

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Ex. No.38 of 2014

Date	Order with signature of Judge
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1. For hearing of CMA No.495/2016.
2. For hearing of Nazir's Report dated 28.11.2016.

27.02. 2017

Mr. Khawaja Muhammad Azeem, Advocate for Decree Holder.
Mr. Afaq Yousuf, Advocate for Judgment Debtor No.2 & 3.
SHO Sheral Khoso, P.S. Memon Goth is present.

Through CMA No.495/2016, filed under Order 21 Rule 90 C.P.C, the judgment debtors No.2 & 3 are seeking setting aside of the sale of the property in question. At the very outset, learned Counsel for the judgment debtor No.2 & 3 submits that in fact this is an application under Order 21 Rule 89 CPC and not Rule 90 CPC. The contention is so recorded and accepted in the interest of justice.

Learned Counsel submits that the property being sold through Nazir's Reference dated 28.11.2016 is a joint property of the decree holders and judgment debtors, whereas, pursuant to a compromise decree, the judgment debtors No.2 & 3 are ready and willing to deposit the share of the decree holders arising out from the property in question. Per learned Counsel an offer of Rs.70,00,000/- has been received, out of which 1/8th share of decree holder is Rs.8,75,000/-, which the judgment debtors No.2 & 3 are ready and willing to deposit to protect the property in question, which is owned by them in majority. In the circumstances, he requests for granting the application and setting aside the sale of the property in question.

On the other hand, learned Counsel for the decree holder submits that a compromise decree was passed in this matter way back on 12.08.2011 and pursuant to para-3 of the compromise decree, the Judgment Debtor Nos. 2 & 3 were required to pay an amount of Rs.1,65,00,000/-, out of which only an amount of Rs.48,00,000/- has been paid, whereas, vide Para-6 of the

Decree, they are also required to pay interest at the rate of 20%, in case of delay in such payment. He therefore, submits that the sale of the property in question be confirmed and the application be dismissed.

I have heard both the learned Counsel and perused the record. Insofar as the compromise decree in question is concerned, it appears that the dispute between the decree holders and the judgment debtors was in respect of various properties left by deceased Aslam Pervaiz as parties appear to be his legal heirs. The property in question being sold is one out of several properties of the deceased. The contention of the learned Counsel for Judgment Debtor Nos. 2 & 3 to the effect that it is only 1/8th share of the decree holders, which is required to be deposited in the Court for grant of an application under Order 21 Rule 89 CPC, appears to be wholly misconceived inasmuch as this provision enables as well as facilitates the judgment debtors to seek indulgence from the Court for setting aside of a sale. However, it is only possible when the judgment debtors not only deposit the entire decretal amount but also an amount of 5% as against the claim of auction purchaser, if any. Though the property may be owned by the judgment debtors as well as the decree holders according to their respective shares; however, insofar as the decree in question is concerned, the same appears to be a money decree for an amount of Rs.1,65,00,000/- against judgment debtors No.2 & 3. It further appears that admittedly the judgment debtors No.2 & 3 have not honoured such compromise decree since long and perhaps are also liable to pay interest to the decree holders. The offer for the property in question is much less than the decretal amount i.e. Rs.70,00,000/-, whereas, the Judgment Debtors during hearing of this application were also given a final opportunity to deposit the amount of entire offer of auction purchaser, however, it was insisted that they can only deposit 1/8th share of decree holder in the property. Therefore, the contention of the learned Counsel for the Judgment Debtors No.2 & 3 is not tenable and cannot be accepted. This neither complies the mandatory requirement of Order 21 Rule 89 CPC, nor it is the spirit and mandate of law.

It may also be noted that insofar as the decree in question is concerned, there is no objection pending on it as they had failed to file any such objections and on 5.8.2015, this Execution application was allowed by directing the judgment debtors to deposit the decretal amount. Moreover, the judgment debtors have not raised any objection on the sale procedure adopted by the Executing Court.

In view of hereinabove facts and circumstances of the case, the application under Order 21 Rule 89 CPC is dismissed, whereas, the Nazir's report dated 28.11.2016 is taken on record and the offer of Rs.70,00,000/- given by the auction purchaser is accepted. Let balance sale consideration be deposited by the auction purchaser within 15 days from today.

Application is disposed of as above and the report is taken on record.

Ayaz P.S.

JUDGE