

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

M.A No.25 of 2014

Date	Order with signature of Judge
------	-------------------------------

Hearing case (Priority)

1. For order on CMA No.6940/2014 (Limitation)
2. For hearing of CMA No.6941/2014 (Stay)
3. For hearing of main case.

23.11.2018

Ms. Durdana Tanweer, advocate for the appellant.

NAZAR AKBAR, J:- Through this Miscellaneous Appeal the following operative part of the order dated **11.09.2014** passed in SMA No.41/2014 has been challenged:-

The amount of Rs.30,00,000/- is to be released in favour of objector after submitting the Judgment and Decree of the competent Court of Law in respect to establish his claim and the Nazir of this Court is authorized to invest the said amount in the profitable scheme till that time.

The Objector was one Mr. Ghulam Hussain son of Lal and the said objector was neither the legal heir nor he had any decree of Court in his favour at the relevant time. It was an undetermined claim of the objector which was not supposed to be entertained by the learned Court in SMA No.41/2014. It goes without saying that an order in respect of movable and immovable properties of a deceased is transfer of both the debts and security from a dead person to his legal heirs. If anything is liable to be recovered from the deceased, the same may be recovered from the legal heirs provided such claim is determined by Court of law against the legal heirs as liability of deceased devolved on them. The Court seized of Succession Petition is not supposed to attach a huge amount of succession in favour of

an objector who has not even filed any suit for recovery of said amount. Be that as it may, the order passed by the lower Court was beyond its jurisdiction, therefore, the impugned order to the extent of order of attachment of Rs.30,00,000/- was void. The appellant has filed an application for condonation of delay with a plausible explanation, too. Even otherwise the part of the order which is challenged through instant appeal was void and, therefore, the appeal was not hit by law of limitation.

2. In view of above facts and law the impugned order is set aside. The Nazir of District Court is directed to hand over the amount lying with him in SMA No.41/2014 to the legal heirs of deceased as per their share already determined in the said SMA.

3. Instant Miscellaneous Appeal is disposed of alongwith pending applications.

JUDGE