

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

HCA No. 229 and 230 of 2024

[ Dewan M. Yousif Farooqi Vs. Dewan Zia ur Rehman Farooqi & others ]

HCA No. 231 of 2024

[ Dewan Abdul Rehman Farooqi Vs. Abdul Manan Mutaqi & others ]

Date of hearing : 08.05.2025

Date of decision : 08.05.2025

Khawaja Shams ul Islam advocate for appellant in HCA No.231/2024 and for respondent in HCA No.127 and 128 of 2024.

Mr. Ahmed Ali Hussain, advocate for appellant in HCA No.229 and 230 of 2024 and for respondent No.4 in HCA No.231/2024.

Mr. Muhammad Mohsin Khan, advocate for intervener Danish

Mr. Basil Nabi Malik, advocate for respondent No.3 in HCA No.231 of 2024.

Abdul Manan Mutaqi, respondent No.1 in HCA No.231/2024 in person.

## J U D G M E N T

**MUHAMMAD IQBAL KALHORO J:** In compliance of court orders passed in Suit No.1183/2011, 609/2023 and 156 of 2024 auction in respect of following properties was held.

1. Bearing No.165, North Napier road, Karachi.
2. Bearing No.709, 1254 Square Yards, Fatima Jinnah Colony, Jamshed Road, Karachi.
3. Godown Dewan Mushtaque & sons- E-III 5 S-I, LR 10/31, Lawrence Road, Karachi.

Before, however, auction was confirmed by the court, three different applications were filed before learned Single Judge seeking enhancement of offer for one of the properties. Such application was resisted by, among others, appellants on the ground that once auction had been conducted on fall of the hammer, no course but to conclude and confirm the sale was required to be done by the court. Learned Single Judge, however, vide impugned order dated 07.05.2024 ordered the property to be re-auctioned between the legal heirs and one Danish s/o Farooq in respect of the property for which he had earlier made a highest bid which has been challenged in three separate appeals.

2. Learned counsel for appellants has argued that learned Single Judge has passed the order in haste; the impugned order is contrary to real facts and circumstances of the case; the provisions of Order 21 Rule 89 and 90 have not been considered; learned Single Judge did not take into consideration Nazir's report which had confirmed the fact that all the legal heirs had participated in auction proceedings, no one had raised any objection; that learned Single judge should have proceeded to decide pending applications instead of ordering re-auction of the properties; that the order was passed in violation of proclamation of the sale which required that whosoever wants to participate in the bid shall submit 25% of the bid amount in the shape of pay order with Nazir. Learned counsel for appellant in HCA 231/2024 has relied upon PLD 2016 SC 229, 2014 SCMR 1662.

3. On the other hand, learned counsel for respondents has submitted that if re-auction of the properties is to be held, no one would be prejudiced and it is right of the legal heirs to match the highest bid; that unless the sale is confirmed by the court, re-auction is not prohibited by law. Learned counsel has relied upon 2020 SCMR 2134, 2004 SCMR 1956.

4. Respondent No.1, Abdul Manan Mutaqi (in HCA 231/2024) present in person, who is one of the legal heirs, has also supported the impugned order and submits that he has no objection to re-auction of the properties.

5. We have considered arguments of the parties and perused material available on record. It is an admitted fact that sale of the properties in terms of auction proceedings had not yet been confirmed when applications for enhancement in the bid price were filed before learned Single Judge. In presence of such applications, the only course available to the court was to order for re-auction of the properties, not the least when bulk of the legal heirs had no objection to it. The objection of learned counsel that report of the Nazir in respect of auction proceedings was not considered is not correct. Nazir in his report has proposed two options either to confirm the offer in favour of auction purchaser in respect of the properties at Sr.No.1,3 and 4 with directions to deposit remaining balance of Rs.75% within 15 days; or to order of re-auction of the properties. Learned Single judge after considering applications and hearing the parties proceeded to order re-auction of the properties between legal heirs and one Danish s/o Farooq for the reason that he was the highest bidder.

6. We see no illegality in the order and fail to understand what is the objection of appellants if the properties are put to re-auction wherein all the parties are allowed to participate and everyone gets an opportunity to make the highest bid and purchase the properties. We, therefore, see no merits in these appeals and accordingly dismiss them alongwith pending applications. Let re-

auction of the properties be conducted within one month by Nazir of the court in terms of order earlier passed by learned Single judge in the suits.

The appeals stand disposed of alongwith pending application(s).

Office to place a copy of this order in connected appeals.

JUDGE

JUDGE

A.K