

IN THE HIGH COURT OF SINDH AT KARACHI

**Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial**

High Court Appeal No. 224 of 2020

Mst. Khursheed Begum & others
Versus
Muhammad Iqbal & others

A N D

High Court Appeal No. 229 of 2020

Nazeer Ahmed
Versus
Mst. Khursheed Begum & others

Date of Hearing: 18.01.2024

Appellant in HCA 224/2020 and Respondents No.1 to 6 in HCA 229/2020: Through Mr. Sarfaraz Ahmed Advocate

Appellant in HCA 229/2020 and Respondent No.12 in HCA 224/2020: Through Mr. Adnan Ahmed Advocate and Mr. Fahad Arif Khilji Advocate.

Respondents No.21 and 24 in HCA 224/2020 & Respondent No.30 in HCA 229/2020: Through Mr. Ahmed Masood Advocate

Respondents No.1, 4-11, 22, 26-28 in HCA 224/2020 and Respondent No.7, 8 and 10-17 in HCA 229/2020: Through Mr. Ch. Muhammad Abu Bakar Khalil, Ms. Nancy Dean and Ms. Aisha Rizvi Advocates.

Respondents No.20 and 23 in HCA 224/2020 and Respondents No.25 and 27 in HCA 229/2020: Through Mr. Abdul Wahab Baloch Advocate

Respondents No.21 and 24 in HCA 224/2020 and Respondents No.26 and 29 in HCA 229/2020: Through Mr. Ahteshamullah Khan Advocate

Respondent No.3 and respondent No.9 in HCA 224/2020 and 229/2020 respectively: In person

J U D G M E N T

Muhammad Shafi Siddiqui, J.- In the captioned High Court Appeals both plaintiffs and defendant No.12 of Suit No.260 of 2011 have impugned the same order passed by learned Single Judge on 23.11.2020 whereby not only the offer of bidder i.e. respondent No.25 and 30 respectively namely Faraz Ali was accepted in respect of the subject property in pursuance of preliminary decree dated 17.08.2011 but it was also confirmed and sale certificate was ordered to be issued in the same breath.

2. We have heard Mirza Sarfaraz, learned counsel for appellant, and Mr. Ahmed Masood, leading counsel appearing for the respondents except respondent No.3 who appeared in person who neither objected the appeal nor supported. She only pleaded for her lawful share. We have also perused material available on record.

3. In a suit for administration and partition, a preliminary decree was passed on 17.08.2011. The relevant proceedings for the purpose of these appeals is report dated 17.11.2020 of Nazir filed in compliance of order dated 17.12.2019. This is a report which suggested that the bidder Faraz Ali has made highest offer of Rs.12,05,00,000/- and deposited pay order amounting to Rs.3,01,25,000/- being 25% of the bid amount offered, as required under the law. Nazir report dated 17.11.2020, referred above, was placed for consideration before the Court on 19.11.2020. In paragraph 3 of the said order of 19.11.2020, the Court provided facts that sale proclamation was published in three newspapers in respect of the property in question having reserved price and the fact about the highest offer made by one Faraz Ali. Without any acceptance or refusal of the bid, the Nazir, in terms of the said order, was directed to proceed with the matter in accordance with law. Whether it amounts to issuance of fresh sale proclamation or acceptance, is all vague.

4. Perhaps for this reason, four days later, the matter was again placed before learned Single Judge i.e. on 23.11.2020 when the impugned order was passed, however, this time not only the bid was accepted but also confirmed and sale certificate was ordered in the same breath. The said impugned order reproduced the contention of one Syed Mohsin Ali, learned counsel for defendant No.12 (appellant in HCA No.229 of 2020, that he intended to match bid, being highest offer made by the auction purchaser/bidder Faraz Ali. This intention to match the offer was disputed by the bidder who made highest offer, on the count that on previous occasions also he attempted to match the bid and subsequently withdrew his last offer of Rs.12 Crore and that he intend to prolong the auction proceedings.

5. It is in this order (impugned order of 23.11.2020), when an offer of Rs.12 crore 5 lacs was accepted and the auction purchaser was directed to deposit balance consideration of 75% of the bid offered within seven days' time and sale was also confirmed. Surprisingly the impugned order also directed the Nazir to proceed further in accordance with law and issue sale certificate in favour of auction purchaser.

6. This order of 23.11.2020 is not in consonance with the scheme of auction proceedings highlighted in order XXI Rule 66, 84, 85, 89, 90 and 92 CPC. In the first instance order of 19.11.2020, passed four days before the impugned order, is neither an acceptance nor refusal of an offer hence cannot be counted. In that order Nazir was only directed to proceed with the matter in accordance with law. It could be read as one for issuance of fresh sale proclamation. The said order of 19.11.2020 only gives a tentative idea about proceedings and the offer so made. The report as placed on 19.11.2020 could have been accepted and could have been refused as it was discretion of the Court which was not exercised. However, the order, which in fact is impugned is order dated

23.11.2020, which gives a clear view that in fact it was not only the day when the offer was accepted but confirmed before balance amount is deposited as in the same order, balance amount was ordered to be deposited in seven days' time and further that sale certificate was also ordered to be issued. This is in violation of Rules of Order XXI CPC as it has not provided sequential way to conclude the sale and also Rule 351 of Sindh Chief Court Rules having been violated, which requires 30 days' time to the legal heirs or any participant to match the highest offer and/or make a better offer. This order in fact has curtailed the rights of the legal heirs to intervene in terms of Order XXI Rule 89 and 90 CPC (though both rules are separate in nature), to be exercised within 30 days' time of the acceptance of offer, as sale certificate was also ordered to be issued.

7. Mr. Ahmed Masood, learned counsel appearing for the bidder, submitted that the Nazir report of 19.11.2020 in fact is an acceptance of the highest bid and that was done in presence of all legal heirs who have not objected to it. He considered Nazir report disclosing highest bid as a "sale" in terms of Order XXI CPC and Rules 349 to 351 of Sindh Chief Court Rules.

8. Nazir was only entrusted to initiate a process of conducting sale but not accepting the sale as being highest offer, which later, in terms of Rule 85 is required to be confirmed by COURT. Both phases of sale and its acceptance vest with the Court and not with Nazir to give declaration of sale in the instant case. General auctions and auctions being conducted by Court in terms of Order XXI are different and distinct. Learned counsel in support of his case has relied upon the cases of Habib Bank Limited¹ and Faysal Bank Limited² involving foreclosure decree.

¹ 2007 CLD 726 (Habib Bank Ltd. v. Kiran Sugar Mills)

² 2023 CLD 44 (Faysal Bank Limited v. Haris Steel Industry)

9. By placing reliance on the above cases, learned counsel submitted that it is the Court which may carve out a process of auction on its own and not necessarily it would bind itself to the terms as required in terms of Rules 84 to 92 of Order XXI CPC. The argument of Mr. Ahmed Masood is irrelevant. Firstly the two judgments of the learned Single Judge, as relied upon, are of banking Court, which may form a summary procedure of sale under section 19(7)(a) of Financial Institutions (Recovery of Finances) Ordinance, 2001, whereas the decree passed in the instant matter is in relation to a suit for administration, specifically governed under Order XXI Rules 66, 72 and 84 onwards. Furthermore, the declaration of sale is achieved when the offer is accepted by the “Court” in terms of Rule 84 and not when the Nazir prepared its report for placing it before the learned Single Judge. Acceptance of offer doesn’t mean confirmation as it matures later when within time balance amount is deposited which is followed by sale certificates.

10. As far as time of 30 days in terms of Rule 351 of Sindh Chief Court Rules is concerned, it would commence from the date of acceptance of the offer by the Court and not from the date of Nazir report as this report is not equivalent to sale. However, in the instant case, without prejudice to above, even if Nazir’s report dated 17.11.2020 is taken, as suggested by Mr. Ahmed Masood as a sale (to which we do not agree), even then, it was confirmed within six days vide order dated 23.11.2020 hence the requisite time of 30 days was not provided even if it is counted the way Mr. Ahmed Masood has argued.

11. His next contention is that even if those 30 days are not provided to the legal heirs, nothing was taken away from them as nobody objected on the day when offer was made by the bidder. Even this argument is not convincing as the objections were required to be made

within 30 days period from the date of “acceptance” and not on the day when the offer was placed and/or accepted by the Court. The case of Muhammad Jawed³ has provided a panoramic view of all Rules of Order XXI CPC, gist of which is highlighted above. The sequential stages of Rule 66 and 84 onward of Order XXI CPC are mandatory and their defiance could not legitimize such sale.

12. We are conscious of the fact that bidder has deposited through different pay orders an amount of Rs.3,01,25,000/- on 12.11.2020 and 14.11.2020, being 25% of the bid amount, followed by Rs.9,03,75,000/- deposited on 24.11.2020, being remaining bid amount, (Total Rs.12,05,00,000/-), as offer was accepted on 23.11.2020 but the bidder cannot get away with the mandatory requirement of Order XXI Rules 84, 85, 89 and 90 CPC and Rule 351 of Sindh Chief Court Rules.

13. The impugned order could only be read as an acceptance of an offer, which ought to have provided 30 days’ time to the legal heirs to match the bid or to raise such offer, which substantive vested right was taken away by the order impugned as confirmation (without full consideration) and sale certificate was also ordered to be issued in same breath. If bidder is said to have some rights in the process then those rights cannot supersede the rights identified in Rule 84, 85, 89 and 90 of Order XXI CPC and Rule 351 of Sindh Chief Court Rules (OS) which required strict compliance.

14. We are therefore of the view that the impugned order which has not only accepted the bid but has also confirmed the bid and ordered the Nazir to issue sale certificate in the same breath is bad in law and is being set aside. Nazir is directed to issue fresh sale proclamation (as considerable time has lapsed), subject to payment of cost by plaintiffs of the suit and/or all the legal heirs, which shall be adjusted at the time of disbursement of sale proceeds to

³ 2020 SCMR 2134 (Muhammad Jawed v. First Women Bank Ltd)

the legal heirs in accordance with their respective share. The amount deposited by the bidder be returned, if he so desires, or he may keep it with the Nazir if he intends to contest the forthcoming/fresh sale proclamation, as ordered above. In case plaintiffs have acquired the share and rights of other legal heirs (as required under Rule 72 of Order XXI CPC), they may submit affidavits of the parties and/or those legal heirs and if they wish to contest in the auction proceedings by depositing the amount of share of rest of the legal heirs who have not sold out their shares to the plaintiffs or have not agreed in this regard they may seek such orders from trial Court/learned Single Judge.

15. Both the High Court Appeals stand disposed of in the above terms along with pending applications.

Dated:

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