

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Ex. No.06 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of O.A's Reference No.06/2016. (C.A. filed)

19.01.2017.

Mr. A.I Chundrigar, Advocate for Plaintiff alongwith Fida Hussain,
Law Officer, HBL.

Mr. Khan Pervaiz Chang, Official Assignee.

MUHAMMAD JUANID GHAFAR J.- Through listed Reference No.06/2016, the Official Assignee has requested the Court for directions to the Decree Holder to deposit his fee on the amount of Rs.353.60 Million i.e. decretal amount, recovered from the Judgment Debtor subject to administrative approval of Honourable Chief Justice.

2. Learned Counsel for the Decree Holder has filed his objections to the said Reference through a Counter Affidavit and has contended that since no sale of the property in question took effect through any order of the Court, therefore, the Official Assignee is not entitled for such fee. He further submits that the decree is though satisfied in this matter, however, it is because of a compromise between the parties, whereas, the Decree Holder has settled the dispute for an amount, which is much less than Judgment and Decree in this matter. Per learned Counsel the amount being claimed by the Official Assignee is too excessive and the Decree Holder/Bank is without prejudice, willing to pay a reasonable amount for his services as may be ordered by the Court.

3. On the other hand, learned Official Assignee, present in Court submits that he was directed by the Court vide Order dated 09.10.2014 to attach the property including preparing an inventory, posting of chowkidars/guards and issuing a Sale Proclamation and conducting the auction proceedings. He further submits that the decree has though finally, not been satisfied by sale of the property through Court, but the Official Assignee's Office has rendered its services completely and even bids were secured, which were much higher than the reserved prices, therefore, he submits that in view of Appendix "C" of Rule 128 of the Sindh Chief Court Rules (Original Side) the Official Assignee and his Office is entitled for payment of the fee as per Rules. He has also referred to an earlier order dated 4.10.2016 whereby, the fee was sanctioned subject to entitlement and rules.

4. I have heard the learned Counsel for Decree Holder and the learned Official Assignee and perused the record. It appears that instant Execution Application was filed pursuant to a compromise judgment and decree passed in Suit No.B-102/2009 and on 09.10.2014 the first order for execution of the decree was passed by the Court through attachment and sale of the mortgaged property after dismissing the objections of the Judgment Debtor. It is not disputed that thereafter the Official Assignee from time to time has proceeded further, pursuant to various orders passed by this Court including attachment, posting of Chokidars, making up of an inventory, issuing of Sale Proclamation, conducting auction proceedings and receiving bids from various prospective bidders and while carrying out such exercise, he has placed before the Court at least five (5) References of different dates. After issuance of sale proclamation and auction proceedings through his Reference

No.04/2015, it was brought to the notice of the Court that the highest bid was received from M/s. Sunrise Pipes Tech Limited for an amount of Rs.32.90 Crores for one property and Rs.9.60 Crores for the other property. It further appears that in the meantime the Judgment Debtor preferred HCA No.338/2014 and Spl. HCA 285/2015, however, for the present purposes it is only Spl. HCA No. 285/2015, which is relevant. This Special High Court Appeal was disposed of vide order dated 6.10.2015 after the parties in this matter reached a compromise and certain payments were made by the Judgment Debtor immediately, with a promise to pay the balance amount of the Decree within the agreed period. It further appears that pursuant to such disposal of the Special High Court Appeal, the decree stands satisfied and this Execution Application was disposed of vide Order dated 04.10.2016.

5. The precise arguments so raised on behalf of the decree holder appears to be that since no sale has taken effect practically through the Court, nor any Sale Certificate is issued by the Court, therefore, the Official Assignee is not entitled for the fee being claimed as per Rules specially the Sindh Chief Court Rules (Original Side). It is their case that though they are willing to pay the Official Assignee, but such amount should be reasonable and not that excessive as is being claimed by the Official Assignee. In this regard reference may be made firstly to Order 21 Rule 66 CPC, which provides for issuance of Proclamation of Sale by public auction. It is not in dispute that in this matter a Proclamation of Sale was issued by the Official Assignee pursuant to directions of this Court and various parties participated in the bidding process and approximately an offer of Rs.42.50 Crores (subsequently increased) was received and was placed before the Court for acceptance. The other relevant provision is Appendix "C"

prescribing the scale of Process Fee pursuant to Rule 128 of the Sindh Chief Court Rules (Original Side), which provides in Para-IV, payment of *fee at the rate of 2% up to sale price of Rs.1000/- together with a further fee on all excess of gross proceeds above Rs.1000 at the rate of 1 per cent.* In fact the Official Assignee has claimed the fee at the rate of 1 per cent of the decretal amount realized by the Decree Holder. This scale of fee is provided for every proclamation for sale under Order 21 Rule 66 CPC. The learned Counsel for Decree Holder has contended that since the sale was not finally materialized through Court, therefore, this provision will not apply and the Official Assignee is not entitled for the fee being claimed. However, I am not inclined to agree with such contention for the reason that this rule does not specifically provides that this fee would only be payable once sale has been finally affected through the Court. What it provides in Column-1 is "*for every proclamation of sale under Order 21 Rule 66 CPC*". It is not in dispute that such proclamation was issued by the Court through the Official Assignee. On the other hand, it is further an admitted position that the entire exercise was carried out by the Official Assignee in furtherance of various orders passed by this Court, which resulted in receiving the highest bids by the Auction Purchaser, who also deposited the earnest money and kept on pursuing his offer for depositing the entire balance sale consideration. It is to be appreciated that it all went on but because of the efforts of the Official Assignee's office. Contrary to this, the Decree Holder on its own entered into a compromise and by satisfaction of the decree has received the amount of Rs.353.60 Million and such act on the part of the Decree Holder cannot benefit them by not paying the Official Assignee's fee as claimed. The compromise was a voluntary act of the decree holder and was never forced or asked by the Official Assignee or the Court. Once the process was completed for sale of the property as ordered

by the Court through the Official Assignee, the Decree Holder was required to pay the Official Assignee's fee and such fee is to be paid notwithstanding the fact that the sale was not finally confirmed and executed through the Court as long as the decree stood satisfied. The Decree Holder is liable to pay Official Assignee's fee in this matter, who rendered services to the fullest possible extent as required, whereas, the remaining part of the sale was not proceeded with only because of the act of the Decree Holder, who entered into a compromise. It further appears from the record that thereafter vide order dated 12.1.2016 in Spl H.C.A 285/2015 the original title documents of the property have also been released by the Official Assignee to the Judgment Debtor, whereas, the Judgment Debtor has also settled the claim of another creditor namely Askari Bank by paying off their liability, which otherwise was also required to be paid out of the excess of the sale proceeds in this Execution, if any. Therefore, I do not see any reason to accept the objections of the Decree Holder, as they cannot be sustained.

6. In view of hereinabove facts and circumstances of the case, the Official Assignee's Reference No.06/2016 is taken on record and is disposed of by directing the Decree Holder/Bank to deposit the fee of Official Assignee as claimed in this Reference, which on such deposit shall be released to the Official Assignee, however, subject to administrative approval of the Hon'ble Chief Justice.

J U D G E

Ayaz P.S.