

**IN THE HIGH COURT OF SINDH AT KARACHI**

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

High Court Appeal No. 29 of 2006

Muhammad Imran Mustaqeem & others  
Versus  
Muhammad Salim & others

Date of Hearing: 27.02.2024

Appellants: Through M/s. Shaikh Jawaid Mir and Shahryar Ibrahim Soho Advocates.

Respondent No.1: Through Ms. Mamoona Advocate holds brief for Mr. Danial Muzaffar Advocate.

Respondent No.3: Through Mr. Abdul Haleem Siddiqui Advocate.

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- Impugned in this appeal is an order dated 19.12.2005 passed on Nazir Reference dated 26.10.2005, which was heard and reserved on 21.11.2005, in Succession Miscellaneous Application (S.M.A) No.334 of 2001 wherein and whereby a lower offer of Athar Rasheed, respondent No.2, in respect of a property of deceased was accepted.

2. We have heard learned counsel for the parties and perused material available on record.

3. Succession matter/petition for Letters of Administration was filed by a husband after sad demise of his wife disclosing sons and daughters also as her legal heirs. It was taken to its logical end on 14.02.2002 when Letters of Administration was granted per rules. The matter should have ended there as this is all that could have been done in the succession matter/petition, which is meant for grant of Letters of Administration/succession only. Petitioner was unable to provide security and

consequently moved an application bearing CMA 2024 of 2002 for accepting title documents of the property in question as surety and thereafter to sell the subject property and distribute the sale consideration amongst the legal heirs according to Mohammeden Law.

4. To our surprise this application (CMA 2024 of 2002) was taken up on 12.08.2002 followed by an order dated 02.09.2002. It is to be kept in mind that up until that date no Letters of Administration was “issued”, though an order to that effect was passed on 14.02.2002. To this application objections were filed by respondent No.1 who was son of the petitioner, and deceased. The Court vide subsequent order of 02.09.2002 ordered that since it is a dispute between father and son hence appointed Nazir as commissioner to sell the property in question and distribute proceeds of sale amongst the legal heirs of deceased Mst. Zaitoon Begum.

5. However, perusal of order dated 05.08.2003 passed in the aforesaid SMA reveals that perhaps the objections were raised by respondent No.1 and hence his counsel sought conversion of the pending lis as a suit for administration however the request was declined by order dated 04.06.2004 on the count that the Letters of Administration was already granted on 14.02.2002 (not issued since the rules have not been complied).

6. Record disclosed that a sale proclamation was issued on 16.11.2002 for the sale of the property on ‘as is where is basis’. Nazir submitted Reference on 11.12.2002, signed on 10.12.2002 which was taken on record on 07.04.2003. Thereafter one of the bidders Athar Rasheed Siddiqui moved an application bearing CMA No.1401 of 2004 for issuance of sale certificate/ execution of sale deed, in pursuance of Nazir report/Reference dated 11.12.2002, which discloses his (Athar Rasheed Siddiqui’s) bid to be on lower side (in the last para) and also

mentioned the value of the property at the relevant time as Rs.50 to 55 lacs. Vide order dated 20.10.2004 his offer was not accepted/approved by the Court. It was observed that the matter of issuance of sale certificate and execution of sale deed would arise once the sale is confirmed under the law, though it was a case of the applicant that he has deposited entire amount of offer i.e. Rs.31 lacs, which itself is shown to be on the lower side in the Nazir's Reference and yet deposit of entire amount without it being approved, would not give any vested right in the property to the bidder. The application for issuance of sale certificate was thus turned down.

7. On 14.09.2005 an order for appearance of parties before Nazir was passed to ascertain highest offer given by bidders. We do not consider any logic in this order as it was already stated that offer of Rs.31 lacs was on the lower side by report of Nazir itself. However, Nazir was compelled to submit report yet again on 26.10.2005.

8. Thereafter on 19.12.2005 (apparent date is 21.11.2005) an order was passed on Nazir Reference dated 26.10.2005, which was heard and reserved on 21.11.2005. It is this conflicting order based on totally misleading report dated 26.10.2005, which is impugned in this appeal. The order disclosed presence of some of the parties before the Nazir along with their counsel on particular dates and also presence of one of the bidders/applicants Athar Rasheed Siddiqui who appeared on 06.10.2005 before Nazir. It is this order which suggests that the highest bid was of Athar Rasheed Siddiqui of Rs.31 lacs received by the Nazir out of which Rs.8 lacs were already deposited and the balance of Rs.23 lacs in the shape of pay orders was also deposited by him and entire amount was then available with the Nazir and which report dated 11.12.2002, was taken on record on 07.04.2003, on which an order dated 20.10.2004

had been passed as referred above which suggested Athar Rasheed Siddiqui's bid on lower side.

9. This impugned order also proposes that up until that time, no order was passed about the acceptance or rejection of the bid. This is factually incorrect as the Nazir has already submitted in his report that the offer was on the lower side which is reflected in the order dated 20.10.2004 as well in terms whereof the application of same bidder for issuance of sale certificate/execution of sale deed was dismissed. In the same order it was also observed that offer of Rs.31 lacs of 2002 could not be considered after two years when at the relevant time as well, this offer itself was on the lower side. Surprisingly, after almost three years of such deposit, the fresh reference with same facts was again taken up, showing this offer of Rs.31 lacs as highest, which was misleading.

10. The impugned order also suggests that one Syed Hidayatullah Alam, the applicant of CMA No.782 of 2005 submitted offer of Rs.80 lacs in respect of the subject property and deposited pay order of Rs.20 lacs being 25% with the Nazir of this Court. It was also proposed that one Salahuddin Ahmed, applicant of CMA No.102 of 2005 had offered Rs.85 lacs. The said Syed Hidayatullah Alam during the course of negotiations, as could be ascertained from the impugned order, has extended/enhanced his offer to Rs.1,45,00,000/- for the subject property however the token amount of Rs.20 lacs as deposited earlier was not extended to 25% of the enhanced offered amount. To these fact, the impugned order, to our surprise, reveals that the highest offer of Rs.31 lacs was made at the "relevant" time of auction on 30.11.2002 by respondent No.2 Athar Arshad Siddiqui who had deposited entire amount of the offer and in the same breath it is disclosed in the order that an offer of

Rs.1,45,00,000/- by Syed Hidayatullah was made but he could deposit pay order of Rs.20 lacs only, not upto 25% of enhanced bid amount.

11. The reasoning assigned by the learned Single Judge in the second part of typed page 3 of the order that the offer of Athar Rasheed Siddiqui in the sum of Rs.31 lacs was neither accepted nor denied is again factually incorrect. Reliance placed in the case of Hudaybia Textile Mills Ltd. v. Allied Bank of Pakistan Ltd. (PLD 1987 SC 512) is not applicable as the offer was never accepted; On the contrary it was disclosed to be on the lower side in the order dated 20.10.2004 and thus deemed rejected. The offer of Rs.31 lacs was on the lower side in 2002 hence it is inconceivable that offer which was on lower side in 2002 and 2004 could have been accepted in November 2005 when other offers of much higher values were available. If the bidder Hidayatullah Alam has not provided 25% of the bid to the tune of Rs.1,45,00,000/- then his offer of Rs.80 lacs would stand on the higher side as 25% of it was available when impugned order was passed. Notwithstanding above, it is immaterial that the proposed bidder Athar Rasheed Siddiqui had deposited entire amount of Rs.31 lacs hence the vested right accrued in his favor. The proposed bidder cannot get away with the property of legal heirs at a throwaway price.

12. The discussion as to the tenancy rights is immaterial in view of terms of the sale proclamation as available to be auctioned on 'as is where is basis'.

13. We have already observed earlier that object of petition for Letters of Administration is only to the extent of its grant or otherwise and the question of sale and purchase of the properties does not arise whereas in the instant matter despite objections taken by one of the legal heirs for its conversion into a suit, the property was attempted to be auctioned. Once the property devolved amongst the legal heirs that

was and is the end of the lis filed in shape of petition for Letters of Administration.

14. The surprising fact in the case is that on 26.12.2005, almost a month later of acceptance of Nazir's Reference dated 26.10.2005, learned Single Judge attempted to explain in his order that it was actually an amount of Rs.1,45,00,000/- which was considered and the bidder Athar Rasheed Siddiqui (according to learned Single Judge in order dated 26.12.2005), was required to deposit balance sale consideration which was allowed by the aforesaid order. This has raised serious questions. This process could hardly be conceived in the matter of auction proceedings. The entire process seems to be alien as far as scheme of auction is concerned.

15. The Supreme Court in a very elaborative judgment in the case of Lanvin Traders<sup>1</sup> has set a principle in terms whereof it is observed that clever maneuvering forcing way for disposal of a property for a paltry sum has to be guarded against and jealously so with all the care and circumspection so that it may go for a sum it deserves.

16. Hence, in all fairness not only the impugned order is set aside and appeal is allowed but now since the property is to be devolved amongst the legal heirs, the Letters of Administration be issued accordingly, if it has not been issued as yet, leaving it up to them i.e. legal heirs to see/decide the fate of their property as they deem fit and proper and not in a petition, which is/was only to the extent of grant of Letters of Administration. It is also to be seen whether literally the Letter of Administration was issued to petitioner on submission of surety in the shape of original documents or otherwise, as required per rules. The amounts, if any of bidders lying with the Nazir may be returned with interest, if accrued thereon, on proper verification and identification.

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<sup>1</sup> 2013 SCMR 1419 (Lanvin Traders v. Presiding Officer, Banking Court No.2)

17. Above are the reasons of our short order dated 27.02.2024 whereby the appeal was allowed. R & P of SMA No.334 of 2001 be sent back to the concerned branch.

Dated:

**J U D G E**

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