

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C. P. No. D-3818 of 2021

Present:-

Ahmed Ali M. Shaikh, CJ &
Yousuf Ali Sayeed, J

Petitioner : Muhammad Maqsood, through
Nausheen Tajammul, Advocate.

Respondent No.1 : Tauheed Sultan through Aijaz
Shirazi, Advocate.

Respondent No.2 : Mehboob Siddiqui through Asim
Iqbal, Advocate.

Date of Hearing &
Short Order : 16.09.2021

JUDGMENT

YOUSUF ALI SAYEED, J. - Albeit being a stranger to Civil Suit No.1130/2002 (the “**Suit**”) pending before the learned 1st Senior Civil Judge, Karachi, Central, the Petitioner had apparently filed an Application on 11.01.2021 under Section 151 CPC, expressing an offer to purchase the immoveable property under administration therein, bearing House No. III-C-14/11, Nazimabad, Karachi (the “**Suit Property**”), for a sum of Rs.16,500,000/-.

2. The Suit Property was then put to auction, with a Public Notice being published in that regard on 16.01.2021 and the auction being conducted as per the date, time and venue mentioned therein, with an offer of Rs.16,850,000/- being received from the Respondent No.1, who duly deposited 1/4th of the said sum.

3. Thereafter, objections were invited from the parties to the Suit, none of whom came forward in that regard. However, certain objections were forthcoming in writing from the Petitioner, who contended that the auction had ensued without notice specifically having been issued to him and that the publication made in the matter also contained certain defects, hence the proceedings were liable to be cancelled and the auction be conducted afresh so as to enable him to participate and offer a sum in excess of what had been tendered by the Respondent No.1, admittedly a bonafide third party purchaser, in such allegedly defective process.
4. Through an Order dated 18.02.2021, whilst considering the Nazir's Report submitted in respect of the auction proceedings, the Petitioner's objections were dismissed by the trial Court along with his earlier Application under Section 151 CPC, with the sale being confirmed in favour of the Respondent No.1, who was directed to deposit the remaining sale consideration within 15 days from the date of that Order.
5. Being aggrieved, the Petitioner preferred Civil Revision Application No.22/2021 before the learned IVth Additional District Judge, Karachi, Central, which also failed to bear fruit and was dismissed vide Order dated 31.05.2021, with it being observed by the Revisional Court that the Petitioner was neither a party to the Suit nor a participant in the auction and had no locus standi to apply for re-auction when the parties had themselves not raised any objection regarding the auction proceedings or confirmation of the sale in favour of the Respondent No.1. Furthermore, the objection that the Petitioner intended to purchase the Suit Property in the sum specified in his Application under Section 151 CPC was bereft of substance whereas the auction subsequently conducted was well within his knowledge and the sale had even otherwise ensued at a price in excess of what had been offered by the Petitioner.

6. Learned counsel for the Petitioner contended that the fora below had failed to appreciate that the Application filed by the Petitioner in the Suit predated the order for auction and remained pending at that time, hence an intimation ought to have been given to him as regards the auction proceedings, which should not have ensued before the hearing of that application. He argued that since no intimation had been given to the Petitioner, his rights had been adversely affected. Furthermore, he submitted that the trial and revisional Courts had failed to note that as per the Public Notice dated 16.01.2021 the auction had been scheduled for 01.02.2021 and conducted accordingly. Per learned counsel, the timeframe constituted a violation of Order 21 Rule 68 CPC. She further contended that only two persons had participated the auction, one of them being the Respondent No.1 and other the wife of the Respondent No.2, and that there was also a discrepancy as regards the deposit of the balance sale consideration.

7. Conversely, learned counsel appearing for the respective Respondents argued that the Petitioner was a stranger to the Suit and had no vested right/interest in the Suit Property, hence had no locus standi to raise the objections advanced so as to maintain the instant Petition. Furthermore, they emphasised that the parties to the Suit had no grievance as against the auction proceedings and that the sale had been confirmed with a Sale Certificate having then been issued so as to transfer title in favour the Respondent No.2

8. We have considered the submissions advanced at the bar and examined the material on record. Apropos the matter, we consider it expedient to reproduce the operative part of the Order dated 18.02.2021 made in the Suit, which reads as under:-

“I have considered the arguments of both sides and perused the material available on record. It reveals that the applicant Muhammad Maqsood is neither a party to the suit nor the auction proceedings and is more an offerer who did not participate in the auction proceedings. The contention of the learned counsel for applicant Muhammad Maqsood that he was unaware of the auction proceedings becomes immaterial when the notice of the auction is published for the general public in Newspaper. None of the parties have raised any objection on the auction proceedings and after the highest bid and deposit of 25% of the bid amount by the auction purchaser creates a right in his favour which cannot be set aside without proper procedure by any objector under Rules 89 and 90 of Order XXI CPC. I am also not satisfied by the objections of learned counsel for applicant Muhammad Maqsood on pointing out the irregularities in the public auction under Rule 66 of the Order XXI CPC as none of the parties interested in the subject matter and raised any objection and the applicant Muhammad Maqsood has no locus standi to get the auction proceedings set aside.

In view of the above circumstances, and seeking guidance from the case law filed by learned counsel for the plaintiff, the application under section 151 CPC and objections filed by the applicant Muhammad Maqsood are dismissed and the auction proceedings are confirmed. The auction purchaser is directed to deposit the remaining sale consideration within 15 days from this order.”

9. In our view, that approach, as endorsed under challenge by the revisional Court, does not suffer from any error or irregularity, and on query posed as to the legal right, if any, that had crystalized in favour of the Petitioner so as then be transgressed, learned counsel was at a loss to advance any cogent argument or cite any relevant precedent to support the plea.
10. Considering the facts underpinning the matter at hand, it is manifest that there is no error or illegality afflicting the impugned Orders as no right ever accrued in favour of the Petitioner, who accordingly had no had no *locus standi* to apply for re-auction. Furthermore, under the given circumstances of the case, where the Respondent No.1 is evidently a bona fide purchaser, upon confirmation of the sale in his favour the same has become sacrosanct and cannot be disturbed.

11. That being so, we had dismissed the Petition through a short Order made in Court upon culmination of the hearing on 16.09.2021.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: