

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Ex. No. 57 of 2018

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For orders on CMA No. 322/19. (U/A)

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**23.09.2019.**

Mr. Muhammad Arif Shaikh, Advocate.

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Urgency granted. CMA No. 273/2019 is taken up for orders. This is an application filed by the auction purchaser requesting return of the bid amount deposited pursuant to auction of the property i.e. Bungalow No.7, 7<sup>th</sup> Gizri Lane, Defence Housing Authority, Phase-IV, Karachi measuring 1522 sq. yds., pursuant to order dated 30.8.2018, whereby this Execution application was allowed. Subsequently, Court auction was conducted through the Nazir of this Court who furnished his report dated 30.4.2019, and informed that the auction purchaser has given the highest bid which was, with consent of the Counsel for the Decree Holder accepted for an amount of Rs.80,000,000/- duly deposited by the auction purchaser, and when the report of the Nazir was placed before the Court, the same was allowed vide order dated 20.5.2019 in terms of Para 3 thereof. However, no absolute order for confirmation of sale has been passed by the Court in terms of Order 21 Rule 92 CPC, as after passing of order dated 30.4.2019, no further report of the Nazir was placed before the Court.

It further appears that thereafter, notwithstanding the fact that the offer was accepted with the consent of the Counsel for decree holders, subsequently an application for discharge of Vakalatnama was filed by their Counsel and was even entertained by the Court without looking into the fact that the bid stands accepted with their consent. Again Notwithstanding this, as an indulgence notice of this application was sent to the decree holders and as per DHL receipt and tracking report, it stands served on one of the decree holders, whereas, it could not be served upon the other as the address is incorrect.

Counsel has also referred to CMA No. 269/2019, which was an application for discharge of Vakalatnama, wherein, the correspondence is annexed, which reflects that the decree holder(s) are well aware of discharge of Vakalatnama of their Counsel. In the circumstances, when the auction purchaser, by himself, does not want to proceed further, whereas, neither the possession has been handed over to the Court Auctioneer (Nazir) nor the documents of the property, it would be highly inappropriate to retain the amount deposited by the auction purchaser any further. It also appears to be an admitted position the decree in question was by way of a compromise, whereby, in addition to other issues, the sale of the property in question was to be carried out with the consent of all parties to the compromise, through an Estate Agent. At the very outset, the Court was not properly assisted in this context as apparently the Court auction was not a proper course to be adopted, especially in absence of taking over of the possession and documents of the property.

Accordingly, this application is allowed. Nazir is directed to refund the amount of the offer i.e Rs.80,000,000/- to the auction purchaser, upon proper identification, with profit accrued, if any. Application stands disposed of.

J U D G E

Avaz P.S.