cause of action.

2. Precise contention of learned counsel for the petitioners is that they have not been allowed to lead evidence in this regard to prove their cause of action which was essential and this deficiency is manifest from the proceedings as well as the judgments of learned Courts below, hence the same being un-sustainable in the eye of law are liable to be set aside and case may be remanded back for re-adjudication even on the question of cause of action.

3. On the other hand, learned counsel for respondents contends that since no restraining order was passed by this Court, therefore, the shops in dispute were re-auctioned by the Department/respondents and same were handed over to the incumbents who succeeded in getting

the highest bid, therefore, this petition has become infructuous as the petitioners after re-auction lost cause of action. He presented a copy of letter dated 10.07.2008 which was written by the Divisional Superintendent to the Divisional Accounts Officer, Pakistan Railway Peshawar directing him to return amount deposited by the petitioners amounting to Rs.6,14,500/-, hence in present circumstances, respondents are ready to return this amount to the petitioners.

4. Learned counsel for the petitioners after examining this letter contends that Rs.6,14,500/- deposited by the petitioners remained with respondents, therefore, they are entitled to get this amount back alongwith interest from respondents and for this reason, the case may be remanded back to the learned trial Court in order to make an application seeking amendment in plaint for alternate relief of recovery of said amount alongwith interest.

5. Be that as it may, the admission on the part of respondents that the petitioners had deposited earnest money (50% of bid i.e. Rs.6,14,500/-) still lying with them and for its return letter has already been written but this stand was never taken by the respondents before any forum.

6. In view of above, I am inclined to set aside the impugned judgments passed by both the learned Courts below. Consequently, the plaint of petitioners shall be deemed to be pending before the learned trial Court where the petitioners, if so, advised, may file application for seeking

amendment in the plaint and if such application is filed within one month from the entrustment of this case, the same shall be dealt with in accordance with law after examining all aspects of the case including cause of action without being prejudiced from any observation made by this Court in this order.

7. Parties are directed to appear before the learned Senior Civil Judge, Minawali on 07.10.2017 who shall take on this matter either himself or entrust it to any other Civil Judge for adjudication.

8. With the above direction, this petition stands **accepted and case remanded**.

**(Muhammad Ameer Bhatti)
Judge.**

*Nadeem**