

IN THE HIGH COURT OF SINDH, KARACHI
HCA No.58 of 2023

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

*BEFORE: Irfan Saadat Khan,
Zulfiqar Ahmed Khan, JJ*

Sehrish Hanif
Lubna Hanif
Noreen Hanif
Nazia Hanif
Afshan Hanif
Appellants

: through their Attorney
Fateh Muhammad

..Vs..

Muhammad Aziz
Respondent No.1.

: through Kh. Saiful Islam,
Advocate

Gohar Hanif
Azhar Hanif
Asad Hanif
Samad Hanif
Nadia Mansoor
Zareen Hanif
Uzma Waqar
Mahwish Hanif
Respondents No.2 to 9.

: Nemo for Respondents No.2 to 9.

Date of hearing : 15.08.2023

Date of decision : 21.08.2023

JUDGEMENT

IRFAN SAADAT KHAN, J. This High Court Appeal (HCA) has been filed impugning the order dated 15.02.2023 passed by the learned Single Judge in Suit No.1080/2014.

2. Briefly stated the facts of the case are that the Respondent No.1 filed a suit for administration, partition and permanent injunction in respect of the property bearing House No.A-462, Block-8, Karachi Administration Employee's Cooperative Housing

Society, measuring 235 sq.yds. The said property was in the name of Mst. Ghulam Fatima w/o Muhammad Suleman, who had expired on 29.01.1993. Mst. Ghulam Fatima left the present Respondent No.1 and Muhammad Hanif, her two sons as her legal heirs at the time of her death. The present Appellants and the Respondents No.2 to 9 are the legal heirs of Muhammad Hanif (son of late Ghulam Fatima) who also has expired on 27.12.2013. Due to difference amongst the present Respondent No.1 and the legal heirs of Muhammad Hanif, the above referred suit bearing No.1080/2014, was filed. The matter proceeded before the learned Single Judge who vide order dated 22.12.2016 appointed Nazir as Administrator of the property and was also directed to make an attempt for private sale amongst the parties and if not, then sell out the same through public auction. Objections were raised time and again by the parties with regard to the valuation of the property. The Nazir in his report dated 16.09.2021 pointed out that the Respondent No.1 has agreed to purchase the property at Rs.3 crore however the appellants have objected to the same. The appellants before the learned Single Judge submitted that the property is worth Rs.4,25,00,000/-. The learned Single Judge then vide order dated 11.08.2022 directed the Appellant No.1, (who was Defendant No.12 in the suit) to prepare a pay-order of Rs.4,25,00,000/- in the name of the Nazir of this Court to show her keenness to purchase the property and to bring the same on the next date of hearing. Thereafter a number of opportunities were given to the appellants to either deposit the amount of Rs.4,25,00,000/- or to bring some potential buyer, if they were of

the view that the property was worth Rs.4,25,00,000/- or more, so that the suit with regard to partition could be disposed of and proper and respective share of each legal heir, in accordance with law and shariah, may be distributed accordingly. It is an admitted position that inspite of giving several chances, the present appellants have failed to either abide by the instructions of the Court or to bring any prospective buyer of the suit property in respect of the amount, which according to them would fetch if sold in open market. It is under these circumstances that the learned Single Judge vide impugned order confirmed the sale offer as given by the Respondent No.1 and dismissed all the listed and pending applications, as having become infructuous, by confirming the sale at Rs.3 crore offered by the Respondent No.1.

3. Mr. Fateh Muhammad, attorney of all the Appellants, has appeared and stated that as per Nazir's report dated 19.5.2022 the property was considered to be between Rs.3,75,00,000/- to Rs.4,25,00,000/-, hence confirmation of the sale at Rs.3 crore by the learned Single Judge was not in accordance with law. He stated that the order may be set aside and the Nazir may be directed to cancel the sale certificate as the value of the property is more than Rs.3 crore, which was incorrectly accepted by the learned Single Judge and some time may be given to the appellants to bring some prospective buyer for purchase of the property at a higher figure then that of Rs.3 crore.

4. He next stated that serious monetary prejudice would be caused to the appellants, if respective share of each legal heirs is

worked out at Rs. 3 crore. He stated that no doubt the appellants have failed to bring any prospective buyer for above Rs.3 crore and have not complied with the order dated 11.8.2022, passed by the learned Single Judge, but if some time is granted to them they are willing to bring some prospective buyer of the property, which according to him is worth approximately Rs.5 crore. He therefore, request that the order of the learned Single Judge may be set aside and some time may be given to the appellants in respect of the prayer made by them in the interest of justice.

5. Khawaja Saif-ul-Islam, Advocate has appeared on behalf of the Respondent No.1 and vehemently opposed the present appeal. He stated that several opportunities were provided to the appellants to bring a purchaser, who is ready and willing to purchase the property above Rs.3 crore, but the appellants have miserably failed to do so. He stated that though it has been averred time and again by the appellants that the property is more than Rs.3 crore and at one stage has shown their willingness either to purchase the same or to match the price but have failed to do so despite the fact that a number of opportunities were given to them by the learned Single Judge, which clearly proves that the appellants were only interested in delaying the process and to linger on the same unnecessarily. Whereas, according to him, the Respondent No.1 has duly deposited Rs.83,00,000/- with the Nazir, which has been acknowledged by the Nazir in his report dated 22.10.2022 and a substantial amount deposited by the Respondent No.1 has already been distributed among a number of

legal heirs of late Muhammad Hanif, who are either brothers or sisters of the present appellants.

6. He stated that from the record, it would be seen that despite given several chances to the appellants they have not deposited any amount with the Nazir in respect of the value, which according to them is the true market price of the said property. He stated that it was under these circumstances that the learned Single Judge quite rightly passed the order by confirming the sale in favour of the Respondent No.1 on the amount offered by him. He therefore, finally prayed that in view of the above facts the instant HCA, alongwith the listed applications, may be dismissed by imposing cost upon the present appellants.

7. Nobody has appeared on behalf of the Respondents No.2 to 9.

8. We have heard the Attorney of the appellants as well as the learned counsel for Respondent No.1 at some length and have also perused the record.

9. Perusal of the record reveals that since there were a number of legal heirs left by of late Mst. Ghulam Fatima, it was impossible to partition the subject property, which comprises of 235 Sq.Yds only. When the matter filed by the present respondent No.1 proceeded before the learned Single Judge in respect of partition it was agreed between all the contesting parties before the court that let the property be sold out to a prospective buyer, be that any one of the parties, and to distribute the shares out of the sale proceeds of the property amongst all the legal heirs as per sharia. Though a

compromise application was also filed by the parties with the understanding that the property would be sold out and thereafter respective shares would be distributed amongst the legal heirs; however it is an admitted position that since the rates, which were as per the legal heirs would fetch in the open market if the property is sold, could not be obtained in spite of several attempts, the plaintiff as well as the defendants in the suit were given the chance either to purchase the property by themselves, or to bring some prospective buyer in this regard. Record also reveals that the Nazir in his report has also opined that the value of the property ranges between the Rs.3,75,00,000/- to Rs.4,25,00,000/- It is also submitted in the report that despite making hectic efforts and giving advertisement in the newspapers no one approached the Nazir of this Court to show interest in purchasing the said property. Under these circumstances the respondent No.1 offered to purchase the property at Rupees 03 crores and to show his bona fides substantial amount was also deposited by him with the Nazir.

10. It may be noted that the present appellants have miserably failed to either purchase the property by themselves or to bring any prospective buyer who could purchase the property for an amount above Rs.03 crores offered by the respondent No.1. It is also an admitted fact that a number of legal heirs of Late Muhammad Hanif, other than the appellants, have already withdrawn the amounts of their respective share from the Nazir. It is also an admitted fact that several opportunities were provided by the learned Single Judge, while hearing the matter to the appellants on their request to bring any prospective buyer interested in

purchasing the property for an amount above Rs.03 crores or to match the price themselves but the appellants have utterly failed to do so.

11. It is in this background that the learned Single Judge came to the conclusion that since neither any amount was deposited by the appellants with the Nazir as required under the rules nor have matched the sale price offered by the respondent No.1 or have brought any prospective buyer to purchase the property, the price offered by the respondent No.1 was accepted and confirmed. Hence under these facts and circumstances, we are of the view that the order of the learned Single Judge, impugned in the instant HCA does not warrant any interference and is found to be in accordance with law. The instant HCA is found to be bereft of any merit which stands dismissed along with the listed and pending application. No order as to cost.

JUDGE

JUDGE

Karachi
Dated:21.08.2023

SM