

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
Ex. Application No. 08 of 2015

Date	Order with signature of Judge
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BEFORE
Mr. Justice Arshad Hussain Khan

1. For hearing of CMA No. 1685/2023.
2. For hearing of CMA No. 1687/2023.
3. For hearing of CMA No. 71/2023.
4. For hearing of Nazir's report dated 10.06.2023.
5. For hearing of Nazir's report dated 17.05.2025.

15.10.2025.

Mr. Mustafa Ali, Advocate for the Decree Holder.
Mr. Shan-ur-Rehman, Advocate for JDs No.1 and 2.
Mr. Ghulam Rasool Korai, Advocate for auction purchaser.
Ms. Sofia Saeed Shah, Advocate for auction purchaser.

This order will dispose of CMA No.1687 of 2023 and CMA No.1685 of 2023 as well as Nazir's Reports dated 10.06.2023 and 17.05.2025.

CMA No.1685 of 2023: Through this application, filed under Order XXI Rule 90 and Section 12(2) read with Section 151 C.P.C., the Judgment Debtors No.1 and 2 seek setting aside of the order dated 05.05.2023, whereby the offer of Rs.15,100,000/- given by the bidder/auction purchaser and pay order of 25% amount being earnest money deposited with the Nazir of this Court was accepted, and sale of the property viz. Shop No.3, Ground Floor, Zehra Salamat Mansion, Survey No.29/3, Survey Sheet No.BR-5, Custodian No.1-D-93, situated at the corner of Chagla Street and Laxmidas Street, Karachi [**subject shop**] was confirmed. It is alleged that the said order was obtained by fraud and misrepresentation.

CMA No.1687 of 2023: Through this application, filed under Section 151 C.P.C., the Judgment Debtors No.1 and 2 seek re-evaluation of the subject shop on the ground that the previous valuation was conducted in the year 2018, whereas the market value of the property has substantially been increased since then.

Nazir's Report dated 10.06.2023: Through this report, the Nazir of this Court has solicited, under Order XXI Rule 94 C.P.C., issuance of a sale certificate and handing over of possession of the subject shop, along with its title documents to the auction purchaser and his nominee after completion of all requisite formalities.

Nazir's Report dated 17.05.2025: Through this report, the Nazir has informed the Court that the original title documents of the subject shop, deposited by the decree holder have been kept in his safe custody. **Taken on record subject to all just exception.**

2. Briefly stated, the relevant facts for disposal of the listed applications and Nazir's report are that the present execution arises out of the judgment and decree passed in Mortgage Suit No. B-45 of 2000. Vide order dated 08.12.2016, this Court directed the Nazir to proceed with the sale of the

subject shop in execution of the said decree. Subsequently, by order dated 06.09.2018 and there being no objections from any side, the Nazir was directed to put the property to public auction in accordance with prescribed procedure. Pursuant thereto, the Nazir submitted his report dated 05.03.2021, reflecting that sale proclamation notices were duly published in three daily newspapers, *The Kawish*, *The Jang*, and *The News*, fixing 02.03.2021 at 2:00 p.m. as the date and time of auction was to be held before the Nazir's office on an "*as is where is*" basis. On the scheduled date, bidders appeared, while none represented the judgment debtors. The highest bid of Rs.15,100,000/- was offered, and 25% of the amount was deposited through pay orders in the name of the Nazir as earnest money. The offer was accepted by the Court, and the auction purchaser was directed to deposit the balance sale consideration within fifteen (15) days, vide order dated 05.05.2023. In compliance thereof, the Nazir submitted his report dated 10.06.2023, inter alia, seeking issuance of a sale certificate in favour of the auction purchaser. Thereafter, the judgment debtors filed the listed applications seeking recall of the bid confirmation order, re-evaluation of the property, and raised objections to the Nazir's report dated 10.06.2023.

3. The record reflects that, upon issuance of notices on the listed applications and objections, counter-affidavits, rejoinders, as well as reply objections have been filed and duly exchanged between the parties.

4. Learned counsel for the judgment debtors contends that the order dated 05.05.2023 was procured through blatant fraud and misrepresentation on the part of the decree holder, who allegedly misled the Court. It is argued that the judgment debtors were not duly served with notices of the Nazir's proceedings and were deliberately excluded from the entire sale process in collusion with the decree holder. Learned counsel submits that the evaluation of the property was conducted in the absence of the judgment debtors, only in presence of the decree holder and an evaluator unilaterally was proposed by him. The Nazir accepted the bid of the auction purchaser without any intimation or participation of the judgment debtors. It is further contended that the valuation relied upon was conducted in the year 2018, and the auction was held on the basis of that outdated valuation, despite a substantial increase in the market value of the property over time, thereby causing serious financial loss to the judgment debtors. Learned counsel maintains that the mandatory requirements of Order XXI, Rule 66 of the Code of Civil Procedure, 1908, governing sale proclamations, were not complied with, and even the reserve price mentioned therein was incorrect and unlawful. On these grounds, learned counsel prays that the listed applications be allowed,

the order dated 05.05.2023 be recalled or set aside, and the Nazir be directed to conduct a fresh valuation of the property in accordance with law.

5. Conversely, learned counsel appearing on behalf of the decree holder contends that the judgment debtors have approached this Court with unclean hands and mala fide intent, solely to delay and frustrate the execution proceedings, which have otherwise attained finality. It is submitted that the present applications have been filed after the completion of the auction proceedings and confirmation of sale by the Court, and as such, are grossly barred by time. Learned counsel asserts that the judgment debtors remained completely inactive during the auction process despite having full knowledge of the same, and only after the sale was confirmed and the auction purchaser deposited the entire sale consideration, have they chosen to challenge the proceedings, which are clearly an afterthought and an abuse of the process of law. He further argues that the mandatory requirement, under Order XXI, Rule 90, C.P.C., of depositing twenty percent of the sale price realized at auction as a condition precedent for maintaining an application to set aside a sale, has not been fulfilled. In the absence of such deposit, the applications are not maintainable in law and are liable to be dismissed on this ground alone. Learned counsel further submits that the entire sale process was conducted transparently under the supervision of the Nazir, after publication of sale proclamation in widely circulated newspapers, and in the presence of independent bidders, thereby ensuring complete procedural compliance. It is further contended that the Nazir's report clearly demonstrates that all formalities under Order XXI, Rules 64 to 94, C.P.C. were duly observed, and that the auction purchaser had deposited the full consideration within the prescribed time. The plea of alleged fraud or misrepresentation, raised after a lapse of considerable time and without any substantiating evidence, is a mere afterthought and cannot be sustained. Learned counsel maintains that once a sale has been confirmed under Order XXI, Rule 92, C.P.C., the same cannot be set aside except upon proof of a jurisdictional defect or fraud of the highest order, which is conspicuously absent in the present case. Lastly, learned counsel submits that the listed applications are hopelessly misconceived, devoid of substance, and not maintainable either in law or on facts. He, therefore, prays for their dismissal with exemplary costs, so as to discourage frivolous and dilatory tactics aimed at obstructing the execution of a valid decree. In support of his arguments he has relied upon the case of *Mst. Asma Zafarul Hassan v. Messrs United Bank Limited and another* [1081 SCMR 108], *Muhammad Rafiq v. Federation of Pakistan and 2 others* [2013 CLC 1679] / [2013 CLC 1679], *Muhammad Asif v. MCB Bank Limited and 3 others* [2019 CLD 733], *Messrs Habib and Company and others v. Muslim*

Commercial Bank Limited and others [2019 SCMR 1453] as well as unreported judgments / orders in the case of *Chaudhary Ghulam Hussain and another v. M/s. Saudi Pak Commercial Bank Limited, Lahore and another* [judgment dated 15.01.2024 in Civil Petition No.3811/2019], *Muhammad Ali Rashid v. M/s. United Bank Ltd., and others* [order dated 22.10.2019 in I.A. No.46/2015], *Muhammad Arif Gohar v. United Bank Limited* [judgment dated 13.09.2019 in First Appeal No.10/2017], *Anwar Ahmed Ansari v. Pak Libya Holding Company (Pvt) Ltd and another* [judgment dated 23.05.2023 in First Appeal No.15/2020] and *Allied Bank of Pakistan Limited v. Fateh Textile Mills Limited and 9 others* [order dated 28.02.2022 in Execution No.69/2004].

6. Learned counsel appearing on behalf of the auction purchaser, while adopting the arguments advanced by learned counsel for the decree holder, submits that despite having been afforded several opportunities both by this Court and by the Nazir during the course of the sale proceedings, the judgment debtors failed to avail themselves of the same. It is contended that the entire process of evaluation and auction of the subject property was conducted strictly in accordance with law, following the prescribed sequence of procedural steps under Order XXI of the Code of Civil Procedure, which inherently required due time for completion. Learned counsel emphasizes that the sale was carried out transparently, after proper publication and without any objection from the judgment debtors at the relevant stages. He further submits that the judgment debtors have not been able to point out a single instance of illegality, material irregularity, or procedural defect in the conduct of the auction proceedings or in the orders of this Court confirming the sale. The allegations now raised are vague, unsubstantiated, and appear to have been made only to frustrate and nullify the lawful exercise already completed in execution of the decree. Lastly, he has argued that the present applications constitute a clear abuse of the process of law, having been instituted with the sole object of obstructing the culmination of lawful execution proceedings and delaying delivery of possession to the bona fide auction purchaser, as such the same are liable to be dismissed with cost.

7. Heard learned counsel for the respective parties and perused the material available on the record.

Interestingly, the subject shop, as per the record, stands in the ownership of **Judgment Debtor No.3**, who, despite having been duly served with notice, **failed to appear** and remained **unrepresented** throughout the proceedings. However, it is **Judgment Debtors No.1 and 2** who, after **confirmation of the auction sale**, have now come forward to raise

objections and filed the **listed applications**, assailing the auction proceedings and the subsequent order of confirmation.

8. Precisely, the stance of the judgment debtors is that the order dated 05.05.2023 was procured through **fraud and misrepresentation** by the decree holder, who allegedly misled the Court and deliberately excluded them from the auction proceedings conducted by the Nazir. It is asserted that the judgment debtors were **never served with notices of the Nazir's proceedings** and were intentionally kept uninformed of the sale process, during which the Nazir accepted the bid in their absence. It is further alleged that the **valuation report relied upon was prepared in 2018**, notwithstanding a substantial escalation in property value since then, thereby causing serious financial loss to the judgment debtors. They also contend that the **mandatory provisions of Order XXI, Rule 66, C.P.C., governing sale proclamation, were not complied with**, and that even the reserve price was unlawfully determined.

9. Insofar as the stance of the judgment debtors regarding alleged fraud and misrepresentation is concerned, the record reflects that the present execution application was filed on 16.10.2014, whereafter notices were issued to the judgment debtors through all prescribed modes. On 02.11.2015, attachment of the mortgaged properties was ordered, and subsequently, on 08.12.2016, the Nazir was directed to proceed with the sale of the subject shop. On 09.01.2018, learned counsel for the judgment debtors filed vakalatnama but thereafter chose to abstain from the proceedings. Consequently, in the absence of any objection, the Nazir was directed on 06.09.2018 to put the subject shop to public auction. It further appears that on 13.02.2018, counsel for the judgment debtors appeared for the first time in the matter and thereafter continued to appear but did not raise any objection to the auction already ordered. In compliance with the order dated 06.09.2018, the Nazir submitted his report dated 05.03.2021, seeking confirmation of the bid offered by the auction purchaser. On 19.09.2022, the said report was taken on the record subject to all just exceptions, and at the request of learned counsel for the judgment debtors, permission was also granted to file objections thereto. However, no objections were filed, and on 05.05.2023, in the absence of any objection from the judgment debtors, the bid/offer of the auction purchaser was accepted, and the purchaser was directed to deposit the balance amount within fifteen (15) days. Pursuant thereto, the auction purchaser deposited the remaining amount, and the Nazir submitted his report dated 10.06.2023, inter alia, seeking issuance of the sale certificate in favour of the auction purchaser. Thereafter, on 15.08.2023,

another counsel, Ms. Nahl Chamdia, Advocate, filed vakalatnama and moved the listed applications as well objections to the Nazir's listed report.

A careful examination of the record dispels the allegation of fraud or misrepresentation. The sequence of events unmistakably demonstrates that the judgment debtors were well aware of the execution proceedings and were provided ample opportunity to participate at every stage. Notices were duly issued through all prescribed modes; their counsel entered appearance, filed vakalatnama, and was permitted to file objections to the Nazir's report but chose not to do so. It is, therefore, evident that the judgment debtors remained negligent and failed to avail themselves of the opportunities granted by the Court. The auction process was conducted in accordance with law under the supervision of the Court and the Nazir. The property was duly attached, valued, and sold through open public auction after publication of sale notices in widely circulated newspapers. No material irregularity or procedural defect has been pointed out. Once the sale was confirmed and the auction purchaser deposited the entire sale consideration, the transaction attained finality and could not be unsettled on vague or belated allegations of fraud. It is also well settled in law that once the auction purchaser has deposited the full sale consideration in compliance with the order of the Court, it becomes the mandatory duty of the Court to confirm the sale under the provisions of *Order XXI, Rule 92 of the Code of Civil Procedure, 1908*¹. It is a settled principle that mere assertions of fraud, unsupported by concrete evidence or specific particulars, do not constitute sufficient ground to annul judicial proceedings. The conduct of the judgment debtors, marked by prolonged inaction and failure to challenge earlier orders at the appropriate time, further disentitles them to any equitable relief. Hence, the plea of fraud and misrepresentation stands wholly unsubstantiated and devoid of merit.

10. Insofar as the second contention of the judgment debtors, that they were never served with notices of the Nazir's proceedings is concerned, the record clearly belies such assertion. In compliance with this Court's directions for auction of the subject shop, the Nazir caused the property to be evaluated through a recognized evaluator, M/s. Joseph Lobo (Pvt.) Ltd., who submitted his report dated 27.10.2018, assessing the market value of the property (free from encumbrances) at Rs.15,000,000/- and the forced sale value at Rs.10,000,000/-. Thereafter, several notices were issued to the judgment debtors and their counsel. Initially, learned counsel for the judgment debtors did appear before the Nazir; however, despite repeated notices thereafter, no one appeared on their behalf for approval of the sale

¹ Muhammad Ikhlaq Memon v. Zakaria Ghani [PLD 2005 SC 819]

proclamation. Consequently, the Nazir finalized the sale notice and scheduled the auction for 02.03.2021. Subsequently, the sale proclamation was published in three widely circulated newspapers, and even a corrigendum was issued correcting the reserved price erroneously mentioned as Rs.1,500,000/- instead of Rs.15,000,000/-. Despite such publication and due intimation, none appeared before the Nazir on behalf of the judgment debtors at the time of auction proceedings held on 02.03.2021. The record manifestly establishes that repeated notices were issued to the judgment debtors, and their counsel had due knowledge of the proceedings. It is a well-recognized principle that *knowledge of the counsel is imputed to the party*, meaning that any information or notice received by counsel in the course of representation is deemed to have been communicated to the client. The judgment debtors have not asserted in their applications that their counsel failed to inform them of the auction proceedings conducted pursuant to this Court's orders. Nor have they placed on record any correspondence showing diligence or effort to pursue the matter after engaging their counsel. In these circumstances, their plea of want of notice appears to be an afterthought and is wholly untenable in law.

11. As regards the contention of the judgment debtors that the valuation of the property was outdated having been conducted five years prior while the auction was confirmed in 2023, the record reveals otherwise. It appears that the property was evaluated by the approved evaluator on **27.10.2018**, and subsequently, the auction was conducted on **02.03.2021**. The Nazir thereafter submitted his report dated **05.03.2021** seeking confirmation of the bid offered by the auction purchaser. Thus, the record clearly reflects that the auction was held **within two years and three months** of the valuation.

12. The Division Bench of this Court in *Muhammad Ali Rashid (supra)*, while dealing with an identical issue has categorically held that **a valuation remains valid for a period of three years** under the law. In the present case, since the auction was carried out within that three-years period, the plea of outdated valuation is misconceived and untenable. It is also a settled principle that **a sale is complete upon the fall of the hammer and not upon its confirmation**, as reaffirmed by the Honourable Supreme Court in *Muhammad Attique v. Jami Ltd. & others* [**2015 SCMR 148**].

Accordingly, the objection of the judgment debtors regarding the alleged lapse of valuation validity is also devoid of merit.

13. As regards the contention of the judgment debtors that the mandatory requirements of *Order XXI, Rule 66* of the *Code of Civil Procedure, 1908* were not complied with and that even the reserve price was unlawfully

determined, the record does not support such allegation. The proceedings of the Nazir clearly demonstrate that a **sale proclamation was duly issued** after obtaining the necessary particulars from the decree holder, and the **reserve price was fixed on the basis of the valuation report** prepared by an approved evaluator. Notices were issued and duly served, and there is no material to suggest that the judgment debtors were denied participation in the process. It further appears that no objection was raised by the judgment debtors at the relevant stage regarding either the valuation or the reserve price, nor did they seek modification of the sale proclamation prior to the auction. It is a settled principle of law that once a party, having knowledge of the sale proclamation and auction process, fails to raise timely objections, they cannot subsequently be allowed to challenge the same after the completion of sale proceedings². It is also well settled that mere technical objections, unaccompanied by proof of substantial injury or irregularity affecting the fairness of sale, do not warrant interference once the auction process has been conducted in accordance with law. Accordingly, the plea of the judgment debtors that *Order XXI, Rule 66 CPC* was violated or that the reserve price was unlawfully fixed is devoid of force and consequently rejected.

14. Besides the above, under the provisions of *Order XXI, Rule 90* of the *Code of Civil Procedure, 1908*, it is **mandatory** for the judgment debtor to make a **statutory deposit of twenty percent (20%)** of the sale amount as a precondition for the maintainability of an application seeking to set aside an auction sale³. In the instant case, the judgment debtors failed to deposit the requisite 20% amount along with their application; therefore, on this sole ground, the application is not maintainable in law and is liable to be dismissed.

15. Furthermore, the record reflects that the auction proceedings were conducted on 02.03.2021, whereas the judgment debtors filed the listed applications on 15.08.2023, i.e., after a lapse of more than two years. Under *Article 166* of the *Limitation Act, 1908*, an application to set aside a sale in execution of a decree must be filed within thirty (30) days from the date of sale⁴. The instant applications, having been filed far beyond the prescribed limitation period, are therefore hopelessly time-barred and liable to be dismissed on this ground as well.

² Messrs Habib and Company and others v. Muslim Commercial Bank Limited and others [2019 SCMR 1453]

³ Messrs Habib and Company and others v. Muslim Commercial Bank Limited and others [2019 SCMR 1453].

⁴ Chaudhary Ghulam Hussain and another v. M/s. Saudi Pak Commercial Bank Ltd. Lahore and another [2025 SCMR 298]; Mst. Asma Azfarul Hassan v. Messrs United Bank Ltd. and another [1981 SCMR 108]

16. In view of the foregoing discussion, it is evident that the objections raised by the judgment debtors are devoid of merit, as the valuation of the property was duly conducted within the legally prescribed period; the sale proclamation and reserve price were fixed in accordance with law; and the Nazir carried out the auction proceedings after due compliance with the relevant procedural requirements. The judgment debtors not only failed to make the mandatory statutory deposit of 20% under *Order XXI, Rule 90 CPC* but also filed their applications hopelessly beyond the prescribed limitation period under *Article 166 of the Limitation Act, 1908*.

Accordingly, the applications [listed at 1 & 2] are dismissed, being not maintainable, time-barred, and devoid of substance. The Nazir's report dated 10.06.2023, *inter alia*, seeking issuance of sale certificate, is disposed of with the directions to the Nazir to issue the sale certificate and hand over possession of the property along with the original title documents to the auction purchasers / their nominees in accordance with law.

JUDGE