

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Ex. No.35/1993

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

1. For hearing of CMA No.172/2014
 2. For hearing of CMA No.173/2014
 3. For hearing of CMA No.301/2012
 4. For hearing of CMA No.361/2012
 5. For hearing of CMA No.402/2012
 6. For hearing of O/A's Ref: 11/2012
 7. For hearing of O/A's Ref: 12/2012
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13.11.2014

Mr. Muhammad Azhar Faridi, advocate for Applicant/Bidder.
Mr. Muhammad Aqil, advocate for J.D No.5.
Mr. Neel Keshav, advocate.
Mr. Moin Azhar Siddiqui, advocate for auction/purchaser.
Mr. Zulfiqar Langha, advocate for Intervener.
Ms. Saima Imdad, A.A.G.

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In this case property bearing No.H-23, LITE, near Dawood Chowrangi, Landhi Industrial Trading Estates, Karachi was attached by order dated 28.3.1995. The attachment was only to the extent of 25% share of J.D No.5 in said property alongwith other legal heirs. The said property was attached in Ex.No.35/1993. However, after dissolution of CIRC, National Bank took over all the execution proceedings which include this Ex.35/1993 filed by UBL and another Ex.No.25/1996 also filed by UBL.

Mr. Neel Keshav, learned counsel informs that an Ex. No.40/2009 on behalf of D.H. NIB Bank was also ordered to be tagged with these proceeding and it has regularly been tagged with these proceedings but the execution application is not listed today. Office is directed to explain why Ex.No.40/2009 has not been placed before the Court. Through listed applications the order dated 13.5.2014 have been challenged. Irrespective of the claim of the applicants during the course of arguments it has transpired that J.D No.5 got his property released from the National Bank after satisfying the decree to the extent of his liability in the judgment in

Ex.No.35/1993, therefore, by default 25% of this property was reverted to J.D No.5, and he is also equal party as J.D in other Ex.No.25/1996 and Ex.No.40/2009. Since J.D is still to satisfy the decree in Ex.No.25/1996 & Ex.No.40/2009, therefore, said property should not have been sold by him straightaway under the cover that he has discharged his liability in Ex.No.35/1993.

Mr. Moin Azhar Siddiqui appearing on behalf of purchaser of the said property from owner (J.D.No.5). His client purchased the same after order of release from the bank and prior to the filing of applications listed today. Order of the release of attachment is not available and if at all such order can be inferred it was only limited to the release of property in Ex.No.35/1993 and it was not released in two other executions pending. Irrespective of the fact there was no formal attachment order in two executions proceedings, the fact remained that J.D was fully aware about pendency of the two other executions proceedings which were tagged with the present execution against him and yet he sold 25% attached share in the property simply on release of the property in Ex.No.35/1993. Since J.D No.5 was fully aware that he is under obligation to satisfy other decrees, therefore, sale of the said property is not free from malafide and it is objectionable, therefore, the property sold after releasing from Ex.No.35/1993 is attached again in Execution No. 25 / 1996 and 40/2009. This order is passed in presence of new purchaser who is represented by Mr. Moin Azhar Siddiqui on his undertaking at the bar that his client will not create any third party interest in 25% share in the said property. The new purchaser of this property is hereby restrained from creating any charge on 25% of the property bearing No.H-23, LITE, near Dawood Chowrangi, Landhi Industrial Trading Estates, Karachi. Office is directed to place for hearing Ex.No.25/1996 & Ex.No.40/2009 on the next date of hearing and copy of this order be placed in both execution proceedings.

Learned counsel for the J.D No.5 claims that Ex.No.40/2009 filed by NIB Bank was hopelessly time barred. He may argue the question of maintainability of execution No. 40 / 2009 on next date.

1 to 5. Deferred.

6 & 7. Official Assignee to assist that whether his references are still pending or have become infructuous.

JUDGE

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