

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No.317 of 2015

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Fahim Ahmed Siddiqui



J U D G M E N T

Date of hearing: 11.09.2019.

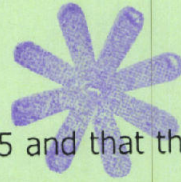
Appellants: Amanullah and four others through Mr. Muhammad Ali Lakhani, Advocate.

Respondents: Raees-ud-din Siddiqui and nine others are called absent.

IRFAN SAADAT KHAN, J. This High Court Appeal has been filed on the ground that the Nazir of this Court has acted in respect of an execution application bearing No.39 of 2002 in an illegal manner. Learned counsel for the appellants stated that the Nazir acted in derogation of the law and has not considered the fact that the execution application bearing No.39 of 2002, on the basis of which he proceeded, has already been withdrawn/not pressed by the Respondent No.6 and due to this mistake on his part he executed a sale deed with Respondent No.7, which caused serious prejudice to the appellants. He stated that at the time when the order dated 9.10.2015 was passed this aspect somehow or other was not brought to the notice of learned Single Judge and thereafter the said order was passed. Learned counsel stated that since certain facts going to the roots of the case were not brought to the knowledge of the learned Single Judge, therefore, the order dated 9.10.2015 was passed and by mistake the learned Single Judge took the Nazir's report on record, which report was defective.

Nobody is in attendance on behalf of the respondents despite service of notice.

The main contention of the learned counsel for the appellants ~~being~~ that since the matter was not brought to the notice of learned



*Single Judge when the matter proceeded on 9.10.2015 and that the Nazir report dated 23.12.2012 was defective to the extent that the very basis of his proceeding in the matter with regard to the execution matter in respect of Execution Application No.39 of 2002 has already been withdrawn by the Respondent No.6, hence there was no occasion for the Nazir to execute a sale deed with the Respondent No.7, which on the very face of it is an illegality. He stated that it is quite possible that even the Nazir was not informed about the said fact, which prompted him to execute a sale deed between him and the Respondent No.7, which caused serious prejudice to the appellants. He stated that he would be quite satisfied and would not press this High Court Appeal if simple directions are issued to the learned Single Judge to consider the matter with regard to this fact and thereafter proceed in accordance with law.

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

We, in view of the facts and circumstances as brought to our knowledge by the learned counsel for the appellants, remand this case to the learned Single Judge for passing a fresh order on Nazir's report dated 23.12.2012 that whether the Nazir has acted in respect of an execution application bearing No.39 of 2002 in accordance with law or not, which as per the learned counsel for the appellants has already been withdrawn. If the learned Single Judge comes to the conclusion that the said execution application had already been withdrawn then he would be at liberty to pass such order as deemed fit and proper in accordance with law after giving notice to the respondents.

With these directions the instant High Court Appeal stands disposed of alongwith the various applications, including contempt applications if any.

JUDGE

JUDGE

Karachi:
Dated:11.09.2019.

S.Akhtar