

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Suit No. 1375 of 1998

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Date	Order with Signature(s) of Judge(s)
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1. For hearing of CMA No. 18710/18.
2. For hearing of CMA No. 1217/18.
3. For hearing of CMA No. 1367/18.
4. For hearing of CMA No. 1368/18.
5. For hearing of CMA No. 88/17.

04.02.2021

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Mr. Javed Iqbal, Advocate for plaintiffs.

Mr. Amir Asher Azeem, Advocate for defendants No. 1 to 4.

Mr. Naeem Ahmed Rana, Advocate for applicant/intervener Ajeet Kumar.

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1. It appears from perusal of order dated 5<sup>th</sup> December, 2018 that vide order dated 15<sup>th</sup> January, 2018, this Court granted permission to parties dispose of immovable properties i.e. (i) Flat No.3 at 2<sup>nd</sup> floor and (ii) Shop No.1 at ground floor of the Building known as Kazi Court situated on plot No.30, K.C.H.S. Union Area, Bahadurabad No.3, Karachi, in open market with the object that these properties would fetch maximum price and the sale proceeds would be distributed amongst the legal heirs i.e. plaintiffs, defendants as well as stakeholder Muhammad Ali Mansoori after deducting the expenses and other charges, if any. Mst. Fareeda Abbas (defendant No.4) has 50% share in the aforesaid properties, while legal heirs of Akber Ali Mansoori have 25% share and plaintiffs and defendants No.1 to 4 are shareholders of remaining 25% being legal heirs of late Abbas Ali Hakimi. Thereafter, the plaintiffs and defendants jointly received an offer from a buyer, namely, Ajeet Kumar to purchase 25% share of late Abbas Ali Hakimi being share of plaintiffs and defendants No.1 to 4 for total sale consideration of Rs.3,25,00,000/- which was accepted by the plaintiffs and defendants No.1 to 4 and thereafter it was settled between the parties that purchaser Ajeet Kumar shall pay Rs.10,00,000/- to plaintiffs as part payment and remaining amount would be kept in a joint locker and key of the

same would be kept with Muhammad Ashraf (estate dealer). According to purchaser Ajeet Kumar he paid an amount of Rs.10,00,000/- through a cheque dated 11.6.2018 drawn on M/s. Al-Falah Bank, Umerkot Branch, which was encashed by the plaintiffs and remaining amount of Rs.3,15,00,000/- in the shape of Rs.50,00,000/- cash, pay orders for Rs.197,00,000/- and USD 50,000/- were kept in a locker No.5, key No.68 in M/s. Askari Bank Limited, Dhoraji Colony Branch, Karachi and the said key as per the settlement is in the custody of Muhammad Ashraf. As per the settlement between the parties the said sale transaction should have been got approved by the parties from this Court by moving application alongwith sell agreement and thereafter respective shares of the plaintiffs and defendants No.1 to 4 would be distributed in presence of Muhammad Ashraf but after keeping Rs.315,00,000/- in the aforementioned locker, the plaintiffs did not come forward to sign sale agreement and joint application for the approval of said sale transaction. The defendant No.1 to 4 demanded their share amount from the plaintiff No. 1 but he refused to do so. On 28<sup>th</sup> July, 2018 defendants No. 1 to 4 filed C.M.A. No. 10616 of 2018, seeking direction of this Court to open aforesaid locker and to distribute the amount of share amongst the plaintiffs and defendants No. 1 to 4, which was allowed by this Court vide order dated 5<sup>th</sup> December, 2018 and vide order dated 15<sup>th</sup> January, 2018 said C.M.A. was allowed by this Court. Subsequently, Nazir of this Court submitted his compliance report dated 21<sup>st</sup> December, 2018 to the effect that key No. 38 of locker No. 005 provided by Muhammad Ashraf was applied in locker but the same could not open; however, another key bearing same number was available with plaintiff No. 1, which was applied and the locker was opened and found "EMPTY". On query made by the Nazir, the Manager of the bank disclosed that on 4<sup>th</sup> July, 2018 the said locker was issued in the name of Ali Muhammad, plaintiff No. 1, who appeared before him on 31<sup>st</sup> July, 2018 and informed that he had lost the key of the locker and made a request for issuing

duplicate key of the said locker upon which the bank issued him new/duplicate key. The bank manger further informed the Nazir that the said locker was lastly operated by Ali Muhammad on 31<sup>st</sup> July, and 7<sup>th</sup> August, 2018.

On 28<sup>th</sup> December, 2018 defendants No. 1 to 4 filed this application (C.M.A. 18710/2018) seeking direction to plaintiff No. 1 to deposit sale consideration of Rs.32,500,000/- being 25% share of the said properties with the Nazir of this Court on the ground that the said plaintiff fraudulently withdrew the said amount from the locker maintained at M/s. Askari Bank Limited, Dhoraji Colony Branch, Karachi. On 31<sup>st</sup> December, 2018 notices of this application were ordered to be issued to the plaintiff No. 1 for 31<sup>st</sup> December, 2018; however, the same returned unserved with the endorsement of process server that he was not residing at the given address. Thereafter, on the direction of this Court defendant No. 1 furnished fresh address of plaintiff No. 1, whereafter notices were again issued to him. On 31.01.2019 Mr. Javed Iqbal Advocate appeared before this Court on behalf of plaintiffs and after receiving the copy of this application sought time to go through the same and to file counter affidavit/objection. Thereafter on 22<sup>nd</sup> February, 2019 learned counsel for the plaintiff again sought time for filing objections and as a last chance seven days' time was granted to him for doing the needful. On 15<sup>th</sup> March, 2019 learned counsel for the plaintiff again sought time on the ground that the plaintiff No. 1 is not available in the town. Thereafter, on 9<sup>th</sup> April, 2019 Mr. Zainul Abdedin Advocate holding brief for Mr. Javed Iqbal Advocate sought time on the ground that latter was busy before another bench. On 05.08.2019 Mr. Zainul Abedin Advocate requested for adjournment on the ground that Mr. Javed Iqbal had gone to Kashmir. On 17<sup>th</sup> September, 2019 learned counsel for the plaintiff No. 1 failed to make his appearance before this Court; hence, this Court passed order that if none appeared on the next date of hearing, these applications would be heard and

decided on the basis of record. Then again on 11<sup>th</sup> August, 2020 none was present for the plaintiffs; however, as an indulgence the matter was adjourned with a note of caution that if on the next date of hearing plaintiffs or their counsel fail to make their appearance, the arguments of learned counsel for the defendants shall be heard and the listed applications would be decided on the basis of material available on record. On 8<sup>th</sup> September, 2020 Mr. Muhammad Naseer Advocate holding brief for Mr. Javed Iqbal, learned counsel for the plaintiffs No. 1 to 6 & 9, requested for adjournment on the ground that latter has gone to his native town as his father had expired in the last week of August 2020. On 22<sup>nd</sup> September, 2020 learned counsel for the plaintiffs sought time for preparation. On 30<sup>th</sup> September, 2020 purchaser Ajeet Kumar filed a statement to the effect that he purchased 25% in the subject property from plaintiffs and defendants No. 1 to 4 for a total sale consideration of Rs.3,25,00,000/-, which is lying with plaintiff No. 1, who refused to pay 9% share amount i.e. Rs.1,17,00,000/- to the said defendants out of sale consideration; however, he is ready to pay the same to the said defendants if the plaintiffs and said defendants agree to execute Sale Deed of 25% purchased share in the said properties in his favour; however, learned counsel for the plaintiff and defendant No. 1 to 4 sought time for deliberation. Then on 7<sup>th</sup> October, 2020 learned counsel for the plaintiff and defendant No. 1 to 4 again sought time for deliberation and as a last chance the matter was adjourned for 22<sup>nd</sup> October, 2020 with a note of caution that no further adjournment shall be granted to either party and in case the parties failed to reach at any consensus this application shall be decided on the basis of material available on record. Then on 12<sup>th</sup> November, 2020 learned counsel for the plaintiff again sought time on the ground that plaintiff is out of Pakistan; therefore, he could not consult with him; therefore, as a last chance, matter was adjourned for 26<sup>th</sup> November, 2020 with costs of Rs.25,000/-; however, the same has not been paid till date. Then on 3<sup>rd</sup> December, 2020 Mr. Moulvi Iqbal Haider

Advocate holding brief for Mr. Javed Iqbal, advocate for plaintiff, requested for adjournment on the ground that latter was on general adjournment up to 20.12.2020. Today learned counsel for the plaintiff files an application for adjournment on the ground that the plaintiff No. 1, who earlier suffered from Covid-19 is under treatment in Iran due to his surgery of gallbladder. Alongwith the application he has filed certain certificates of doctor and photographs. On query learned counsel for the plaintiff states that such operation of the plaintiff was conducted in December 2020.

From aforementioned detailed facts of the case it appears that the plaintiff No. 1 on after receiving sale consideration from the purchaser with undertaking to pay off the shares of other legal heirs/stakeholders deposited the amount jointly with Muhammad Ashraf (estate dealer) in the aforesaid locker of the bank as “Amaanat”; however, he by misrepresentation obtained duplicate key of the aforesaid locker and then removed the amount so deposited and thereafter he failed to appear before this Court; however, his counsel made appearance on several times but he on one pretext or another sought time in last two years and he never showed intention to pay off the shares of the other legal heirs/stakeholders of the subject property and to honour the settlement reached between the parties and now the plaintiff No. 1 has left Pakistan. It was mutually consented by the parties that the alleged private sale shall be confirmed by the Court; meaning thereby till the time the Court makes endorsement of the alleged sale, the amount so received by the plaintiff was lying in the locker as “Amaanat”. Since the plaintiff No. 1 has failed to pay share of other legal heirs/stakeholders, private sale is rejected with directions that property shall be sold out by the Nazir of this Court in open auction as already ordered by this Court on 9<sup>th</sup> February, 2016 and 2<sup>nd</sup> December, 2016. Purchaser Ajeet Kumar

shall be at liberty to initiate proceedings against plaintiff No. 1 for the recovery of his amount and he may take part in the auction proceedings.

C.M.A. No. 18710 of 2018 stands disposed of. Adjournment application filed today by the learned counsel for the plaintiff No. 1 is dismissed being devoid of merit.

2to4. Adjourned to a date in office.

Athar Zai

JUDGE