

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
 Spl. HCA No.210 of 2019
 [Syed Wajahat Hussain Zaidi & another Vs. United Bank Limited]

Date	Order with signature of Judge(s)
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PRESENT:

Mr. Justice Irfan Saadat Khan
Mr. Justice Arshad Hussain Khan

Appellants	Through Mr. Sami Ahsan, Advocate
Respondent	Through Mr. Aijaz Hussain Shirazi, Advocate
Date of Hearing:	28.02.2023
Date of Decision	06.03.2023

ARSHAD HUSSAIN KHAN, J: Through instant Spl. High Court Appeal the appellants have called-in-question the order dated 13.03.2019, passed by learned Single Judge of this Court in Suit No.B-82 of 2013, whereby application under Section 151 CPC, filed by the appellants for changing of evaluator namely M/s. Iqbal A. Nanjee & Co. (Pvt.) Ltd. was dismissed.

2. From perusal of the record, it appears that on 27.11.2018 by consent of the learned counsel for the parties in Suit No.B-82/2013, following order was passed:

- (i) *Nazir of this Court is appointed as Commissioner to sell out the subject pledge stock, lying in the custody of the plaintiff's Muccadum namely Mughal & Sons, through public auction.*
- (ii) *Nazir before taking above exercise shall get said pledge stock evaluated from evaluator namely Mr. Iqbal Nanji.*
- (iii) *The defendants shall be at liberty to lift said pledge stock upon deposit evaluated amount or upon furnishing Bank Guarantee to the satisfaction of Nazir of this Court.*
- (iv) *Nazir shall complete such exercise within a period of 3 (three) months.*
- (v) *the fee of Nazir is fixed at Rs.50,000/- in addition to the fee of above named evaluator, both to be borne by the defendants."*

3. In compliance of the above said order M/s. Iqbal A. Nanjee & Co. (Pvt) Ltd., addressed a letter dated 31.12.2018 to the Deputy Registrar / Nazir of this Court for conducting evaluation, upon which the appellants raised objection and sought change of evaluator-M/s. Iqbal A. Nanjee & Co. (Pvt) Ltd., on the ground that they do not have any expertise in conducting evaluation of such type of chemicals. The Nazir along with his report dated 24.01.2019 has placed the said objection in the case (Suit No.B-82/2013) before learned Single Judge. The appellants also filed application bearing CMA No.566/2019 seeking replacement of the evaluator-M/s. Iqbal A. Nanjee & Co. (Pvt) Ltd., from Muccadam-Mughal & Sons. On 13.03.2019, learned Single Judge after hearing the counsel for the parties dismissed the said application with the directions to the Nazir to proceed further towards compliance of the order dated 27.11.2018. The said dismissal order is impugned in the present proceeding.

4. Learned counsel for the appellants while reiterating the contents of Memo of Appeal has submitted that the impugned order is not sustainable being bad in law and facts both. He has further contended that the chemicals, which are to be evaluated, are highly inflammable and in the event if sampling is done without specialized due care, the whole stock will be destroyed. It has further been contended that the proposed evaluator namely; Muccadam Mughal & Sons are chemical experts and the change of evaluator is sought for the best interest of the appellants and the respondent. Lastly, he has contended that the impugned order may be set-aside and new evaluator may be appointed in place of evaluator M/s. Iqbal A. Nanjee & Co. (Pvt) Ltd.

5. Conversely, learned counsel appearing on behalf of the respondent-bank while supporting the impugned order has contended that M/s. Iqbal A. Nanjee & Co. (Pvt) Ltd., was appointed by consent and further the evaluator is a well-known evaluator and having a vast experience in conducting evaluation of such type of material. It is also contended that the evaluator now proposed by the present appellants is not a recognized and approved evaluator by the State Bank of Pakistan. It is also contended that the consent order was passed on 27.11.2018 and the appellants / defendants filed such application with ulterior motives to delay the matter, which is pending since 2013.

6. Admittedly, the evaluator-M/s. Iqbal A. Nanjee & Co. (Pvt) Ltd., was appointed by consent of learned counsel for the parties and further neither the Bank nor the Muccadam of the Bank has raised any objection with regard to expertise / capability of the said evaluator for conducting evaluation of such type of chemical. Moreover, learned counsel for the appellants when asked to corroborate his stance through any proof of document or evidence, he has failed to do so. In the circumstances, in absence of any proof substantiating the stance of the appellant with regard to non-proficiency of evaluator-M/s. Iqbal A. Nanjee & Co. (Pvt) Ltd., for conducting evaluation of such type of chemical, we are of the view that the learned Single Judge was justified in dismissing the application of the appellants for change of evaluator. Learned counsel for the appellants has also failed to give any plausible justification for interference in the impugned order. Consequently, this appeal, being devoid of any merit stands dismissed.

JUDGE

JUDGE

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