

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
S.M.A. No. 182 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

For order on CMA No. 618/2020 (if granted)

25.06.2020.

Mr. Riaz Hussain Soomro, Advocate for Petitioner.

For the reasons so stated in the supporting affidavit and submissions made by the learned Counsel for the Petitioner, in the given facts urgency granted.

CMA No. 497/2020 is taken up for orders. This is an application seeking appointment of Nazir to act as Commissioner in respect of the bank accounts mentioned in the Schedule of Properties belonging to the deceased for approaching the Banks; obtaining the amount(s); and then distributing the same amongst the legal heirs. At the very outset, Counsel has been confronted to satisfy as to how such an application is supported by any provision of Law, to which he is unable to satisfy. This succession petition stands allowed, whereas, by consent of all legal heirs an order has already been passed on 14.2.2020 to issue Succession Certificate in the name of the petitioner against personal bond instead of any surety.

In the case reported as ***Muhammad Javed Akhtar v Public at Large*** (1987 CLC 262), it has been held by a learned Single Judge, that “....*The grant of Succession Certificate to a petitioner depends upon his right to claim a share in the estate of the deceased either by virtue of being a heir or a person otherwise entitled under the law to claim a share out of the estate of the deceased. A reading of the provisions contained in sections 370 to 390 of the Act in Part X will show that the grant of Succession Certificate is dependent upon a right to be established thereto. Under subsection (2) of the section "373, the Judge can grant Succession Certificate when he positively reaches the conclusion that the applicant has a right thereto, and not otherwise. The Nazir of this Court cannot possibly fall in any of the categories, so as to enable him to assert a right for grant of Succession Certificate. In my humble view, therefore, the grant of a Succession Certificate in favour of the Nazir of the Court is not possible under the provisions of the Succession Act.*”

Notwithstanding the above judgment, this Court, from time to time, and in peculiar facts of the case, has shown indulgence by exercising discretion in directing Nazir of this Court to approach Bank(s) and obtain the amount lying with them and then distribute the same amongst the legal heirs. However, this at the most, in my opinion can only be done before grant of the petition and order of issuing Succession Certificate in favor of the Petitioner. In this matter this has already been done. Moreover, record reflects that all Banks in respect of which the appointment of Nazir is being sought are outside Pakistan, and therefore, even otherwise no Commissioner can be appointed as prayed. While confronted, Counsel has argued that Banks Head Office in Karachi, can be approached for this purposes. I am afraid this contention does not appear to be convincing at all. Further, it is not established from record or any supporting documents that whether the Petitioner / Administrator has made any effort to approach the Head Office of concerned Banks at Karachi; nor even any details of such Banks have been placed on record. Rather, in a cursory manner, listed application has been filed to burden the Nazir of this Court to carry out such exercise. This is no assistance to the Court from a Counsel.

In the circumstances, Counsel for the petitioner is directed to come prepared and assist the Court as above, failing which the application, being misconceived, will be dismissed without further indulgence.

J U D G E

Avaz P.S.