

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Suit No. 1251 of 2008**

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Order with signature of Judge(s)

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1. For hearing of CMA No.10484/2018
2. For hearing of objection to Nazir Report dated 28.04.2018

**31.08.2018**

Plaintiff No.4 Adil Shamsi is present in person  
Syed Muhammad Saleem, Advocate for Auction Purchaser

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1. Through this application a request has been made by the Auction Purchaser of properties being (i) Property bearing Plot No.Ak-13-38-4-1, Street No.3, Masjid Road, Behar Colony Lyari Town, Karachi-South and (iii) Plot No.M-II-E-194, Block-B, Lane No.52, Urdu Bazar, Shershah, Karachi from the properties Schedule, who himself is one of the legal heirs, (namely Syed Ahmed Shah Shamsi) that he may be permitted to deposit a pay order in the sum of Rs.1,750,000/- (Rupees Seventeen Lac and Fifty Thousand only) with the Nazir of this Court in compliance of this Court's orders dated 08.03.2018 and 21.05.2018 respectively to settle the differential of amount claimed under Fiqah Jafri and Fiqah Sunni. Per counsel, infact he has already paid total amount of Rs.15,487,500/- for the purchase of these two properties minus his own share, which sale has already been confirmed by this Court's orders mentioned hereinabove and upon objection raised as to intermarriages between Shia and Sunni Fiqah, a question was posed that in case higher amount is to be paid on account of differential payments in accordance with Fiqah, he is willing to deposit this additional payment, and request is made that having deposited all sums, the possession of the properties be handed over to him. In support of his contention, learned counsel places reliance in the case of Muhammad Saghir Khan v. Hiralal and others, reported as 1982 CLC 1051 [Karachi] and NLR 1982 Civil 101 and case of Lokman Chhabilal Jain Bani v. Motilal Tulsiram Agarwala and another (AIR 1939 Nagpur 269).

This application has been opposed by Plaintiff No.4, who submits that a stay has been granted in Appeal bearing HCA No.81 of 2018, a copy of the stay

order has been provided to the Court, where on 03.04.2018 my learned brothers were pleased to issue pre-admission notice to the respondents, however as an interim measure, held that the proceeds of the sale of immovable properties may not be distributed till the next date.

Heard the parties and reviewed the record.

Interestingly the appeal referred in above infact has been preferred by the Auction Purchaser and not by the Plaintiff No.4 with regard to his CMA No.14516 of 2017 which was dismissed in *limine* on point of limitation by the order dated 08.03.2018 at Sr.09, which has nothing to do with regards payment of full or additional consideration by the highest bidder or handing over possession of the said properties to him, therefore, I do not consider the said appellate Court's order to pose any impediment in allowing this application. This Court vide its orders dated 08.03.2018, as well as, 21.05.2018 has already accepted the highest bids from Mr. Shah in respect of the Properties at Sr.1 and 3 detailed hereinabove and the objections raised by the Plaintiff No.4, who candidly admitted in his arguments that he himself is interested to purchase these properties cannot be entertained at this juncture when he himself is one of the legal heir and did not offer the highest price when bids were open.

In these circumstances objections are dismissed. Resultantly the application becomes successful. Nazir is directed to accept the pay order and deposit it in the pool of money where he has already placed the previous sums for the benefit of all the legal heirs, which sums however not to be distributed since an order in HCA No.81 of 2018 is passed against distribution of these sums. Under these circumstances when bids have already been accepted and confirmed by this Court, monies fully paid, I do not see any impediment as to why possession of the Properties at Sr.1 and 3 should not to be handed over to the Auction Purchaser. Order accordingly.

JUDGE