

# IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal 254 of 2010

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Dawood Khan  
vs.  
Abu Bakar and & Others

For the Appellant : Mr. Shaiq Usmani, Advocate  
For the Respondent : Mr. Mushtaq A. Memon, Advocate  
Mr. Ishtiaq A. Memon, Advocate  
Mr. Shahid Ansari, Advocate  
Date of Hearing : 26.11.2018.  
Date of Announcement: 15.02.2019

## JUDGMENT

**Agha Faisal, J:** Through this appeal the petitioner, being an intervener in J.M. No.1 of 1989 (“**JM**”), has assailed the order passed therein dated 28.09.2010 (“**Impugned Order**”) whereby the appellant’s application for taking certain documents on record was rejected. It is considered pertinent to reproduce the operative constituent of the Impugned Order herein below:

“After hearing both the parties the arguments advanced on behalf of the official Liquidator merit the consideration of this Court as the whole exercise of Enquiry Report that was conducted would become redundant. The Enquiry Report dated 13.05.2006 is based on the record of this case and the documents produced before the Enquiry Officer. The intervener Dawood Khan was cross-examined with reference to the documents produced by him. The application CMA No.462 of 2006 which has partly been heard contains the prayer “---examine the evidence produced by the intervener before the Enquiry Officer and after calling for evidence from the Official Assignee and examining the same decide the question of title to the said property.”. The documents now produced through the present application (CMA No.906 of 2010) admittedly were neither produced before the Enquiry Officer nor have been produced by the Official Assignee. Therefore, allowing the intervener to file documents at this stage in support of objections against the Enquiry Report dated 13.05.2006 shall be contrary to the principles of natural

justice depriving the official liquidator from opportunity to cross examine the intervener in order to test the veracity of the said documents. The Official Liquidator is charged with the onerous responsibility of collecting the assets of companies under liquidation and distribution thereof amongst investors. The intervener has not come up with any plausible justification for failure to produce the subject documents at the time of evidence. The hearing cannot be delayed by allowing the intervener to fill up deficiency or lacuna, if any, in the evidence. The documents filed by the counsel for the Official Assignee on 21.08.2008 are mostly part of the record in these proceedings. In any event, the intervener did not object against production of documents by the counsel for the Official Assignee on 21.08.2008. The intervener therefore cannot rely on production of documents by the counsel for the Official Assignee as a precedent. Moreover, this Court agrees to the fact that the intervener has no nexus to the documents as he is not competent to produce the same before this Court. The application is dismissed.”

2. Mr. Shaiq Usmani, Advocate argued on behalf of the appellant that the proceedings in the JM pertained to the liquidation of M/s. T.J. Ibrahim and Alliance Motors Private Limited (“**T&A**”) It was submitted that the appellant was an intervener in the said JM and had moved CMA 906 of 2010 seeking the permission of the Court for taking on record of the documentation stated therein. Learned counsel argued that an enquiry was ordered into the affairs of T&A in respect whereof a report was submitted on 13.05.2005. The appellant reportedly had reservations/objections to the enquiry report predicated on the premise that certain immovable property being treated as that of T&A was claimed by the appellant. It was submitted that during the course of the enquiry the appellant had produced all documents relating to his claim/title to the immovable property, in his possession, before the enquiry officer. However, the documents sought to be placed on record came within the knowledge of the appellant at a belated stage, hence, he sought to place the same on record. It was argued that the documents sought to be recognized in the JM were public documents and no harm would be occasioned to any party if the same were allowed

to be brought on record. It was thus argued that the Impugned Order may be set aside and the appellant be permitted to bring the relevant documents on record in the JM.

3. Mr. Mushtaq Ahmed Memon, Advocate argued on behalf of the respondent Official Liquidator and submitted that the Impugned Order was delivered in due consonance with the law and no interference was merited therewith in the present proceedings. It was argued that the appellant was given complete opportunity to lead evidence including the right to cross examine. It was further submitted that the enquiry report was prepared on the basis of the record produced and that allowing the present appeal would perpetuate the delay that is being occasioned in the JM. Learned counsel submitted that the documentation in question pertains to a fraudulent decree and execution proceedings filed in pursuance hereof and that the said proceedings have already been challenged by the learned Official Liquidator by filing an application under section 12(2) CPC before the Court of appropriate jurisdiction. Learned counsel delved into the issue of the immovable property claimed by the appellant and submitted that from 1992 till 2000 possession thereof was with the concerned Deputy Commissioner and since 09.04.2000 possession was restored by the Deputy Commissioner to the Official Liquidator. It was also stated that it was manifest from the ancillary proceedings, being JCM-1 of 1989, that the present appellant had disavowed his claim to the immovable property and had sought to pursue a monetary claim. It was further stated that the aforesaid statement was belatedly claimed to have been given under duress. It was thus argued that the present appeal merits dismissal forthwith.

4. We have considered the arguments of the respective learned counsel and the question before us is whether the Impugned Order merits any interference in appeal. In order to initiate this discussion it may be pertinent to describe the documentation sought to be placed on record in the JM:

- “ 1. Certified true copy of Execution Application No.82 of 1991.
2. Certified true copy of Order dated 01.10.1995 in Execution Application No.82 of 1991 allowing amendment of execution application.
3. Certified true copy of Amended Execution Application No.82 of 1991 in Suit No.905 of 1989.
4. Certified true copy Order dated 24.03.1996 in Execution Application No.82 of 1991 allowing the Execution application.”

(hereinafter collectively referred to as the “**Documentation**”)

5. It was argued by the appellant before the learned Single Judge in the JM that during the course of the enquiry the appellant produced all documents relating to his title to the immovable property that were in his possession before the Enquiry Officer. However, the Official Liquidator who was claiming the plot in his custody as Official Liquidator failed to produce for evidence documentary or otherwise, nevertheless, subsequently a number of documents were filed in Court by the counsel for the Official Liquidator in support of the Official Liquidator’s contentions. It was argued that the Official Liquidator had conceded that the plot in question was the property of a company Ideal Builders (Private) Limited, whose directors were stated to be associated with the owners of T&A. The Official Liquidator had relied upon a purported Sale Deed favoring Ideal Builders (Private) Limited dated 26.06.1998. It was contended for the appellant that the aforesaid deed was declared to be illegal and without any legal effect in Suit 905 of 1989 and the execution

proceedings were also pending in pursuance thereof. Since the appellant claimed to have gained knowledge of the documentation subsequent to the enquiry report, thus, he was unable to produce the same in the enquiry proceedings to place the same on the record in JM.

6. It is also noted that while the learned counsel for the respondent has not challenged the veracity of the documentation; he has raised a question in respect of the validity thereof and it was in this regard that it was argued that an application under section 12(2) CPC has been filed by the Official Liquidator wherein such judgment and decrees have been assailed. The Documentation prima facie comprises of certified true copies of court proceedings and it was also argued by the learned counsel for the appellant that such documents constituted public documents per the Qanoon-e-Shahadat Order, hence, they were not required to be proven in any event.

7. The existence of the judgment, decree and execution proceedings are accepted by all parties and it is the considered opinion of the Court that placing the said Documentation on the record in the JM would only serve to add better clarity for the determination of the issues before the learned Single Judge. It is, however, observed that the taking of the documentation on the record in the JM shall remain subject to the right of the Official Liquidator to challenge the evidentiary value thereof. The learned Single Judge shall also consider the arguments of both the parties when determining what weightage is to be given to the Documentation.

8. In view of the forgoing the present appeal is allowed in terms herein contained. With utmost respect to the learned Single Judge, the

Impugned Order is hereby set aside and the Documentation is directed to be taken on record.

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