

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.851/2012

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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| 1. | For hearing of Official Assignee Ref: No.6/2014 & 7/2014. |
| 2. | For orders on CMA No.7928/2014 (U/s.3(1)) |

13.6.2014

Mr. Abdul Qadir Khan, Advocate alongwith Plaintiffs.
Mr. Abbas Ali, Advocate for the Defendants No.1, 2 & 5.
Mr. Muhammad Azhar Fareedi, Advocate for Auction Purchaser.
Mr. Qadir Bux Omerani, Official Assignee.

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Ref: No.06/2014 Through this reference bid in respect of two properties bearing (i) Plot No.C-144, Sector 35-A, Zaman Town, Korangi No.4, Karachi, and (ii) Plot No.D-319/2, Block-D, KDA Scheme No.19, Khudadad Colony, Karachi, are placed on record. The Highest bid in respect of Plot No.C-144, Sector 35-A, Zaman Town, Korangi No.4, Karachi was for Rs.42,00,000/-. Since no objection has been raised, this bid is accepted. The Official Assignee should complete the process of transfer of property in terms of auction notice.

The highest bid in respect of property No.2 has been offered by Sheikh Naveed Iqbal. His bid was Rs.73,00,000/- and he has improved the bid from Rs.73,00,000/- to Rs.75,00,000/- after coming to know that the Defendants wants to purchase the same on this value. However, Plaintiffs have also objected to this offer because as per their understanding there is a buyer with even higher bid to Rs.75,00,000/-. therefore by consent, the parties and the bidders are directed to appear again before learned Official Assignee on 21.6.2014 at 10:30 a.m for renegotiating the value as well as bringing any other offer higher to Rs.75,00,000/- to meet the bid of Sheikh Naveed Iqbal. In case for any reason, if negotiation is not completed on 21.6.2014, the Official Assignee may adjourn the meeting for 28.6.2014. However, after 28.6.2014 Official Assignee should file a reference without any excuse to finalize the existing bid or any fresh bid as the

case may be. No bidder mentioned by the Official Assignee in the final reference will be allowed to renegotiate or improve bid in Court room. All the fresh bidders and contestant should be entitled for consideration only on deposit of 25% of their offer as already mentioned in auction notice. Right of the legal heirs to match the highest offer is unquestionable and therefore, once highest bid is surfaced whoever legal heir like to purchase, shall have right to purchase.

Ref: No.07/2014 Through this reference the Official Assignee has placed on record documents of tenement viz; godown in Sawami Nayaran Temple, showing that the father of parties was tenant and running the business from there. He further informed that the Defendant No.2 despite notice has not attended the office of Official Assignee.

I have heard Mr. Abbass Ali counsel for the Defendants No.1 to 4 and perused the objections, he has raised only four points namely;

- i. There was no tenancy receipt in the name of deceased.
- ii. As per definition of tenant in Sindh Rented Premises Ordinance, 1979 only heirs in possession after the death are tenant .
- iii. There was default in payment of rent.
- iv. Defendant No.1 and the trustees of Sawami Nayaran Temple have executed a tenancy agreement dated 31.7.2007 in favour of Defendant No.1.

In their objections to this reference, the Defendants have not denied the documents filed with the reference, which were generated from the office of the owner of the godown namely the Trustees of Sawami Nayaran Temple. They have not offered any comments on the documents of trust showing transfer of tenancy rights in favour of deceased Muhammad Hussain in 1995. Therefore, the first contention that there is no tenancy receipt with the reference is unfortunately contrary to record. The record filed with reference also shows that the authorities of trust by their own letter dated 28.5.2007 after the death of Muhammad Hussain have treated all the legal heirs including the Plaintiffs and the Defendants as statutory tenants. Then there is one more documents, i.e. minutes of the meeting

of the trustees showing recommendation of the sub-committee that the tenancy should be transferred to the legal heirs. Further if the Plaintiffs were not having interest or right in the tenancy of Godown by way of inheritance on the death of their father then why Defendants No.1 & 3 (brothers) prepared a forged relinquishment deed on behalf of Plaintiffs surrendering their rights in favour of the Defendants and provided the same to the trustees. This relinquishment deed has also been filed by the Official Assignee but the Defendants have not referred to it in their objections. In view of the objections the Defendants were not required to seek any relinquishment deed in respect of the Godown. It is an admitted position from the record of trust that the tenancy was purchased by the deceased father of the Plaintiffs from a previous tenant, and tenancy was on pagree basis (Goodwill) that is why only change in the name of tenancy was sufficient and there was no agreement between the deceased and the owner of Godown. Since the tenancy right in the Godown were prior to promulgation of Rent Law in 1979 it cannot be treated as simple tenancy inherited by the male member of the family. It is, by all means a tenancy purchased and therefore it is saleable and proceeds of sale are inheritable. The reference to definition of “tenant” given in the Sindh Rented Premises Ordinance 1979, is misconceived. The term ‘tenant’ in special law is restricted to its use in rent proceedings under the said Special Law and it cannot be stretched to deny rights of inheritance guaranteed under the divine command of Holy Quran and Sunnah. The other aspect of the issue in hand is that the Defendants No.1 to 4 have suppressed all the documents in respect of the tenement / Godown in their written statement. In reply to para 2(b) to the plaint the Defendants simply declared that they are paying rent. The documents filed with the reference have disclosed the circumstances in which the Defendants have taken over the business of their deceased father and deprived the Plaintiffs of their legitimate right of inheritance in “*goodwill*” as well as in the income of the business of their father. It is pertinent to recall here that this Court by order dated 07.2.2014 in presence of the counsel of the Defendants has passed a detailed order in respect of almost each and every property which is subject

matter of this suit and the relevant part of the said order in respect of Godown and business therein is reproduced here as follow:-

“The attorney of defendants No.1, 2 & 3 admits that the business run by deceased Muhammad Hussain in the Godown premises situated in Swami Narayan Temple Estate Trust (Hindu Religious and Charitable Trust) was taken over by the defendant No.2 Muhammad Ashraf and since then he is running the said business. Defendant No.2 Muhammad Ashraf despite orders of court has not tendered any account of the business ever since the death of Muhammad Hussain. The Official Assignee is directed to forthwith take over possession of business premises, make an inventory, appoint someone to supervise the said business and maintain proper accounts under the supervision of Official Assignee from today. He is also directed to hold local inquiry to ascertain possible income so generated from the business from other persons in the market doing similar business. Therefore, the defendant No 2 is directed to furnish statement of accounts of business right from June 2005 till date within two week. In case of failure of Defendant No.2 to submit fair account of business, the other properties of the defendants will be attached”.

It is regretted that Official Assignee has failed to point out in any of the references filed by him after the order dated 07.2.2014 that under what circumstances, he has not been able to comply with above order of this Court. I have examined the court file and there is no reference of the Official Assignee showing that he has taken over possession, made an inventory and held an inquiry as directed not submitted report of accounts from the Defendant No.2.

I have examined the file and found an order in High Court Appeal and it is clear from the order in High Court Appeal that the order quoted above has not been suspended or stayed by the learned Division Bench of this Court. therefore, failure of Official Assignee to comply with the above referred order is highly undesirable. The Official Assignee is directed to submit his explanation in writing regarding his failure to comply the above referred order. It is admitted position that the Defendants No.1 to 3 are running the same business which their father was running from the same premises that they have willfully not attended the office of the Official Assignee in response to his letter dated 7.6.2014. In view of the above facts, I do not feel any hesitation in directing the Official Assignee to seal the godown immediately and ensure compliance of earlier order pending the determination of right of Plaintiffs in the income generated from the business of

their deceased father. Compliance report of sealing of the godown in question should be submitted by the Official Assignee within one week of receipt of this order.

In view of the order on Ref: No.6/2014 CMA No.7928/2014 stand disposed of.

JUDGE

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