

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S-758 of 2025

Kamran

Versus

Mst. Zaitoon and others

DATE	ORDER WITH SIGNATURE OF JUDGE(s)
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Date of Hearing: 21.05.2026.

Date of Order: 17.08.2026.

Date of announcement: 24.08.2026.

M/s. Nousheen Khan Tajammul, Abdul Hakeem, Advocate for petitioner.

Mr. Muhammad Khalid, Advocate for Respondent No.1.

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ORDER

ZULFIQAR ALI SANGI, J: Through this Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called in question the legality and propriety of (i) the order dated 13.07.2024 passed by the learned IVth Additional District Judge, Karachi Central in Civil Revision No.24 of 2022, whereby the revision preferred by the petitioner against the order dated 03.03.2022 was dismissed; and (ii) the order dated 03.03.2022 passed by the learned IIIrd Senior Civil Judge, Karachi Central in Civil Suit No.742 of 2010, whereby an application purportedly filed by respondent No.1 under Order XXI Rules 88 and 89, C.P.C. was allowed and she was permitted to deposit the amount of the highest bid for purchasing the suit property in preference to the petitioner, who had emerged as the highest bidder in the auction.

2. Briefly stated, the facts giving rise to the present petition are that deceased Abdul Waheed son of Abdul Hameed died at Karachi on 22.10.1990, leaving behind, inter alia, immovable properties bearing Plot Nos.10/755 and 10/754, Liaquatabad, Karachi. Some of his legal heirs instituted Civil Suit No.742 of 2010 for declaration, administration, rendition of accounts and permanent injunction in respect of the said properties. During pendency of the suit, an application under Section 3 of the Partition Act, 1893 was filed seeking determination of the value of the property and purchase of the shares

preliminary decree was passed whereby the Nazir of the concerned District Court was appointed to ascertain the market value of the suit properties and to dispose of the same through public auction, with direction to distribute the sale proceeds amongst the legal heirs according to their respective shares under the applicable law.

3. In pursuance of the aforesaid preliminary decree, the Nazir conducted auction proceedings on 27.07.2021 in respect of Plot No.10/755, Liaquatabad, Karachi. The petitioner offered the highest bid of Rs.51,75,000/- and deposited the requisite amount of Rs.11,00,000/-, being one-fourth of the bid amount, through pay order. Subsequently, according to the petitioner, the entire sale consideration was deposited within the prescribed period.

4. After conclusion of the auction, respondent No.1 initially moved an application under Section 151, C.P.C. seeking permission to bring a purchaser offering Rs.60,00,000/-. Thereafter, on 11.08.2021, she filed an application purportedly under Order XXI Rules 88 and 89, C.P.C., claiming that she was a co-sharer/legal heir and had a preferential right to purchase the property by matching the highest bid offered by the petitioner. She also expressed willingness to deposit the share of the other legal heirs and five percent of the purchase money for payment to the auction purchaser.

5. The petitioner contested the application and specifically raised objections regarding its maintainability. It was contended that respondent No.1 had neither participated in the auction nor offered an equal bid at the time of sale; that the auction had already been concluded; that the mandatory five percent amount contemplated by Rule 89 had not been deposited with the application; and that the other statutory requirements had likewise not been fulfilled. Similar objections were raised by respondent No.2. The learned trial Court, however, vide order dated 03.03.2022, allowed the application under Order XXI Rule 88, C.P.C., holding respondent No.1 to be a co-sharer and directing her to deposit the amount of the bid within fifteen days, failing which the bid of the petitioner would stand confirmed.

6. Aggrieved, the petitioner preferred Civil Revision No.24 of 2022 before the learned IVth Additional District Judge, Karachi Central. The learned Revisional Court, vide order dated 13.07.2024, dismissed the revision, principally holding that the bid offered by the petitioner was merely in the nature of an offer and did not create an enforceable right

until acceptance and confirmation of sale by the Court. Reliance was placed, inter alia, upon the judgment of the Hon'ble Supreme Court in *Jawed v. First Women Bank Ltd. and others* (2020 SCMR 2134). Hence, the present petition.

7. Learned counsel for the petitioner has contended that the Courts below have misconstrued the scope and application of Order XXI Rules 88 and 89, C.P.C. According to him, Rule 88 applies only where, at the time of auction, two persons offer the same amount and one of them is a co-sharer. It does not confer upon a co-sharer an unfettered right to intervene after conclusion of the auction and displace the highest bidder merely by offering to match his bid. It is further contended that the requirements of Rule 89 are mandatory and that respondent No.1 failed to deposit the amount required by law, including the five percent compensation payable to the auction purchaser. It is argued that the petitioner, on the other hand, had complied with the terms of auction and deposited the entire sale consideration, and therefore the sale ought to have been confirmed in his favour.

8. Learned counsel for respondent No.1 has supported the impugned orders and submitted that respondent No.1, being a co-sharer in the suit property, possessed a preferential right to acquire the property. It has further been argued that no vested right accrued in favour of the petitioner merely because he had offered the highest bid, as the sale had not yet been confirmed by the Court. It is therefore contended that the learned Courts below rightly exercised jurisdiction in favour of the co-sharer.

9. I have heard learned counsel for the parties and have carefully examined the record and the impugned orders.

10. The principal question requiring determination is whether respondent No.1, after conclusion of the auction, could invoke Order XXI Rule 88, C.P.C. merely by offering to match the highest bid, and whether the requirements of Rule 89 had been duly complied with.

11. Before proceeding further, it would be appropriate to examine the statutory scheme. Order XXI Rule 88, C.P.C. deals with a specific situation arising at the time of sale. The rule contemplates that where two or more persons, one of whom is a co-sharer, bid the same amount for the property, the bid of the co-sharer shall be deemed to be the bid of the co-sharer. The statutory preference is thus linked to the auction

itself and to the contemporaneous making of an equal bid. The provision cannot reasonably be construed as conferring a general right upon a co-sharer to remain absent from the auction, permit another person to become the highest bidder and thereafter, after the auction has concluded, seek substitution by filing an application offering to match the highest bid. In the present case, it is an admitted position that respondent No.1 did not participate in the auction held on 27.07.2021 and did not make any bid at the time of auction. The petitioner alone emerged as the highest bidder. Respondent No.1 approached the Court subsequently and, on 11.08.2021, sought permission to match the highest bid. Thus, the very factual situation contemplated by Rule 88, namely, competing bids of the same amount at the time of sale, was absent. The learned trial Court, therefore, fell into error in treating the mere status of respondent No.1 as a co-sharer as sufficient to invoke Rule 88, without first examining whether the statutory conditions prescribed by the rule existed.

12. The matter assumes greater significance when examined in the context of Rule 89. Rule 89 is not merely procedural in character. It prescribes specific conditions upon which an application to set aside a sale may be entertained. The person seeking relief under the rule is required to make the deposits prescribed therein within the statutory framework. The requirement relating to payment of five percent of the purchase money to the purchaser is specifically intended to compensate the auction purchaser whose bid has resulted in the sale proceedings and who is sought to be displaced. Such statutory requirement cannot be substituted by a mere undertaking or expression of willingness to deposit the amount subsequently.

13. The record shows that respondent No.1 did not accompany her application with the requisite statutory deposit. In particular, the five percent amount payable to the auction purchaser was not deposited in accordance with Rule 89. The learned trial Court nevertheless entertained and allowed the application without recording any lawful basis for dispensing with the mandatory requirement. In our legal system, where a statute prescribes a particular condition as a prerequisite for invoking a remedy, the Court cannot dispense with such condition on equitable considerations or merely because the applicant claims a preferential interest in the subject property.

14. It is equally important to note that the application filed by respondent No.1 was not an application challenging the auction on the ground of fraud or material irregularity causing substantial injury within the contemplation of Order XXI Rule 90, C.P.C. Nor were the statutory prerequisites of Rule 90 complied with. The learned trial Court itself observed that the grounds advanced by the parties questioning the auction proceedings would fall within the scope of Rule 90. Having so observed, the Court could not thereafter permit respondent No.1 to achieve, indirectly through Rule 88, what could not lawfully be achieved under Rule 90.

15. The Revisional Court principally proceeded on the premise that the highest bid of the petitioner was merely an offer and that no enforceable right accrued to him before confirmation of sale. There can be no quarrel with the general proposition that an auction sale conducted by a Court does not become absolute merely upon the highest bid being offered and that the sale remains subject to confirmation in accordance with the provisions of Order XXI, C.P.C. The principle, however, does not mean that every person claiming to be a co-sharer may, after conclusion of auction, displace the highest bidder without satisfying the statutory requirements prescribed by the Code. The distinction between *absence of an absolute right in the auction purchaser before confirmation and existence of a lawful right in a subsequent claimant to displace the auction purchaser* is material. The former does not automatically establish the latter.

16. The judgment of the Hon'ble Supreme Court relied upon by the learned Revisional Court in *Jawed v. First Women Bank Ltd. and others* (2020 SCMR 2134) lays down the general principle concerning the nature of a bid and the necessity of confirmation of sale. However, the said principle cannot be read as authorizing departure from the express requirements of Order XXI Rules 88 and 89, C.P.C. The question before this Court is not whether the petitioner's bid, by itself, had attained the status of an absolute sale; rather, the question is whether respondent No.1 had acquired a statutory right, after the auction, to substitute herself for the highest bidder without complying with the conditions prescribed by law. In my considered view, she had not.

17. Another material circumstance is that the petitioner had deposited the entire bid amount of Rs.51,75,000/- pursuant to the auction proceedings. The Nazir had accepted the amount and submitted

the relevant report before the learned trial Court. The auction was conducted pursuant to the preliminary decree dated 10.07.2013. No finding has been recorded by either of the Courts below that the auction itself was vitiated by fraud, collusion or any material irregularity causing substantial injury to any person. Nor was the sale set aside upon any legally established ground under Order XXI Rule 90, C.P.C. In these circumstances, the Court was required to consider the petitioner's claim in accordance with the statutory scheme governing confirmation of judicial sales.

18. It is also pertinent that respondent No.1 admittedly approached the Court after the auction had concluded. Her subsequent application cannot be treated as a continuation of the bidding process. Once the auction had been concluded and the highest bid had been recorded, a person who had not participated in the auction could not retrospectively create an equal bid for the purposes of Rule 88. To hold otherwise would render the auction process uncertain and expose every concluded judicial auction to indefinite claims by persons who had chosen not to participate when property was actually put to sale.

19. The preferential right of a co-sharer, where recognized by law, is undoubtedly entitled to protection. However, such right must be exercised within the four corners of the statutory provision conferring it. A preferential right cannot be enlarged into an unrestricted right of substitution after completion of the auction. The Courts are required to balance the rights of co-sharers with the sanctity and finality of judicial auction proceedings. The latter cannot be undermined merely on the basis of an unaccompanied offer to match the highest bid.

20. The learned trial Court, therefore, committed material illegality in allowing the application under Order XXI Rule 88, C.P.C. despite the absence of the essential factual condition contemplated by that provision and despite non-compliance with the statutory requirements of Rule 89, C.P.C. The learned Revisional Court, instead of correcting the said jurisdictional and legal error, affirmed the impugned order principally on the ground that the petitioner's bid had not yet been confirmed. In doing so, it failed to address the fundamental question as to whether respondent No.1's application itself was maintainable.

21. The jurisdiction of this Court under Article 199 of the Constitution is undoubtedly extraordinary and discretionary. Ordinarily, concurrent findings of fact recorded by the Courts below are not interfered with in

constitutional jurisdiction. However, where such findings are founded upon misreading of the statutory provisions, failure to exercise jurisdiction in accordance with law, or assumption of jurisdiction where none exists, constitutional interference becomes justified. The present case falls within that exceptional category. The impugned orders do not merely contain an error of appreciation; rather, the Courts below have permitted a statutory preference to be exercised in a manner not contemplated by Order XXI Rule 88, C.P.C., while overlooking the mandatory requirements attached to the remedy invoked.

22. For the foregoing reasons, this Court is of the considered view that the impugned orders dated 03.03.2022 and 13.07.2024 cannot be sustained in law. Accordingly, the present Constitutional Petition is allowed. The order dated 13.07.2024 passed by the learned IVth Additional District Judge-IV, Karachi Central in Civil Revision No.24 of 2022 and the order dated 03.03.2022 passed by the learned IIIrd Senior Civil Judge, Karachi Central in Civil Suit No.742 of 2010 are hereby set aside. Consequently, the application dated 11.08.2021 filed by respondent No.1 under Order XXI Rules 88 and 89, C.P.C. is dismissed for want of compliance with the statutory requirements and for being otherwise not maintainable in the circumstances of the case.

23. As regards the petitioner's prayer for confirmation of sale, the record reflects that he was the highest bidder in the auction conducted on 27.07.2021 and that the entire bid amount of Rs.51,75,000/- has been deposited. No legally sustainable ground for setting aside the auction has been established before this Court. The learned trial Court is, therefore, directed to proceed with the matter strictly in accordance with Order XXI, C.P.C., and, subject to completion of any remaining statutory formalities, to confirm the sale in favour of the petitioner and issue the requisite sale certificate in accordance with law. The learned trial Court shall complete the consequential proceedings expeditiously, preferably within sixty days from receipt of a certified copy of this judgment.

24. The petition stands allowed in the above terms.

25. There shall be no order as to costs.

JUDGE