

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

C.P. No. D — 1241 of 2023

---

DATE

ORDER WITH SIGNATURE OF JUDGE[S]

---

**13.12.2023.**

FOR ORDERS ON OFFICE OBJECTION.  
FOR ORDERS ON M.A. 10263/2023.  
FOR HEARING OF M.A. 687/2023.  
FOR HEARING OF MAIN CASE.

Mr. Rizwan Ali Memon Advocate for Petitioner.

Mr. Asif Ali Buledi Advocate for Respondents No.3, 4 and 5.

Mr. Abdul Majeed Khan Advocate for Respondents No.2(i) and  
Attorney of Respondent No.2(ii) to (ix).

----

This Petition has challenged the Judgment dated 28.03.2023, whereby the case was remanded to the Trial Court to hear the Application of present Petitioners afresh filed under Order XXI Rule 90 of CPC for setting aside the 'Auction Sale'.

The undisputed facts are Petitioners and Respondents except Respondent No.1 Amir Azad (who is Auction Purchaser) are legal heirs of second generation, litigating over the inheritance Property. On 09.04.2022 First Class Suit No.10/2021, was decreed with a direction that if the sole House Property is not partitionable then it should be sold through Auction and 'Sale Proceeds' be distributed accordingly in accordance with share of each legal heir. Consequently, the Property was put to auction and Respondent No.1 was declared as highest bidder. He deposited 25% amount on the same day that is 04.08.2022, whereas within fifteen [15] days he could not deposit the balance sale consideration which was deposited on 01.09.2022. This prompted the Petitioners to file the above Application on which the learned Trial Court has passed the order dated 07.12.2022, setting aside the Sale and ordered re-auction. This Order was set-aside by the

Impugned Judgment and it was ordered that the Application of present Petitioners be heard afresh.

Learned counsel for the Petitioners has stated that the Impugned Judgment remanding the matter is erroneous, as in view of Rule 85 to 90 the Order passed by the learned Trial Court is correct.

Counsels for the Respondents have opposed this Petition and state that the legal heirs are suffering since long due to non-distribution of Sale Proceeds.

Arguments heard and record perused.

Rule 86 deals with the default; if the amount is not paid within the stipulated time. However, it is discretion of the Court either to set-aside the Sale or if the amount is already deposited by the 'Auction Purchaser', it can be accepted and further proceeding be undertaken. Undisputedly when the Order dated 07.12.2022, was passed by the learned Trial Court, at the relevant time the entire amount was already deposited by the 'Auction Purchaser' / present Respondent No.1. This material fact has been completely overlooked by the Trial Court. Secondly, the delay is of ten [10] days regarding which the 'Auction Purchaser' has moved an Application that due to torrential rains, he was unable to arrange the amount and he invoked the force majeure factors.

Only sole house Property is to be distributed amongst the legal heirs and record shows that second generation is now litigating. Re-auction of the Property will involve a lengthy process and other intricate complications, adding to the constant mental agony of the Legal Heirs.

Learned counsel for the Petitioner states that the Property was sold on a lesser price and it can fetch a market price of Rs.15 Million. He was offered to purchase the same in the same price of Rs.15 Million, after adjustment of his share and the remaining amount can be distributed amongst the legal heirs / Respondents, to which he then disagreed.

Consequently, the impugned judgment does not require any interference in Constitutional jurisdiction. However, in Order to save the legal

heirs from further trauma, the impugned judgment is modified to the extent that there is no requirement to rehear the Application for setting aside the Sale, which in view of the above discussion, is accepted, confirmed and the sale has become absolute. Amount be distributed amongst the Legal Heirs (Parties hereto) in accordance with their respective shares in inheritance within two [02] weeks from today by the learned Trial Court. Nazir to complete other formalities, including, issuance of the Sale Certificate and delivering of possession to the Auction Purchaser.

The Petition stands disposed of in the above terms.

JUDGE

JUDGE

A.