

ORDER SHEET**IN THE HIGH COURT OF SINDH, KARACHI****High Court Appeal No.67 of 2007****along with****High Court Appeal No.73 of 2007**

Date	Order with signature of Judge
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HCA No.67/2007

1. For orders on CMA No.2461/2021
2. For orders on CMA No.2060/2021
3. For orders on Nazir report dated 30.04.2019 as at 'A'.
4. For orders on CMA No.1663/2020
5. For orders on CMA No.2433/2021.

HCA No.73/2007

1. For orders on CMA No.2460/2021
2. For orders on CMA No.1278/2015
3. For orders on Nazir report dated 30.04.2021.
4. For orders on CMA No.2346/2002.
5. For orders on CMA No.1664/2020
6. For orders on CMA No.2434/2021.

16.12.2021:

Mr. Asim Mansoor Khan, advocate for the appellants.
 Mr. Khawaja Shams-ul-Islam, advocate for the auction purchaser.
 Mr. Hanif Faisal Alam, advocate for auction purchaser
 Mr. Mureed Ali Shah, advocate for respondents No.1 and 2.
 Mr. Shahid Ali Ansari, advocate for respondent No.5 and 7.
 Mr. Asadullah Shaikh, Advocate for respondent No.9.

CMA No.2460/2021 & CMA No.2461/2021

Urgent applications in both appeals are granted.

CMA No.2433/2021 in HCA No.67/2007

1. Through listed application filed under Section 151 CPC by the Auction Purchaser i.e. M/s R & H Enterprises, duly signed by all the parties who are legal heirs of the deceased, namely, Abdul Rehman Muhammad Qureshi (A.M. Qureshi) in respect of the suit

property i.e. Plot No.84 N.I Line, Saddar, Karachi, left behind by deceased A. M. Qureshi, the parties have agreed to allow the Auction Purchaser to deposit the balance sale consideration in the sum of Rs.922,590,000/- before the Nazir of this Court pursuant to Court's order dated 28.12.2016, whereafter, Nazir to proceed further in terms of para-20 of the listed application and shall distribute the share out of sale proceed in respect of subject property amongst all the legal heirs of Late A. M. Qureshi as per mechanism provided in para 7 and 9 of the compromise application being CMA No.1278/2015. It appears that all the relevant parties have agreed for disposal of the listed application in the above terms, as all the parties have affixed their signatures, whereas, the learned counsel representing the respective parties present in Court have also consented for allowing the listed application in terms as detailed in para 20 of the application.

2. It will be advantageous to reproduce the para 20 of the listed application which reads as follows:-

“20. That without prejudice to the enforceability of the sale conditions as already contained in the Auction Purchaser's Offer Letter and this Hon'ble Court's Order dated 28.12.2016, the Auction Purchaser in order to conclude the transaction and to avoid any unnecessary dispute with the parties to the instant Appeal, the Auction Purchaser is ready to deposit the balance sale consideration of Rs.922,590,000/- (Rupees Ninety Two Crores Twenty Five Lacs Ninety Thousand Only) (**Balance Sale Consideration**,) with the Nazir of this Hon'ble Court within four (4) weeks from the date of this application is allowed, and would have no objection if the same is disbursed among the legal heirs of (Late) A.M. Qureshi in accordance with CMA No.1278/2015 filed in HCA 73/07 (**Compromise**

Application'), or in any other manner which the court deems fit, but subject to the following terms and conditions:-

- i. That the Nazir of this Hon'ble Court immediately on the deposit of the pay order with regard to the Balance Sale Consideration, shall execute conveyance deed of the Subject Property in favour of the Auction Purchaser, and shall ensure that the title being conveyed is free from all claims, liens, encumbrances, charges, and disputes, and to have the Subject Property mutated in favour of the Auction Purchaser before all concerned authorities, and would further hand over vacant peaceful possession of the Subject Property to the Auction Purchaser.
- ii. That the Auction Purchaser shall bear all cost, expenses, taxes, duties, stamp duty, and other charges towards the aforesaid transfer and conveyance of the Subject Property in favour of Auction Purchaser.
- iii. That all rights and interests accrued by virtue of the Commercialization Application made by, Akbar Qureshi, Altaf Qureshi, Iqbal Qureshi, Tariq Qureshi, Nasir Qureshi, and Mst. Seema Rasool, for commercialization of the Subject Property presently pending with the MEO, shall stand assigned to the Auction Purchaser, and the Commercial Lease of the Subject Property shall be executed directly in favour of the Auction Purchaser.
- iv. That the Nazir of this Hon'ble Court shall immediately pay a sum of Rs.104,000,000/- (Rupees One Hundred and Four Million Only) to Muhammad Faisal and Shaukat Ali, out of the shares of Respondent No.5 to8, as per their Settlement Agreement dated 15.01.2020.

- v. That the Nazir of this Hon'ble Court, before paying the legal heirs of (Late) A.M Qureshi their due share, must determine and withhold from the Total Sale Consideration the following (**'the Withheld Amount'**):
 - a) An amount equal to all the outstanding ground rent, dues, taxes, levy, cess, and other charges which may be outstanding against the Subject Property.
 - b) An amount equal to the full commercialization fee rate as per the 2007 Policy extended up to 31.12.2016, and development charges, stamp duty of commercial lease, and all other costs which may be incurred in the process of commercialization and execution of commercial lease of the Subject Property in favour of the Auction Purchaser.

- vi. That this Hon'ble Court may be pleased to direct the Nazir to pursue the aforesaid Commercialization Application of the Subject Property with the concerned authorities on behalf of the Auction Purchaser, and to pay all the commercialization fee, development charges, stamp duty, and all other costs of commercialization from the Withheld Amount.

- vii. That once a commercial lease of the Subject Property has been executed in favour of the Auction Purchaser, any amount which is left surplus with the Nazir of this Hon'ble Court may also be disbursed amongst the legal heirs of (Late) A.M Qureshi according to the above."

3. From perusal of the detail as recorded in the listed application and in view of various orders already passed in the instant High Court Appeal, whereby, the claim of legal heirs of (Late) A.M. Qureshi and the auction proceedings in respect of subject plot

have been recognized and approved, whereas, there seems no objection or dispute to this effect, therefore, apparently there is no impediment if the listed application is allowed in the above proposed terms, as all the relevant parties i.e. appellants No.1 and 2, respondents No.5(iii) & respondent No.5(iv), respondents No.1 and 5(ix), respondents No.2 and 5(x), respondents No.5(i), respondents No.5(ii), respondents No.5(v) and 6, respondents No.5(vi) and 7, respondents No.5(vii) and 8, respondents No.5(viii) and 9, auction purchaser as well as learned counsel for the appellants, auction purchaser, respondents No.1, 2, 5 to 7, except appellant Muhammad Hussain Qureshi have signed the application. According to learned counsel for the parties, the appellant in HCA No.67/2007 has expired, whereas, no one has come forward to be impleaded as party on his behalf nor his counsel is appearing in Court to pursue HCA No.67/2007. Learned counsel for the parties submit that though no one is coming forward on behalf of aforesaid appellant, namely, Muhammad Hussain Qureshi (now deceased) to pursue HCA No.67/2007, however, interest of the appellant through legal heirs, if any, has been secured in the listed application, keeping in view the order dated 25.08.2016, passed by this Court in HCA No.67/2007, according to which, share of the aforesaid appellant has to be withheld by the Nazir of this Court till outcome of the HCA No.67/2007. Accordingly, the above application is allowed by consent of all the parties and their counsel present in Court, however, subject to all just exceptions and without prejudice to right or claim, if any, of any other party or authority in the subject plot.

At this juncture, learned counsel for auction purchaser has drawn attention of this Court to various orders already passed by this Court, including order dated 28.12.2016, whereby, according to learned counsel, commercialization policy of Military Estate Office in respect of subject plot was extended, whereas, directions were issued to the Nazir of this Court to assist the process of commercialization of the subject plot in terms of Policy of 2016 as according to learned counsel, in view of pendency of instant High Court Appeal, and non-compliance of Court's order by MEO, the needful could not be done during pendency of instant High Court Appeal. It has been requested that Nazir may be directed to pursue the process of commercialization with the MEO as per Commercialization Policy 2016, pursuant to Court orders already passed in this regard, particularly order dated 28.12.2016, and the assurance given by the officials of MEO to this effect, whereas, the Commercialization Policy of 2016 shall be extended in respect of subject plot till the application for commercialization is finally decided by the MEO. Such request being reasonable and in consonance to earlier orders already passed in the instant High Court Appeal, is accorded to and the Nazir is directed to do the needful accordingly. Listed application stands disposed of in the above terms, whereas, the HCA No. 67/2007 is adjourned to be fixed after winter holidays.

CMA No.1278/2015 in HCA No.73/2007

Through listed application filed under Order 23 Rule 3 read with Section 151 CPC, duly signed by the appellants No.1 and 2; respondents No.1 to 8, supported by their respective affidavits, and also signed by their respective counsel, it has been prayed that

instant High Court Appeal may be disposed of in terms of compromise reached between the parties and decree may be prepared accordingly. Learned counsel for the parties, who are all legal heirs of late A.M. Qureshi, submit that all the legal heirs have agreed for disposal of instant appeal in terms of compromise reached between the parties as reflected to in Paras (i) to (xv) of instant application, whereas, both the learned counsel for auction purchaser present in Court have also verified such factual position and have agreed for disposal of listed application in the above terms. It has been submitted by the learned counsel for the parties that this compromise is, however, without prejudice to any right, title or claim of any other party in respect of subject property.

Accordingly, by consent, listed application stands disposed of in terms of the compromise reached between the parties as per Paras (i) to (xv) of instant application, which are reproduced hereunder for the sake of record.

- i. That Mr. A.M. Qureshi expired on 22.06.1989. He was survived by the respondents No.1, 2 and 3 i.e. his children from his first pre-deceased wife i.e. Mrs. Kulsoom Bibi, whereas, Appellants and Respondents No.5 to 10 i.e. his children from his second wife namely, Mrs. Hafeezunnisa. (Hafeezunnisa died on 30.11.1996). The respondent No.4 (Muhammad Hussain Qureshi) the Appellant in HCA 67 of 2007 also claims to be a legal heir of late A.M. Qureshi;
- ii. That civil Suit No.756/1998 before the Hon'ble High Court of Sindh at Karachi was preferred in respect of plot of land bearing No.84, N.I. Lines, Saddar Karachi;
- iii. That in the said civil suit, Mrs. Shahida Qureshi and Mr. Sabir Qureshi filed their written statements supporting in full, the gift instruments impugned therein. Further, the parentage of Muhammad Hussain Qureshi was also disputed, claiming that he is not the real son of Late A.M. Qureshi;
- iv. That the said civil suit was decreed by the Hon'ble High Court of Sindh at Karachi. In terms of Judgment dated 12.03.2007 and Decree dated 20.03.2007

whereby, it was declared that the said Muhammad Hussain Qureshi was not the real son of Late A.M. Qureshi, thus not entitled to inheritance from his estate and said property bearing Plot No.84, N.I. Lines, Saddar, Karachi, be distributed amongst all legal heirs of Late A.M. Qureshi;

- v. That Muhammad Hussain Qureshi preferred HCA No.67 of 2007 before the Hon'ble High Court of Sindh at Karachi against Judgment dated 12.03.2007 and Decree dated 20.03.2007 passed in Suit No.756/1998 before the Hon'ble High Court of Sindh at Karachi, which is still pending adjudication and a stay is operative in respect of property bearing Plot No.84, N.I. Lines, Saddar, Karachi. The parties to this compromise application agree that they shall take all efforts to dispute the claim of Muhammad Hussain Qureshi in HCA No.67 of 2007 before the Hon'ble High Court of Sindh at Karachi and this compromise shall be subject to final decision of HCA No.67 of 2007 and/or any legal impediment created by any proceedings launched by Muhammad Hussain Qureshi;
- vi. That since the litigation has consumed almost two decades as such the Respondents No.1, 2 & 3 by way of settlement accept the gift in favour of the Appellants and Respondents No.5 to 8 thereby the gift to the extent of property bearing Plot No.84, N.I. Lines, Saddar, Karachi, may be declared as valid thereby Judgment and Decree impugned through the captioned Appeal may be set-aside to that extent only;
- vii. That the Appellants No.1 & 2 and Respondents No.5 to 8 from the net sale proceeds after deduction of tax & other government charges, if any, of property bearing Plot No.84, N.I. Lines, Saddar, Karachi, shall pay 20% to Respondents No.1 & 2 in the manner that (a) Appellants No.1 & 2 and Respondents No.5 to 8 from their share shall pay equally 16.40% to Respondents No.1 & 2 and (b) the remaining 3.6% shall be paid by the Appellants No.1 & 2 and Respondents No.5, 6 & 8 respectively, within **Twelve Months** from the date of the final decision in HCA No.67 of 2007 or any appeal thereafter. The approximate prevailing market value of the said plot shall be determined by 3 evaluators each, to be appointed in a manner that one is appointed by the Nazir of this Hon'ble Court and one each by the Respondents No.1 & 2 (as one component) and Appellants and Respondents No.5 to 8 (as the other component). Provided that in the event of difference in evaluation, the average of all three evaluations shall be taken as the approximate prevailing market value of the property, whereas, presuming the value of property is Rupees One Thousand Million, and basing the distribution on the presumed value, the Respondent No.3 shall be paid a sum of Rs.2,00,00,000/- (Two Crore) in the following manner;

- a) Respondents No.1 & 2 from their share shall pay a sum of Rs.1,40,00,000/- (Fourteen Million) to Respondent No.3;
 - b) Respondent No.6 from his share shall pay a sum of Rs.20,00,000/- (Two Million) to Respondent No.3;
 - c) Respondent No.8 from his share shall pay a sum of Rs.40,00,000/- (Four Million) to Respondent No.3;
- viii. Time shall be essence of the contract as per clause vii above and the property bearing Plot No.84, N.I. Lines, Saddar, Karachi, will be sold in the open market and either party shall be at liberty to purchase the property himself or to bring forth a buyer willing to purchase the same at the approximate prevailing market value determined as per clause vii above;
- ix. That if the Appellants and Respondents No.5 to 8 fail to pay the amount as mentioned above in para (vii) to Respondent No.1 & 2 within **Twelve Months**, subject to clause vii above, then property bearing Plot No.84, N.I. Lines, Saddar, Karachi shall be attached by the Nazir of this Court and thereafter, Nazir shall sale said plot and shall pay 20% of net sale consideration (as in clause vii) of said plot to Respondents No.1 & 2, without any notice or execution process and shall pay remaining 80% equally amongst Appellants and Respondents No.5 to 8;
- x. That the Appellants and Respondents No.1, 2, 3 & 5 to 8 and each one of them shall cooperate in disputing the claim of Mr. Muhammad Hussain Qureshi being the subject matter of HCA No.67 of 2007 before this Court;
- xi. That the Respondent No.9 & 10 have already admitted in their written statement before the Trial Court regarding the execution of declaration of oral gift dated 20.05.1975, however, Respondents No.10 is the witness of the said gift;
- xii. That the Appellants and Respondents No.5 to 8 hereby agree and confirm that upon passing of the relevant Orders in the titled appeal/compromise application by this Hon'ble Court the Appellants and Respondents No.5 to 8 shall handover original documents of property bearing Plot No.84, N.I. Lines, Saddar, Karachi, as surety (currently in custody of Appellants and Respondents No.5 to 8) to the Nazir of this Hon'ble Court within seven days, who shall keep the same in safe custody. In the event the property is sold by private agreement, the documents shall be handed over to the purchaser on the joint request of the parties hereto. In the event the property is sold by the Nazir, the document shall be delivered to the purchaser directly to the purchaser on the confirmation of sale by the Court. In case Appellants and Respondents No.5 to 8 fail to provide aforesaid documents to Nazir, the Nazir will be entitled to collect/get aforesaid documents from

the concerned department/authority etc. without any notice or execution process;

- xiii. That it is declared and clarified that the Appellants and Respondents No.5 to 8 shall pay 20% of the net sale consideration of property bearing Plot No.84, N.I. Lines, Saddar, Karachi, as per clause vii above, to Respondents No.1 & 2 and the Respondents No.1 to 3 shall not claim any other payment from the Appellants & Respondents No.5 to 8;
- xiv. That it is hereby jointly and severally declared, clarified and understood by the Appellants and Respondents No.1, 2, 3 & 5 to 8 that any breach or violation of any of any clauses of this agreement, mentioned hereinabove by any one of them, inclusive of their respective legal heirs, successors in interests etc. shall be taken to be unauthorized, illegal, void and nullity, having no legal significance;
- xv. That the terms and conditions of this application, as agreed upon between the Appellants and Respondents No.1, 2, 3 & 5 to 8 shall be binding upon them and shall also be enforceable through the Court of Law of competent jurisdiction.”

In view of disposal of the aforesaid CMA No.1278/2015, by consent of all the parties in above terms, High Court Appeal No.73/2007 stands disposed of accordingly along with all pending applications. Office to prepare decree in the above terms. It is, however, clarified that the compromise is effective and binding upon the parties to this compromise and will not prejudice the right, interest or title, if any, of any third party in respect of subject property.

Office is directed to place the copy of this order in both the High Court Appeals i.e. HCA No. 67/2007 and HCA No. 73/2007.

JUDGE

JUDGE