

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.696/2007

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For orders on Official Assignee Ref: No.7/2014
 2. For hearing of CMA No.9507/2014 (U/s.151 CPC)
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30.10.2014

Mr. S. Shakeel Ahmed, Advocate for the Plaintiff.
Mr. M. Masood Khan, advocate for the Defendant No.1.
Mr. Noman Jamali, advocate for Auction Purchaser.
Mr. Qadir Bux Umrani, Official Assignee.

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1. Counsel for the Defendant No.1 has raised three objections to the confirmation of the bid through Reference No.7/2014. The first objection is that despite consent order in HCA No.252/2010 dated 02.3.2011 the valuation of the property has not been properly ascertained by the Nazir of this Court before the auction of suit property on "AS IS WHEREAS BASIS" and the value as determined by the Nazir was not proper. Second objection is that the learned Official Assignee in the reference has suggested that dues on the property may be adjusted from the sale proceed. This is negation of the language of the advertisement for sale as property was to be sold on "AS IS WHEREAS BASIS" in terms of the publication. Third objection of Counsel for the Defendant No.1 is that in para-10 of the plaint the property has been valued to tune of Rs.25 crore by the plaintiffs themselves.

Counsel for the bidder has contended that objection regarding valuation has been taken by the Defendant No.1 after the process of the bidding has been completed and 25% of the sale price has already been deposited by him. This objection should have raised before bidding and it should not have been made after deposit of 25% of the bid. Even otherwise out of 25 claimants of the property as legal heirs, most of them have already given no objection to it. The counsel of the bidder concedes that bidder has participated in the bid pursuant to the advertisement and he is bound by the terms and conditions given in the advertisement.

I have carefully examined the contention of the respective parties. This is a suit for partition of the property of the deceased. All the Defendants are legal heirs and if the property is not sold at higher price everybody will suffer equally. However, if property is not sold at the price already offered in the last seven years, only those legal heirs will suffer who are not in possession of any portion of the property therefore, delay would defeat the right of other legal heirs who are waiting for the end of this litigation. The Nazir's valuation report in terms of order in HCA was in the knowledge of Defendant No.1 right from 2011 when the property for the first time was put to auction through publication dated 24.1.22011 and reserved price was mentioned in the publication notice. Since the very order of the High Court was also by consent, the defendant No.1 should have not waited for almost about two years to raise this objection on the method of valuation without offering better price even after three years of order in HCA. Therefore, I am not inclined to accept the objection as bona-fide for **not** accepting the offer of the bidder. As far as value shown in the plaint is concern that is not binding on the parties and the same plaintiffs have no objection to price offered by the bidder. However, as a matter of last chance all the parties in the suit are given 15 days' time from today to bring better offer to match the offer of the bidder and be ready to increase 5% of value for return of the amount of the bidder if they wish so. After 15 days if no activity is done by the objectors/legal heirs the offer mentioned in the reference shall be deemed to have been confirmed on 15.11.2014. In view of above discussion reference of Official Assignee is disposed of with directions that he should complete the transaction in terms of the publication.

Reference stands disposed of.

2. Dismissed as infructuous.

JUDGE