

IN THE HIGH COURT OF SINDH, AT KARACHI

C. P. No. D-1965 of 2022

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Petitioners : Asim Afzal Bhatti and others
through Asif Ali Mastoi.
Advocate.

Respondents : Nemo.

Date of hearing : 30.03.2022.

ORDER

YOUSUF ALI SAYEED, J: The Petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order made on 11.01.2022 by the learned VIIth Additional District & Sessions Judge (MCAC), Karachi, South, dismissing Civil Revision Application No.81/2021 that had been filed by them against the Order dated 06.08.2021 passed by the learned Vth Senior Civil Judge, Karachi, South in Civil Suit No.282 of 2012 (**“the Suit”**).

2. The Suit was apparently one for Administration in respect of a House No.Y-22, 20th East Street, DHA, Phase-I, Karachi (the **“Property”**), wherein an Application under Order XXIII Rule 3 CPC (the **“Compromise”**) was submitted by the parties under their signatures and duly supported by their Affidavits.

3. In terms of the Compromise, the Petitioners agreed to purchase the Property in concert with one of the other legal heirs, and to deposit the shares of the non-purchasing Parties with the Nazir within a period of 90 days. For the avoidance of doubt, the date by which payment was to be made was specified as being 20.05.2021.

4. Evidently, the payment envisaged was not made in time, hence an Application under Section 151 CPC was preferred by the remaining heirs, whereby it was prayed that the Nazir of the Court be directed to commence auction proceedings in respect of the Property. The order dated 06.08.2021 was then passed on that Application, with the Nazir being directed to put the Property to public auction after due verification and to distribute the proceeds between the parties as per Muhammadan Law.

5. The Petitioners assailed that Order in Revision, but that proceeding came to be dismissed on the ground of default and on the touchstone of Clause 5 of the Compromise, which provided that:

“5. That it is further agreed that in case Defendants No.2,3 and 5 fail to make payment of shares (as mentioned above) to Plaintiff No.1, Plaintiff No.2, Defendant No.1 and Defendant No.4 on or before 20.05.2021 (i.e. within 90 days hereof), this Honourable Court may be pleased to direct the Nazir of District and Sessions Court Karachi (South) to commence with the auction proceedings in respect of House No. Y-22, 20th East Street, DHA, Phase 1, Karachi, and thereafter distribute the shares amongst the legal heirs as per shariah.”

6. On query posed, learned counsel for the Petitioners conceded that the Petitioners had been unable to deposit the requisite funds within time, but stated they remained ready and willing to deposit the sum provided that some reasonable time was allowed for such purpose. On further query as to what perversity or illegality afflicted the Orders of the *fora* below under such circumstances, the only argument forthcoming with reference to the grounds advanced in the memo of Petition was that due to some financial exigency and the onset of COVID-19, the Petitioners had been unable to arrange the necessary funds, but the trial and Revisional Court had failed to appreciate the matter and allow relaxation in the payment period.
7. Under the given circumstances, we see no force in the Petition, as it is manifest the Courts below have merely acted so to give effect to the very terms of the Compromise.
8. That being so, while granting the application for urgency, we proceed to dismiss the Petition *in limine* along with other pending miscellaneous applications.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: