

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-7751 of 2019

Mst. Badar Sultana and another
Versus
Mushtaq Ahmed and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

Priority

1. For order on office objection.
2. For hearing of CMA No.34230/2019.
3. For hearing of main case.

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Dated 16.01.2024

None present for the petitioner.

Syed Murtaza Haider, Advocate for Respondent No.1.

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In substance, a suit for partition/administration was filed; the subject property was eventually auctioned and one of the legal heirs [petitioner No.1] offered to purchase the property in the sum of Rs.26,25,000/-. The matter came up for consideration for the acceptance of the bid on 17.09.2015, the bid was accepted and the statement in relation to certain claims for setting off the amount was declined and the auction purchaser was directed to deposit the balance consideration of offer within a required time of 15 days in terms of Order-XXI Rule 85 CPC. That was again objected, as the amount was never deposited and perhaps on 29.09.2018 the application under Section 151 CPC was again filed claiming certain amount over the property to be excluded. The said application was allowed vide order dated 23.05.2019 and the order was challenged by virtue of a review application for recalling of the order, which was dismissed. The said order was assailed before the revisional court in revision application No.35/2019, which revision was allowed.

We have heard learned counsel for respondent No.1. The petitioners and their counsel are called absent.

It seems that the strict terms of Order-XXI Rule-84/85 were not complied after the acceptance of the offer. The auction purchaser was required to submit the balance consideration within 15 days from the date of the acceptance. The offer was accepted on 17.09.2015 and the balance amount was not deposited in time. The belated application under Section 151 CPC was filed claiming certain amount to be set off, which was virtually allowed without lawful cause. The respondents intervened by moving a review application for recalling of the order, which was dismissed and rightly a revision application was filed whereby the revisional court, in consideration of the facts and circumstances, allowed the revision.

The auction purchaser cannot enjoy a privilege of being a successful bidder yet does not deposit the balance of the offer and continue to enjoy the balance consideration, which is not the spirit of Order-XXI Rule-84/85 CPC. The requirement of Order-XXI Rule-84/85 CPC is mandatory and cannot be avoided.

There is no justifiable reason for extension of time to deposit the balance consideration of offer which exceeds more than few years. We therefore do not interfere in the order of the revisional court in this petition under Article-199 of the Constitution of Islamic Republic of Pakistan. The petition as such is dismissed along with pending application(s) and consequently property be put to auction afresh on lawful terms to be incorporated in the sale proclamation.

JUDGE

JUDGE

Ayaz Gul