

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI
HCA No.343 of 2019

Date	Order with signature of Judge
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1. For orders on C.M.A No.3696/19 (U/A)
 2. For orders on office objection a/w reply as at "A"
 3. For orders on C.M.A. No.3687/2019 (Exemption)
 4. For Hearing of Main Case.
 5. For orders on C.M.A No.3698/2019 (Stay)
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15.11.2019.

Mr. Zafar Iqbal, advocate for the appellant.

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1. Urgency granted.

2to5. This High Court Appeal has been filed impugning the order dated 24.10.2019 passed by the learned Single Judge in SMA No.270 of 2016, whereby the application filed under Section 476 Cr.P.C read with Section 282 of the Succession Act 1925 with regard to tampering in the record was dismissed by imposing a cost of Rs.10,000/-.

Mr. Zafar Iqbal, advocate has appeared on behalf of the appellant and submitted that the learned Single Judge was not justified in dismissing the application since the petitioner in SMA No.270/2016 made some tampering in the record, therefore an appropriate action was required to be taken against her in accordance with law but the learned Single Judge without considering this aspect has dismissed the said application by imposing a cost of Rs.10,000/-, hence the impugned order may be set aside.

We have heard the learned counsel at some length and have also perused the record.

Record indicates that SMA No.270/2016 was filed by the petitioner seeking Letter of Administration/Succession Certificate in respect of properties left by deceased Zafar Iqbal, who expired on 08.03.2016. Letter of Administration and Succession Certificate were then granted to the petitioner vide order dated 21.11.2017. Subsequently the present appellant moved two applications bearing CMAs No.1602/19 and 863/2019 for modifying the order dated 21.11.2017 by claiming therein that the property commercial shop No.4, Ground Floor, 465 Sq.Ft a/w 15th of 1/4th undivided share in plot No.71.C, Jami Commercial Street No.8, Phase VII, D.H.A., Karachi was jointly owned by him with the deceased. Both these applications were then taken up by the learned Single Judge and vide order dated 01.10.2019, with the consent of the parties, the learned Single Judge modified the order dated 21.11.2017 by categorically observing that the deceased has only 50% share of the subject property and 50% is owned and belongs to the present appellant. Since the grievance of the present appellant stood redressed the application bearing CMA No.1602/2019, thereafter was disposed of with the consent of the parties and the objector then did not press CMA No.863/2019. It was thereafter that the present applicant moved an application under Section 476 Cr.P.C read with Section 282 of the Succession Act.

Facts clearly reveal that in the application bearing CMA No.1602/2019 and application bearing CMA No.863/2019 it was the contention of the appellant that his 50% share was hidden by the petitioner however no plea with regard to tampering of the record was alleged in those applications but a request was made that the petitioner may be punished on account of giving false averments however when the

matter was taken up with regard to CMA No.1602/2019 and CMA No.863/2019, with consent of the parties the order dated 21.11.2017 was modified by accepting 50% share of the objector in the property mentioned above without entertaining the allegations leveled against the petitioner for false averments and to punish her on this account as there are no findings about the said allegation in the order dated 01.1.2019 by the learned Single Judge. It is also an admitted fact that no appeal against the said order dated 01.10.2019 has been filed by the appellant, which in our view has attained finality.

As per Order 2 Rule 2 CPC if any portion of the claim is relinquished, the same cannot be claimed subsequently. It may also be noted that the application bearing CMA No.1602/2019 was disposed of with the consent of the parties and a consent order is not appealable. Hence, we agree with the observations made by the learned Single Judge that the subsequent application moved by the present appellant under Section 476 Cr.P.C read with Section 282 of the Succession Act 1925 is nothing but an afterthought on his part, which does not merit consideration and was rightly dismissed by the learned Single Judge. Before us also the learned counsel for the appellant has failed to demonstrate any illegality or irregularity in the order of the learned Single Judge. It is noted that the appellant has relied upon certain documents not produced previously by the petitioner, hence how could it be said that any tampering in the record was made by the petitioner. It may be noted that when the appellant had produced certain documents and modification thereafter was made in the order dated 21.11.2017, with the consent of the parties, through applications bearing CMA No.1602/19 and 863/2019 moved by the appellant himself.

This High Court Appeal thus is found to be wholly misconceived and is hereby dismissed along with the listed applications by imposing a cost of Rs.10,000/-, to be deposited by the present appellant in the Nazir Office in the head of High Court Clinic.

Above are the reasons of our short order of 15.11.2019, whereby we have dismissed the instant High Court Appeal by imposing a cost of Rs.10,000/-.

JUDGE

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15.11.2019.

Mr. Zafar Iqbal, advocate for the appellant.

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1. Urgency granted.

2-5. For the reasons to be recorded later on, the instant High Court Appeal stands dismissed alongwith listed applications by imposing a cost of Rs.10,000/-, to be deposited by the appellant in the Nazir Office in the head of High Court Clinic.

JUDGE

JUDGE