

*Order Sheet*  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.369 of 2012**

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

FOR HEARING OF CMA 18571/2021

**24.10.2022**

Mr. Muhammad Zubair Hashmi, Advocate for Plaintiff No.1.  
Mr. Muhammad Najeeb Jamali, Advocate for Plaintiff No.2  
Mian Ashfaq Ahmed Advocate for Plaintiff No.3  
Mr. Mansoorul Arfin, Advocate for Defendant No.1

-----

**ARSHAD HUSSAIN KHAN, J.-** This order will dispose of Application dated 30.10.2021 under Order 47 Rule 1 Read with Section 151 CPC, [bearing CMA No.18571/2021], filed by learned counsel for Plaintiff No.3 [Mrs. Seema Tariq Khan] stating therein that on 21.10.2021, though he had raised the objection that the offer of the last Bid is very low and also raised objection for confirmation of the said Bid, but his contention was not mentioned in the said order dated 21.10.2021. It is further stated that the name of the counsel has wrongly been mentioned as Mian Ashraf Ahmed Advocate for Defendant No.3 instead the name of the counsel **Mian Ashfaq Ahmed Advocate for the Plaintiff No.3**. It is prayed that the order be passed mentioning the contention of objection for confirmation of Bid as was raised by the counsel at the time of hearing on 21.10.2021 with correction of the name of learned counsel viz. **Mian Ashfaq Ahmed Advocate for Plaintiff No.3**.

2. In reply to aforesaid application, counter affidavit on behalf of Defendant No.1 [Najmul Sahar Soomro] has been filed stating therein that the application is not maintainable and further none had filed any objection before this Court to his Bid to purchase the property in question bearing No.G-17, Block-6, PECHS, Karachi, for Rs.12,02,00,000/- and when the matter came up for confirmation of his Bid the Court asked if anyone has any objection to his Bid, no one including learned counsel for Plaintiff No.3 submitted any objection. Hence, the Court has rightly noted in its order dated 21.10.2021 that no one has any objection to his Bid and confirmed his Bid. It is further stated that when the Official Assignee filed his **Reference No.13/2019**, at that time also Plaintiff No.3 did not contend that she has any

objection to his Bid and / or its confirmation by this Court. It is stated that as far as wrongly mentioning the name of learned counsel for Plaintiff No.3 is concerned, it was merely a typing / clerical error, and it could be corrected under Section 152 CPC. It is further stated that the ingredients of Order 47 Rule 1 CPC are missing in the application and the same is not maintainable for that reason alone. It is stated that the application is an afterthought on the part of Plaintiff No.3, designed to harass and humiliate him as well as deprive him of his father's ancestral property and to delay the matter therefore the same is liable to be dismissed with exemplary costs.

3. Rejoinder to the counter affidavit of Defendant No.1 has also been filed by Mian Ashfaq Ahmed, learned counsel for Plaintiff No.3, denying the contents of the counter affidavit. Learned counsel further stated that Defendant No.1 most probably was not present at the time of hearing, hence he should not say anything on Oath which he did not hear with his own ears or see with his own eyes. He has further stated that he raised his objections, which are genuine as Defendant No.1 has given Bid of Rs.12,02,00,000/- while the market value of the property is much more than that which fact can be verified from the fact that the Plaintiff No.1 and 3 [legal heirs] have given Bid of Rs.15,00,00,000/- i.e. almost three crores more than the Bid given by Defendant No.1, which is the reason that Defendant No.1 is telling lies before this Court. It is stated that since the value of the property is more than fifteen crores then how could the Bid of Defendant No.1 be accepted, which is very much lower than the value offered by other legal heirs and also the market value as certified by State Bank's official value. While reiterating the contents of his review application, he has stated that the Plaintiffs have filed their objections before the official assignee too, which are on the record. It is further stated that even objections were raised before this Court many times and there is an order dated 24.01.2017, on the record, whereby this Court ordered that the property to go for auction, if legal heirs do not agree. In another order dated 05.11.2018, all the Plaintiffs and Defendants except Defendant No.1 pleaded for public auction. It is further stated that in the orders dated 04.02.2019 and 28.02.2019, objections to the Bid of Defendant No.1 was raised and pleadings for public auction was made. He has further stated that these orders were to be complied by the official assignee.

Official Assignee chose not to comply with this Court order dated 24.01.2017, rather the official assignee fell in error and did not present the true picture before this Court, despite he was present in the Court and was in full knowledge of these objections and various court orders, when the issue for disposal of this property came up for hearing. It is stated that Defendant No.1 himself is depriving all other legal heirs from the lawful rights of received shares under the Sharia as per market value of the property in question. It is further stated that since he raised objection, which is mistakenly written as no objection, which is not correct, hence the counter affidavit of Defendant No.1, who was not personally present or was not aware as to what objection he raised, may be rejected and his application may be allowed in the interest of justice. He has prayed that his name may be corrected as well as “no” before the word “objection” may be ordered to be deleted from the said order in the interest of justice and equity and further in order to obtain fair market value of the property. He has also denied that Defendant No.1 is neither being harassed nor humiliated while the objections raised by Defendant No.1 is his malafide, who is doing so with ulterior motives to usurp the property at a very low price in order to deprive the other legal heirs from their lawful amounts. Lastly, it is stated that unless the application filed by him is allowed, all the parties to the case shall seriously be prejudiced and shall suffer irreparable loss.

4. Learned counsel for Plaintiff No.3 in his arguments reiterated and reaffirmed the contents of the Application as well as the Affidavit in Rejoinder. Learned counsel appearing for Plaintiff No.1 supports the contention of learned counsel for Plaintiff No.3 and submits that since the offer made by Plaintiffs No.1 and 3 is more than the offer made by Defendant No.1 as such the order passed by this Court on 21.10.2021 may be reviewed and for confirmation of sale in favour of Defendant No.1 it may be recalled.

5. Learned counsel appearing for Plaintiff No.2 submits that Plaintiff No.2 has withdrawn his Offer in favour of Defendant No.1. In this regard, he has also referred to Plaintiff No.2’s letter dated 25.11.2019 addressed to the Official Assignee annexed with the Official Assignee’s Reference No.13/2019.

6. Learned counsel for Defendant No.1, while reiterating the contents of his Counter Affidavit and referring to the order dated

12.02.2020, passed by this Court in the instant matter, submits that despite directions of this Court none has filed any objection to the Official Assignee's Reference particularly Reference No.13/2019. He submits that Plaintiff No.3 has also preferred HCA No.363/2019 against the order dated 13.11.2019, which was dismissed in limine. In support of his instance, he has relied upon the case of Mst.Ghulam Fatima and others v. Sufi Ahmed Khan and others [1981 CLC 76].

7. Heard learned counsel for the parties and perused the record. Record shows that the present suit was filed for administration, accounts, mesne profit and permanent injunction in respect of the properties left by deceased namely Jameel Ahmed Soomro, Salma Soomro and Muhamad Hassan Soomro.

8. Through instant application [CMA No.18571/2021], Plaintiff No. 3 seeks review of the order passed by this Court on 21.10.2021. Before going further, it would be appropriate to reproduce herein below the order dated 21.10.2021, which reads as follows :-

“21.10.2021

Mr. M. Najeeb Jamali, advocate for plaintiff No.2.  
Mian Ashraf Ahmed, advocate for defendant No.3.  
Mr. Mansoor ul Arfin, advocate for defendant No.1.  
Mr. Salman Hamid, advocate for defendant No.2.  
Syed Saleem Ahmed, advocate for defendant No.5.

Learned counsel for defendant No.1 by referring orders of previous date submits that defendant No.1 has offered Rs.12,02,00,000/- for purchase of Bungalow No.G-17, PECHS, Karachi, measuring about 1500 Sq. Yds., together with furniture, fixtures, fittings and machines etc. and in this regard he has also deposited 25% of the offered amount with the Official Assignee. Learned counsel further submits that pursuant to the directions of this Court dated 13.11.2019, the Official Assignee held competition amongst plaintiffs and the defendants to fetch best price of the said property, however, neither any of the parties made any Bid nor had shown any interest to purchase the said property. In this regard the Official Assignee has also filed the listed reference No.13/2019. Learned counsel further submits that since none of the parties has shown interest to purchase the property, as such, the offer of the defendant No.1 may be accepted. Learned counsel for the parties present in Court extend their no objection for the offer made by defendant No.1 to purchase the above said property. Accordingly, the listed reference No.13/2019 is disposed of and the offer of defendant No.1 to purchase the property is accepted. Let the balance sale consideration amount be deposited with the Official Assignee before the next date of hearing.

To come up on 09.11.2021.”

9. The main stance of Plaintiff No.3 in the application is that the objection raised by her counsel in respect of the bid offered by

defendant No.1 was not recorded in the order and whereas previously also the objections were raised before this Court many times and in this regard orders dated **24.01.2017**, **05.11.2018**, **04.02.2019** and **28.02.2019** were referred. Conversely, the stance of Defendant No.1 is that no “Objection” had been filed before this Court to his Bid to purchase the property in question, which was initially offered in the year 2017, however, on 30.11.2019, Defendant No.1 deposited 25% of the Bid amount, which fact is reflected in the Official Assignee’s Reference No.13/2019 and when the matter came up for hearing on 21.10.2021, no one including learned counsel for Plaintiff No.3 submitted any “Objection” as such there is no merit in the review application, which is liable to be dismissed.

10. In order to analyze the contention viz. raising objection of learned counsel for Plaintiff No.3, before this Court, I have seen the aforesaid orders. Order dated **24.01.2017** reveals that this Court simply ordered learned Official Assignee to proceed further for selling of the property by first making an attempt for private sale amongst the parties and if not then through public auction according to the rules. In this order, no “Objection” is mentioned on behalf of learned counsel for Plaintiff No.3, who was present on that date. Similarly, the order dated **05.11.2018** is silent about the objection of learned counsel for Plaintiff No.3 regarding the Bid, however, he was present on that date. The order speaks only about the offer of Plaintiff No.2 and Defendant No.1. However, the order dated **04.02.2019** shows some variations between the parties, viz. Plaintiff No.2 has offered Rs.13,00,00,000/- whereas Defendant No.1 has offered 12,02,00,000/-. The Plaintiff No.2 was directed to deposit 25% of the offer given by her i.e. Rs. 13,00,00,000/- with the Official Assignee within 10 days. Whereas, the order dated **28.02.2019** reflects that in compliance of the order dated 04.02.2019, 25% of the offered price had not been deposited and the matter was adjourned to 21.03.2019. Thereafter, the order dated **13.11.2019** was passed by giving the following directions :-

*“Let the parties submit their respective offer before the Official Assignee on or before 30.11.2019 at 12.00 noon. Thereafter, the Official Assignee will hold competition among the plaintiffs and defendants to fetch best price of the said property.*

*This exercise shall be done by the official assignee in view of previous orders whereby parties were allowed to sell the said property through private auction / sale”.*

From perusal of the above referred orders, it is clearly reflected that nowhere in the said orders, it is mentioned that learned counsel for Plaintiff No.3 has himself ever raised any objection with regard to the Bid of Defendant No.1 and/or has offered any higher Bid than the Bid offered by Defendant No.1.

11. Thereafter, on 02.12.2019, learned Official Assignee has filed his Reference No.13/2019, which has been disposed of by my order dated 21.10.2021. From perusal of the Reference No.13/2019, it is reflected that learned counsel for Plaintiff No.3 has never raised any objection and/or offered any Bid higher than the Bid of Defendant No.1, during the course of proceedings before the Official Assignee. It is also reflected that Mian Ashfaq Ahmed, learned advocate for Plaintiff No.3, amongst other parties was very much present before the Official Assignee and nobody has raised any Objection with regard to the Offer of Rs.12,02,00,000/- made on behalf of Defendant No.1. For the sake of arguments, if anyone had any objection, undoubtedly, it would have been mentioned by the Official Assignee in his Reference. But nobody did so as it is apparent from para-3 of the Reference, which reads as follows:-

“3. That learned Advocate for Defendant No.1 submitted a letter accompanied a pay order of Rs.3,05,00,000/- and shared that his client makes an offer of Rs.12,02,00,000/- for the purchase of Bungalow No.17-G, Block-6, PECHS, Karachi, measuring about 1500 square yards together with furniture, fixtures, fittings, machines, etc. with the condition that offer is free from all claims, taxes, and utility bills etc. Copy of letter of offer of defendant No.1 along with copy of pay order is enclosed as ‘B’ and ‘B/1’. No one from amongst the parties or his representative in the case has contested such offer of the defendant No.1.”

[emphasis supplied]

12. Moreover, from perusal of the record it appears that on 12.02.2020 this Court had specifically directed the parties to file their respective objection, if any, in respect of the Official Assignee References 10 of 2018, 11 of 2019, 12 of 2019, and 13 of 2019. However, it is an admitted position that no objection to Official Assignee’s Reference No.13/2019 was filed by any of the parties. On

21.10.2021, the matter was fixed before this Court and the order was passed whereby Official Assignee's Reference No.13/2019 in absence of any objection was disposed of. Perusal of the order shows that just before disposing of the Official Assignee's Reference No.13/2019 and before accepting the offer of Defendant No.1, it is mentioned that "*Learned counsel for the parties present in Court extend their no objection for the offer made by Defendant No.1 to purchase the above said property.* It is to be noted that before passing the order dated 21.10.2021, if learned counsel had objected the offer of Defendant No.1, it would have been definitely mentioned in the said order, which has been admittedly passed in the open Court in presence of other learned for the parties. Hence, the stance of learned counsel for plaintiff No.3 that at the time of hearing of Reference of Official Assignee i.e. 21.10.2021, *he has raised objection with regard to lowest Bid and his objection was not mentioned in the order* is absolutely wrong.

13. Perusal of the record of this case shows that with regard to the Bid of Defendant No.1, learned counsel for Plaintiff No.3 neither raised any specific objection before the learned Official Assignee nor before this Court. If he had any genuine objection with regard to the Bid of Defendant No.1, he should have filed specific or written objections at the stage of the proceedings before the learned Official Assignee or at least he must have told to the Court at the time of hearing of the Reference of the Official Assignee but he failed to do so. If he had filed any written objection or at least if he had objected it verbally before the learned Official Assignee, it would have been mentioned in the said Reference, which is silent in this regard. So much so, admittedly, objection to the Official Assignee's Ref. No.13 has not been filed despite the directions of this Court as contained in the order dated 12.02.2020. Hence, the very contention of the learned counsel for Plaintiff No.3 *that he has filed his objections before the Official Assignee, which are on the record*, is totally misconceived. Insofar as the contention of learned counsel for Plaintiff No.3 *that the Plaintiff No.1 and 3 have given Bid of Rs.15,00,00,000/- i.e. almost three cororers more than the Bid given by Defendant No.1*, is concerned, there is nothing available on the record, which could show that either Plaintiff No.1 and/or Plaintiff No.3 have made any offer to purchase the

property prior to the order dated 21.10.2021, as such, the contention of learned counsel in respect of the Plaintiffs offer to purchase the property, at this stage, appears to be misconceived hence not sustainable.

14. Insofar as the contention of learned counsel for Plaintiff No.3 that his name had wrongly been mentioned as Mian Ashraf Ahmed Advocate for Defendant No.3 instead the name of the counsel **Mian Ashfaq Ahmed Advocate for Plaintiff No.3** is concerned, it is indeed a clerical or typographical mistake, which is correctable under Section 152 of CPC as by this Section any clerical or arithmetical mistakes in the order or error arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. In this regard prayer of learned counsel is allowed. Let the name of the learned counsel be read as **Mian Ashfaq Ahmed Advocate for Plaintiff No.3** as far as the order dated 21.10.2021 is concerned. However, at this stage, it may be observed that this type of mistake may not occur or happen, if any counsel appearing for any of a party, in any of the matter in future, make his positive effort to have his name checked, before leaving the Court Room from the official of the Court, who note it down during the Court proceedings.

In view of the above discussion with regard to the prayer of learned counsel for Plaintiff No.3 for recording / mentioning of his Objection to the Bid amount offered by Defendant No.1 this Application [CMA No.18571/2021] is dismissed.

Judge