

2. Briefly stated the facts leading to these Revisions are that the applicants and respondents No.1 & 2 are legal heirs of late Syed Ishaq Ali. They have filed Civil Suits bearing No.410/2011 and 577/2011 against each other in respect of an immovable property bearing House No.R-715, Sector 15/A-2, North Karachi (the suit property). Both the suits were consolidated and the same were decreed by way of compromise on **21.5.2013**. It was agreed between the parties that suit property shall be sold out through Nazir of the Court and each legal heir shall get share by inheritance from the sale proceeds in accordance with shariah.

3. Consequently in terms of compromise the Nazir of the Court issued proclamation/publication of sale of suit property in daily Newspaper Express on **5.1.2016** and the date of auction was fixed as **6.2.2016**. The applicants filed an application for compliance of **Order 21 Rule 66 CPC**, the said application was allowed by order dated **2.4.2016**. Therefore the Nazir of the Court had ascertained market value of the suit property from three different estate agents of the area and it was assessed to be Rs.1 crore to Rs.1.05 crore and submitted his report to the Court on **12.4.2016**. Therefore, on **14.4.2016** another auction notice was published in daily Express, for auction to take place on **28.4.2016**. The Nazir auctioned the suit property to Respondent No. 5 as he was the highest bidder and his bid was accepted. The applicants on **07.05.2016** filed an application under **Order XXI Rule 90 CPC**, for setting aside the sale. The trial Court after exchange of counter affidavit and rejoinder and hearing dismissed the said application by order dated **08.11.2016**.

4. The applicants filed an appeal No.16 of 2016 against the order dated **08.11.2016** on the grounds that impugned order is bad in law and on facts, as the Nazir did not comply with the **Rule 66 of Order XXI CPC** and the learned trial Court never asked the applicants to furnish surety or security of 20% to entertain their application under **Order XXI Rule 90 CPC**. Respondents No.1 & 2 filed objections, alleging therein that the applicants have not come to the Court with clean hands as they are in possession of the suit property since **15.1.1987**, and they want to deprive the respondents from their right of inheritance in the said property.

5. The learned appellate Court after hearing learned counsel for the parties, by order dated **29.4.2017** dismissed the said appeal. The said order and the order of the trial Court dated **08.11.2016** are both impugned in these Revision applications.

6. I have heard learned counsel for the parties and perused the record.

7. Learned counsel for the applicant has repeated all of his contentions, which he has raised before the two courts below, that the auction proceedings were unlawful since the auction notice was defective. He concedes and Court record also confirms that he has filed an application under **Order 21 Rule 90 CPC** read with **Section 151 CPC** one week after the highest bid was accepted. The trial Court has ordered to deposit 20% of the auction sale to have a right of audience. The trial Court has considered all of his contentions of the applicant despite the fact he had not complied with the requirement of law which is mandatory for the objector before raising an objection to the auction proceeding after the auction proceedings have been

concluded and the auction purchaser has deposited the bid money. In the case, in hand it is not only the auction has been completed, but the suit property has also been handed over to the auction purchaser by the Nazir of the trial Court. In fact on failure of the applicant to deposit security equal to 20% of the auction sale, the applicants have failed to obtain interim order against the confirmation of auction by order dated **17.11.2016** and then appeal No.18 of 2018 against the order of confirmation of sale has also been dismissed by the same Additional Sessions Judge, Karachi-Central by order dated **29.04.2017**. The other Civil Revision No.76 of 2016 against the order dated **29.04.2017**. However, the sale proceeds lying with the Nazir of the trial Court have not been handed over / distributed amongst the legal heirs of late Syed Ishitaq Ali in terms of the compromise decree dated **21.05.2013** pending these Revisions.

8. Learned counsel for the applicant has contended that the learned trial Court has not specified the figure / amount in its order for the applicants in terms of second proviso to **Order XXI Rule 90 CPC** and therefore, the order of depositing money in Court being vague and ambiguous were not required to be complied. On the query from the Court he concedes that he has challenged the sale through the auction and he knows he was objecting to the acceptance of bid by the Nazir of the Court for selling the property for an amount of **Rs.69,50,000/-**. Learned counsel for the respondent contends that order of the trial Court to deposit 20% of the auction sale was clear and no calculation was required to be done by the trial Court. If the applicants were unaware or could not understand what could be 20% to the sum of Rs.69,50,000/- then this application was not maintainable before the trial Court or before appellate Court. The

other contention of the counsel for applicant that the value of the property was assessed as Rs.1.05 crore and it has been auctioned on lesser value than the market value. Both the contentions have adequately been answered by the trial Court in the impugned judgments. The case-law cited by the learned counsel for the applicants is also one and the same, which he has cited before the trial Court. The learned trial Court has rightly observed that the case law from the jurisdiction of Banking Court relied upon by the applicants for challenging the auction of suit property owned by deceased in suit for distribution of share amongst the legal heirs are not relevant since the facts of suit for recovery of loan and suit for partition and distribution of inheritance are always distinguishable. Therefore, the sale of the suit below the tentative value in the proclamation of sale in the case in hand was not any irregularity. The property auctioned was inheritable property in which all the legal heirs have agreed to sale it through auction. If the property according to the appellants was auctioned for a lesser value than the market then it was their duty either to bring better offer or the three brothers and two sisters should have jointly grabbed the opportunity to purchase the undervalued share of the widow and the daughter of their deceased brother.

9. Learned counsel for the applicants has not advanced any other argument. Apparently the intentions were unfortunately to deprive the respondents from their legitimate share by hanging on in the Courts because the applicants were in possession of the suit property since 1987. The suit was filed by the applicants in **2011**. The applicants have compromised the suit on **21.5.2013**. The dispute was between the applicants on the one side who are **three** brothers

and **two** sisters of deceased Syed Ishtiaq Ali and on the other side respondents are two women, the widow and the sole daughter of late Syed Ishtiaq Ali, but they are not in possession of even a portion of the suit property and, therefore, delay was to the advantage of the applicants. The applicants have consumed more than five years even after the compromise on the strength of filing frivolous applications, then appeals, followed by Revisions to delay distribution of sale proceeds of auction and handing over share to the widow and her daughter. The applicants, had they been serious, should have deposited 20% of **Rs.69,50,000/-** of the sale proceed on **07.05.2016** as security. They contested their frivolous application under **Order XXI Rule 90 CPC** for two years on frivolous contention that the Court has not done mathematic of 20% of **Rs.69,50,000/-**. The trial Court has observed that *“The record shows that the plaintiffs has not sustained any substantial injury, while it appears that inspite of passing judgment & decree, the defendants No.1 & 2 have sustained substantial injury by the reason that the plaintiffs are enjoying suit property, which is admittedly in their possession”*. The husband of Respondent No.1 and father of Respondent No.2 has died on **15.1.1987**. The applicants have badly abused the process of Court and even practically disobeyed order of Court to deposit 20% of the auction amounting to **Rs.1,390,000/-**. This was abuse of the process of Court to deny the right of inheritance to two women. It is not only derogatory to law but it also amounts to causing harassment to women through the Court.

11. In view of the above facts and conduct of the applicants, these Revisions applications are dismissed with consolidated cost of **Rs.100,000/-** and it should be deducted by the Nazir of trial Court

from the share of applicants proportionately and paid to Respondents No.1 and 2 alongwith their share in terms of compromise decree from the sale proceeds lying with the Nazir. The Nazir should complete this exercise within two weeks (15 days) from the date of this order and submit compliance report through MIT-II for perusal in Chamber. Copy of this order be sent to the learned Court forthwith.

JUDGE

Karachi
Dated:10.01.2019

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