

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ahmad Khan.

High Court Appeal No. 378 of 2022

Appellant No.1: Mrs. Seema Tariq Khan
Through Mr. Muhammad Zubair Hashmi,
Advocate

Appellant No.2: Ms. Noreen Mughal,
Through Mr. Adeel Mahmood Shah,
Advocate

Respondent No.1: Mr. Najamul Sehr Soomro,
Through Mr. Mansoor-ul-Arfin, Advocate.

Date of hearing: 08.11.2023
Date of order: 08.11.2023

ORDER

Muhammad Junaid Ghaffar, J: Through this High Court Appeal, the Appellants have impugned Order dated 24.10.2022, whereby, the application filed by the Appellant No.1 under Order 47 Rule 1 read with Section 151 of the Civil Procedure Code (“CPC”) seeking review of Order dated 21.10.2021 has been dismissed.

2. Learned Counsel for Appellant No.1 has contended that the learned Single Judge has failed to appreciate the true facts as available on record, whereas, the objections raised on behalf of Appellant No.1 have not been considered while passing the Order dated 21.10.2021; hence the same was liable to be reviewed. He has further contended that even an affidavit was filed by the Counsel of Appellant No.1 to the effect that objections were raised by him; and therefore, the Appeal be allowed by setting aside the impugned order and Order passed on 21.10.2021 be reviewed. Learned Counsel for the Appellant No.2 has adopted the arguments of the Counsel for Appellant No.1.

3. Learned Counsel for Respondent No.1 has opposed this Appeal on the ground that no case for review was made out; whereas, no Appeal lies against an order dismissing a review application; and therefore, the office objections to this effect may also be sustained. According to him the Appellants have also impugned the order dated

21.10.2021, of which the review stands dismissed; hence, the Appeal is otherwise time barred as well. He has further contended that insofar as Appellant No.2 is concerned, her Appeal is liable to be dismissed inasmuch as the review application, if any, was only preferred by Appellant No.1 and if at all this Appeal could be entertained in respect of Order dated 21.10.2021, it is hopelessly time barred as well. He has further submitted that earlier an order was passed on 13.11.2019 by the learned Single Judge; whereby, it was decided that Official Assignee shall conduct an open auction / bidding amongst the contesting parties and thereafter report be furnished, whereas, an Appeal against the said order stands dismissed by a learned Division Bench of this Court vide order dated 29.11.2019; therefore, the present Appellants are bound to follow the Order passed on 13.11.2019. He lastly submits that no objections were ever raised during proceedings before learned Single Judge; whereas, present Appellants never participated in the open auction / bidding before the Official Assignee and belatedly filed certain objections along with undated cheques in the names of Official Assignee just to delay the proceedings within time. He has prayed for dismissal of the Appeal.

4. We have heard both the learned Counsel and perused the record. The precise facts leading to filing of this Appeal appear to be that a Suit for administration and mesne profits was filed by Appellant No.1 & 2 jointly with Respondent No.2, in respect of the estate of deceased Jameel Ahmed Soomro, Salma Soomro and Muhammad Hasan Soomro, wherein, certain orders, including an order for sale of the property in question have been passed from time to time. Though instant Appeal the Appellants have impugned two different Orders one dated 24.10.2022 and the other dated 21.10.2021. Insofar as the Order passed on 21.10.2021 is concerned, this Appeal appears to be hopelessly time barred; whereas, no lawful justification has been brought forward for such delay except that Appellant No.1 had preferred a review against the said order and after dismissal of the review, the said order has merged into the Order passed on 24.10.2022; and therefore, one Appeal against both these two orders is not only maintainable; but so also is within time. We are afraid this argument is misconceived. Firstly, even if this was the stance, then at

least an application for condonation of delay in impugning the order dated 21.10.2021 was inevitable along with a proper affidavit with such reasons to seek condonation. Admittedly, no such application has been preferred. Moreover, if this argument is accepted, then in each and every case an aggrieved party would first prefer a review, and will only prefer an appeal once the review is decided which does not appear to be a correct appreciation of law. If a party is aggrieved by an order and has taken recourse to a review of the said order, then perhaps it cannot claim or maintain an Appeal subsequently against dismissal of the review application by claiming that the Appeal is within time even in respect of the first order, of which the review was sought. The settled principles of the *doctrine of election*¹ denote that the election to commence and follow an available course, from concurrent avenues, vests with a suitor, however, once an option is exercised then the suitor is precluded from re-agitating the same *lis* in other realms of competent jurisdiction. Therefore, in our considered view the present Appeal, at least to the extent of Order dated 21.10.2021 is hopelessly time barred and cannot be maintained. It is also settled that period spent in pursuing review was not liable to be excluded while reckoning period of limitation for assailing the basic or original order as in essence the intent is to call in question the correctness and validity of the initial order of which the review was sought which had attained finality creating valuable rights in favor of the other party which could not be disturbed so lightly². It is further settled that appeal against order refusing a review is in fact seeking vacation of previous order which by efflux of time has become final, whereas, refusal to review cannot give a fresh period of limitation³. Lastly, non-availing the remedy of Appeal as provided under the law against a basic order and instead prosecuting a review before the same Court, will not allow a party to benefit from section 14 of the Limitation Act, 1908 as the time spent cannot be excluded in computing the period of limitation⁴.

5. Insofar as Appellant No.2 is concerned, admittedly the said appellant had never preferred any review application; and therefore,

¹ Trading Corporation of Pakistan vs. Dewan Sugar Mills Limited reported as PLD 2018 Supreme Court 828

² Collector of Sales Tax v Customs Appellate Tribunal (2008 SCMR 435)

³ Ghulam Hussain v Kanwar Ashiq Ali Khan (PLD 1980 SC 198) & Mumtaz Baig v Jamal Din (2009 SCMR 1364)

⁴ Ghulam Nabi v Rashid (PLD 2000 SC 63)

the ground so taken by Appellant No.1 as to her Appeal being within time is even not available to Appellant No.2; hence Appeal preferred by the Appellant No.2 against Order dated 21.10.2021 being hopelessly time barred stands dismissed. Similarly, the Appeal of Appellant No.2 against Order dated 24.10.2022 is concerned, the same is also not maintainable as no review was ever preferred; and therefore, the present Appeal in respect of both the orders to the extent of Appellant No.2 stands dismissed as being time barred and not maintainable.

6. Notwithstanding the above, the very maintainability of this Appeal on behalf of Appellant No.1 against an Order; whereby, a review application has been dismissed also requires to be looked into in view of the provisions of Order 47 Rule 7 CPC read with Section 4 CPC and Section 3 of the Law Reforms Ordinance, 1972 (“Ordinance”). The Appellant has filed this Appeal in terms of Section 3 of the Ordinance. All these relevant provisions read as under: -

Order 47 Rule 7 CPC

7. Order of rejection not appealable. Objections to order granting application. (1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was--

- (a) in contravention of the provisions of Rule 2,
- (b) in contravention of the provisions of rule 4, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

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Section 4 CPC

4. **Savings.** (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect and special or local law now in force of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a land-holder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

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Section 3 of the Law Reforms Ordinance, 1972.

[3. Appeal to High Court in certain cases. —(1) An appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single Judge of that Court in the exercise of its original civil jurisdiction.

(2) An appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a single Judge of that Court under 2[clause (1) of Article 2[199] of the Constitution of the Islamic Republic of Pakistan] not being an order made under sub-paragraph (i) of paragraph (b) of that clause:

Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article 2[199] arises out of any proceedings in which the law applicable provided for at least one appeal 3[or one revision or one review] to any court, tribunal or authority against the original order.

(3) No appeal shall lie under sub-section (1) or sub-section (2) from an interlocutory order or an order which does not dispose of the entire case before the Court.

(4) Nothing contained in this Ordinance shall be construed as affecting—

(a) any appeal under the provisions of the Letters Patent applicable to a High Court or under section 102 of the Code of Civil Procedure, 1908 (V of 1908), which was pending immediately before the commencement of this Ordinance; or

(b) any appeal or petition for leave to appeal from a decree, judgment or order of a single Judge of a High Court made to the Supreme Court before the commencement of the Law Reforms (Amendment) Ordinance, 1972.].

7. Order 47 Rule 7 CPC provides that an order of the Court rejecting an application for review shall not be appealable; but an order granting an application may be objected to on the ground that the application was in contravention of the provisions of Rule 2; Rule 4, or was filed after the expiration of the period of limitation prescribed therefor and was without sufficient cause. Insofar as the impugned order is concerned, it falls within the first part of Rule 7 which clearly provides that when an application for review stands dismissed, it is not appealable. At the same time Section 3 of the Ordinance, provides that an appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single Judge of that Court in the exercise of its original civil jurisdiction. If one looks into Section 3(1) of the Ordinance, then a cursory surveillance shows that appeal is provided against all final orders made by a Single Judge of this Court while exercising original civil jurisdiction. The order in question is a final order and apparently one can draw an inference that an appeal against the order in question is maintainable; however, it is not so for the reason that Section 4 CPC, as above, provides that in absence of any specific provision to the contrary (these words are more relevant) nothing in this Code shall be deemed to limit or

otherwise affect any special or local law now in force or any special jurisdiction or power conferred or any special forum of procedure prescribed by or under any other law for the time being in force. This would mean that the Code i.e. Civil Procedure Code must yield in favour of any special law like the one in hand i.e. The Ordinance; however, it is subject to, when within the Code there is a specific provision to the contrary. Here in the case in hand, a specific contrary provision exists i.e. Rule 7 of Order 47 CPC, which prohibits an appeal against an order refusing a review. Therefore, the appeal provided under Section 3 of the Ordinance would not cover or apply on the order impugned herein. This is for many reasons including the fact that the review application preferred in this matter was under order 47 Rule 1 CPC and once the proceedings of review were initiated under Order 47 itself, then the right of appeal, if at all, must also be governed under Order 47, in which case Rule-7 prohibits an appeal. The use of the words “*in the absence of any specific provisions to the contrary*” in Section 4 CPC are of real consideration for the present purposes. There are three components under section 4(1); first, the Code generally governs matters covered by it; secondly, if a special or local law exists covering the same area or field, the special or local law will be saved and will prevail; and lastly, which is relevant here, that if there is any specific provision to the contrary in the Code itself, then that will override the special or local law. The question now is that whether Order 47 Rule 7 CPC is a specific provision to the contrary, and if it is so, then will it prevail upon the special law. The expression “in the absence of any specific provisions to the contrary” means that there must be a particular provision in the Code clearly indicating in itself and not merely by implication, in order to affect the special law or local law. In ***Mahadeolal⁵***, a somewhat similar issue came up before a Division Bench of the Gauhati High Court that whether an appeal could be entertained in terms of clause 15⁶ of the Letters Patent when an

⁵ Mahadeolal Jalan v M/s Hardeodas Iswardas (AIR 1992 Gauhati 78)

⁶ [15. ***Appeal from the Courts of Original Jurisdiction to the High Courts in its appellate jurisdiction***: - [And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the judgment] (not being a judgment passed in the exercise of appeal late jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act made (on or after the 1st day of February 1929) in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of

application under Order 47 Rule 1 CPC has been declined. In effect, and notwithstanding that the provisions of Section 3 of the Ordinance, 1973, and Clause 15 of the Letters Patent, are not exactly pari-materia, the legal issue is somewhat identical that whether an Intra Court Appeal could be maintained against an Order passed under Order 47 Rule 7 CPC, whereby, the application has been rejected. The learned Gauhati High Court came to the following conclusion.

7. Section 104 and Order 43, Rule 1, C.P.C. are general provisions and provide that no appeal shall lie from any order made by a Court unless it is expressly provided under Section 104 or Order 43, Rule 1, C.P.C. It has already been concluded that right of appeal conferred by law, that is to say, --
- the Letters Patent in this case, is expressly preserved under Section 104(1) and right to appeal under the Letters Patent against an order, if it amounts to a judgment within the meaning of Letters Patent, is not affected. Therefore, if there is no specific provision to the contrary, the right to appeal under the Letters Patent has been saved by Section 4 and provisions of Section 104(1), C.P.C. But Order 47, Rule 7(1) clearly provides that an order of the Court rejecting an application for review shall not be appealable. The words under Order 47, Rule 7(1) are plain and explicit and they must be given full effect. Therefore, it is a specific provision to the contrary in the Code itself clearly indicating to affect Clause 15 of the Letters Patent. Under Section 117, C.P.C, the provisions of the Code shall apply to the High Court's save as otherwise provided in Parts IX and X of the Code. Therefore, no appeal shall lie under Clause 15 of the Letters Patent from an order rejecting an application for review.

8. It is also important and crucial to take note of that if this Court is to exercise its Appellate jurisdiction as prayed for in the matter of a refusal by the Original Court to review its own order, this would amount to exercise the power of review by this Court, whereas, in fact such a power vested only in the original Court, i.e. the learned Single Judge. It sounds bizarre that the Court which has passed the order itself says that there was no apparent error on the face of the record, and notwithstanding such a clear and express finding, the Appellate Court draws another conclusion. It is also very relevant to note that the learned Single Judge has not refused to review the order for want of any jurisdictional defect or otherwise, rather, he has dismissed the review on merits. The very attribute of an error on the face of the record is, that it must be apparent to everyone including the Judge who has passed the order. If the Judge, even on being told that there was an error, holds that there was no error, then even if there was in fact an

appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council as hereinafter provided].

error, it was certainly not an error apparent on the face of the record. In this view, it would not be open to this Court to say that there was an apparent error in the order passed by the learned Single Judge and to grant review or to remand the case to him to allow review⁷. It is not in dispute that the learned Single Judge was approached to exercise his powers vested in him under Order 47 Rule (1) CPC, which power has been exercised by him, by holding that no case for a review was made out. Now when the appropriate remedy of Appeal against the original order dated 21.10.2021 has become time barred, this Court lacking jurisdiction in the matter, cannot exercise its Appellate powers in favor of the Appellants who have by themselves adopted a circuitous method of an Appeal against an order refusing to review an earlier order against which they preferred not to Appeal. On an overall review of the provisions of law and the language used and reproduced as above, in our considered view, the intention is that the Court which originally heard the case should be the Court to decide whether an application to review its earlier order should or should not be granted, and where the Court decides to reject such an application, its decision should not be open to Appeal by a higher Court⁸. Reliance may also be placed on the case of **Shanker Motiram**⁹, wherein the Supreme Court of India refused to entertain an Appeal as incompetent against an order of a Division Bench of the High Court rejecting the application for review of a judgment of a Single Judge, by observing that the basic judgment was never appealed, whereas, Order 47 Rule 7 of CPC bars an appeal against the order of the court rejecting the review. In **Lahore Development Authority**¹⁰ it has been observed by the Supreme Court that under Order XXXVII, Rule 7, C.P.C. an order of the Court rejecting an application for review is not appealable; consequently, no Intra Court Appeal is competent against the order, whereby the review applications were dismissed. This has been followed by a Division Bench of this Court in the case of **The Military Estate Officer**¹¹. In view of the above, the Appeal of Appellant No.1 also appears to be not maintainable in law.

⁷ Madan Mohanji Maharaj Vs. Sunder Lal (AIR 1953 All. 554)

⁸ Ram Lal v Ratan Lal (ILR 26 Allahabad 572)

⁹ Shanker Motiram v Shiolalsing Gannusing Rajput (1994) 2 SCC 753

¹⁰ Lahore Development Authority v Fahmeeda Khatoon (1986 SCMR 1478)

¹¹ The Military Estate Officer v Ardeshir Cowasjee (2017 MLD 22)

9. Even otherwise, insofar as Appeal against Order dated 24.10.2022 is concerned, it seems that on 21.10.2021 an order was passed by the learned Single Judge, whereby, Reference No.13 of 2019 filed by the Official Assignee of this Court was accepted. The said order reads as under;

“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.”

10. The Appellant No.1, thereafter preferred CMA No.18571 of 2021 on 20.10.2021 under Order 47 Rule 1 read with Section 151 CPC seeking review of the said order. The learned Single Judge has been pleased to dismiss the same through impugned order. The relevant findings read as under;

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.”

11. From perusal of the aforesaid order, it clearly reflects that the review being sought of Order dated 21.10.2021 appears to be an afterthought and an exercise to delay the settlement of dispute amongst the contesting parties in a Suit for Administration pending before a Single Judge of this Court. It has not been disputed that Respondent No.1 pursuant to Order dated 13.11.2019 submitted its bid for Rs.12,02,00,000/- for purchase of the property in question and deposited 25% of the offered amount by way of pay order with the Official Assignee. It is also not in dispute that the Official Assignee held competition amongst the parties to fetch a best price; however, except Respondent No.1, none of the contesting parties made any bid; nor showed any interest in purchasing the property in question. Based on these facts, the Official Assignee filed his Reference No. 13 of 2019 and the learned Single Judge on 21.10.2021 allowed the said Reference as none of the parties had shown any interest; nor raised any objection on the said Reference. The offer was then accepted and directions were issued for deposit of the balance sale consideration, which admittedly has been done. In fact, no objection of whatsoever nature is available on record; nor the learned Counsel for Appellant No.1 could refer to any such document while arguing the Appeal. His only plea was that subsequently certain offer was made which the learned Single Judge ought to have accepted. We are afraid this does not appear to be a correct approach as once the offer has been accepted by the Court without any one objecting to it, then any subsequent offer(s) are not valid in law. It further appears that belatedly, the Appellant No.1 has raised an objection through its review application that time and again on various dates, the objections were raised but were never considered by the learned Single Judge. However, these arguments are not supported by the available facts as

constantly matter was taken up by the learned Single Judge; time and again orders were passed; but no such objection was ever raised. Moreover, even if any objections were raised belatedly, same cannot be considered by the Court inasmuch as the objection, if any, could only be raised by Appellant No.1 by participating in the open bidding before the Official Assignee and by way of matching the offers given by Respondent No.1 along with a pay order of 25% of the amount so offered. We have time and again confronted the Appellants' Counsel as to whether any such offer was ever made before the Official Assignee and learned Counsel has frankly conceded that no such offer was made; nor any objections were raised on Reference No. 13 of 2019 filed by the Official Assignee. These are admitted facts and therefore, the learned Single Judge was fully justified in dismissing the review application as it does not fall within the contemplation of any of the situations provided for under Order 47 Rule (1) CPC.

12. Lastly, it may also be noted that the basic order for ordering sale of the property in question was passed on 13.11.2019, and the present Appellants being aggrieved had preferred High Court Appeal No.363 of 2019 which stands dismissed vide order dated 29.11.2019, affirming the order of a private sale and asking the parties to compete with each other for a better offer / price. Such exercise was carried out by the Official Assignee and admittedly the present Appellants never participated in such exercise of sale. In the case of Ahmed Ali¹², a learned Division Bench of this Court while answering the question that *"Whether the provisions of Order XXI, Rule 89, C.P.C. should be universally applied to all auction sales without distinction and irrespective of the fact whether the sales are in pursuance of money decree or other decrees and whether auction sales held in Partition Suits or Administration suits etc. are beyond the scope of rule 89 of Order XXI, as held by Aftab Hussain, J¹³."* has been pleased to endorse the view taken in Muhammad Din¹⁴ by Aftab Hussain, J, and has answered the first part of the question as above in negative, whereas, the second part in the affirmative. Resultantly, in private sales or sales followed by preliminary decrees in Administration

¹² Ahmed Ali v Noor Muhammad (1987 CLC 1575)

¹³ In Muhammad Din v Ilahi Noor (PLD 1975 Lahore 1393)

¹⁴ ibid

Suits are not be governed strictly by the provisions of Order 21 Rule 89 and 90. Therefore, any subsequent objections, in any manner, could not be raised as this sale was not a sale falling strictly within the contemplation of Order 21 CPC; nor the provisions of Rule 89 and 90 *ibid* were applicable.

13. In view of the above facts and circumstances, it appears that Appellant No.1 only intents to drag the matter; whereas, the offer of Respondent No.1 already stands accepted way back in the year 2021 and now the Appellant No.1 intends to avail benefit of increase in price, if any, which cannot be entertained by this Court; therefore, the Appeal in hand being misconceived and not maintainable was ***dismissed*** by means of a short order passed on 08.11.2023, and above are the reasons thereof.

J U D G E

J U D G E

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