

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.323 of 2009
[Mst. Rasheeda Bano and another vs. Mst. Khursheed
Begum and others]

Date of hearing : 05.03.2024

None from the Plaintiffs' side.

Mr. Ashiq Ali, Advocate for Defendants No.6, 10-12

Mr. S. Rafiq-un-Nabi, Advocate for Auction Purchaser.

Defendants No.7-Naseer Ahmed, Defendant No.8(a)-Aqeel Begum
and Defendant No.9-Shafique Ahmed are present in person.

ORDER

Muhammad Faisal Kamal Alam, J: The Review Application under Section 114 of the CPC (*CMA No.6617 of 2022*), preferred by the Defendants No.4, 7, 8(a) and 9.

2. Arguments were heard on 05.03.2024 and direction was given, which is reproduced herein under_

“The Applicants of Review Application state that if the amount deducted from the bid amount, as directed in the Order dated 13.04.2022, then the remaining amount will be too meager to be distributed amongst the legal heirs and hence they want re-auction of the Property, whereas, Mr. S. Rafiq-un-Nabi, Advocate for the Auction Purchaser has opposed this Application and states that the entire amount was deposited under bona fide impression that it is a judicial sale and it cannot be put for re-auction but adjustment can be made, as already directed in the Order.

Defendant No.7-Naseer Ahmed and Defendant No.9-Shafique Ahmed, who state that the amount of undisputed Property being City Survey No.599, measuring 108 Square Yards, District Jacobabad, Sindh, be distributed, as there is no dispute with regard to the same Property. Mr. Ashiq Ali, Advocate representing the legal heirs of Defendants No.6, 10-12 also supports this request.

Learned counsel for the Auction Purchaser states that only Objections he has, that with regard to the Property-City Survey No.596, measuring 72.4 Square Yards, District Jacobabad, Sindh, the adjustment has to be made. This issue is resolved by directing the learned Nazir to distribute the amount of sale proceeds presently lying with him in respect of the Property No.599 amongst the legal heirs in view of the earlier Order dated 15.02.2024, if there is no other legal impediment.”

3. The undisputed record shows that the above Property No.596, was sold through the Court Notice published in the Daily Jang of 02.08.2021 (Newspaper is available in record), wherein its total area was mentioned as 108 Square Yards; the Auction Purchaser gave the bid, which was accepted by the Court vide Order dated 03.11.2021 (so also mentioned in Paragraph-3 of this Review Application). The issue of less area of the Subject Plot was also reflected in different Orders passed by this Court after acceptance of bid and finally in the Order dated 09.02.2022 it has been observed that amount has been deposited by the Auction Purchaser, and accepting his apprehension, a restraining Order was passed that the learned Nazir will not disburse any amount to the Parties. On 13.04.2022 (Order sought to be reviewed), different Applications were decided, including the CMA No.1167 of 2022, passed by the Bidder-Mehran Khan, wherein it was observed that it is not a disputed position that instead of 108 Square Yards for which the Auction Purchaser deposited an amount of Rs.9.8 Million, the total area of the above Plot is 72.4 Square Yards, hence it was directed that the learned Nazir should consider this aspect and refund the additional amount to the bidder / Applicant, whose bid was already confirmed by the Order dated 03.11.2021, hence vested rights accrued in favour of the Auction Purchaser; the reported Judgment of the Hon’ble Supreme Court handed down in the Case of *Muhammad Javed Vs. First Women Bank-* 2020 SCMR 2134, is relevant.

4. The only ground agitated in the Review Application is that if a certain amount is deducted from the bid amount, then the above named Applicants will suffer losses and hence the Property should be re-auctioned.

5. No plausible ground is mentioned in the Review Application-CMA No.6617 of 2022, *inter alia*, any factual error or a material fact, which was overlooked or not considered while passing the above Order, which has prejudiced the Parties.

Secondly, this Application is moved only by four Defendants and other legal heirs have not come forward to contest the above Order. *Thirdly*, it is a settled rule, that mistake of the Court should not prejudice any individual; in the present case, due to *bona fide* error, the area of the above Property was mentioned as 108 Square Yards instead of 72.4 Square Yards, regarding which, the Auction Purchaser while acting in good faith gave the bid of Rs.9.8 Million, which was the highest and was further confirmed by this Court, couple with the fact that the said amount is lying with the learned Nazir for a considerable period. Record shows that the balance sale was also paid since it was never objected to by the Plaintiff and Defendants; therefore, for all practical purposes, the sale was confirmed and thus became absolute. If even for the argument's sake, request of Applicants (who have filed the Review Application) is accepted, then it would cause prejudice to the Auction Purchaser for the *bona fide* error, which he never committed.

6. Consequently, this Review Application-CMA No.6617 of 2022 is dismissed. Within two weeks, the learned Nazir should implement the Order dated 13.04.2022 in respect of the Subject Property-City Survey No.596, situated in the District Jacobabad, Sindh.

To be listed on 16.04.2024; as per Roster.

Karachi.
Dated: 22.03.2024
M.Javid.PA

JUDGE