

# IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

SMA NO.49/2008

Plaintiff : Farrukh Rafih,  
Through: Mr. Muhammad Ameen, advocate.

Objector : Zeenat Parveen,  
Through: Mr. Neel Kishov, advocate.

Date of hearing : 02.03.2016.

Date of order : 17.03.2016.

## ORDER

This order will dispose of CMA No.1052/2011, through which petitioner *inter alia* seeks permission to deposit Rs.49,656/- as full and final payment share of respondent in respect of immovable property House No.B-15, Sub-Block C, Block V, Nazimabad, Karachi; further seeks direction to Nazir to issue sale certificate alongwith original title documents of property to petitioner. A breakup of the amounts received by/payable to the objector is also enclosed.

2. At the outset learned counsel for the petitioner contended that all issues have decided except issue of service benefits, which may be decided in view of PLD 2015 Sindh 360 (Erum vs. Mst. Aameena and 5 others).

3. Such contentions were not opposed by learned counsel for the objector.

4. Briefly stated, petitioner claiming to be real nephew of deceased Muhammad Wasiuddin s/o Muhammad Arfeen filed present SMA stating that deceased left behind nephew Farrukh Rafih (petitioner), nieces Amber Iqbal and Saima Rafih, and Widow Zeenat Parveen (objector); that deceased was issueless; parents of deceased and real brother of deceased/father of petitioner have also expired. Immovable and movable properties as described in schedules of properties were left by deceased.

5. Earlier order dated 02.02.2009 recorded that Deceased was employed as Officer Grade-I in NBP had left behind amount in Bank Account, Provident Fund Balance, Benevolent Fund balance, welfare fund, group insurance, union fund and some arrears and other dues lying with NBP, as well immovable property. It was further recorded that *"The widow of deceased Mst. Zeenat to entitle to her share in the estate left by the deceased, however, rest would fall towards the shares of children of the brother of the deceased."* And further *"Nazir of this Court is appointed administrator to collect all dues of deceased Muhammad Wasiuddin from National Bank of Pakistan, I.I. Chundrigar Road, Karachi and also to open the locker number of which will be provided to him and after breaking open the locker in front of the parties concerned, an inventory be made and same may be distributed amongst all the legal heirs in accordance with law."* Thus succession certificate and letter of administration were granted in favour of Nazir subject to rules. On 12.08.2009, defence saving certificates and prize bonds were directed to be encashed by the Nazir, further *evaluation of jewelry and giving option to any of the legal heirs to retain the same and adjust their value from sale proceeds of his/her share in defence saving certificates and prize bonds*, was directed. Order dated 24.03.2011 reflects that petitioner agreed to purchase the immovable property at Rs.85,00,00/- as evaluated at that time and further stated that he is willing to deposit the

1/4<sup>th</sup> share of widow/Objector as well share of other legal heirs with Nazir of this Court. Such request was accepted and petitioner was directed to proceed accordingly; subsequent distribution of share among the legal heirs, was ordered. However, order dated 25.01.2011 shows that petitioner sought permission of this Court to deposit Rs.490,565/- ONLY towards full and final payment of the share of the objector in respect of immovable property, on the ground that since objector has received pensionary benefits of deceased to which all the legal heirs were entitled, the amount of such benefit to the extent of petitioner's share is to be adjusted out of sale proceeds of the house, thus the amount payable to objector comes to Rs.490,656/- and further that share of petitioner in jewelry left behind by deceased has been adjusted, which contentions were seriously opposed by objector side.

6. For the purpose of decision of application in hand, it is relevant to reproduce order dated 17.02.2016, as under:-

“Since legal heirs who intend to purchase this property i.e House No.B-15, 5-C, Nazimabad, Karachi have given the offer of Rs.130,00,000/- (Rupees one crore thirty lacs only); accordingly, with the consent of the other side, this offer is accepted, the petitioner and other legal heirs except widow of deceased shall deposit the share of widow as calculated by the Nazir of this Court from the total sale consideration of Rs.130,00,000/-, however, widow will not withdraw Rs.22,75,000/- until the issue in respect of gratuity and group insurance amount is resolved by this Court, as she has already received this amount in that account. After depositing of this amount Nazir shall ensure that transfer is affected in favour of all the legal heirs who have deposited the share of widow and after such mutation such documents shall be handed over to them. Nazir shall also distribute the chattels which were found from the locker among the legal heirs as per Sharia.”

The above order(s) and proceedings, *so far done* in above matter, reflect that petitioner presumed all the service benefits of the deceased to be inheritable by all the legal heirs which, *I say*, is not correct legal position because such

benefits also include '*group insurance & benevolent fund*'. To make this legal position a reference to para-14 of the judgment in case of *Erum* (supra), being relevant, is made hereunder:-

*"14. At this juncture, it would be worth to add here that 'Benevolent fund and Group Insurance' amount were held as not part of 'TARKA' and the case-law (PLD 1991 SC 731) is continuing holding the field and is being followed thus the binding effect thereof within meaning of Article 189 of the Constitution has to be given due regard. Further, the status of Benevolent fund and Group Insurance to be not part of 'TARKA' was confirmed IN THE MATTER OF SUCCESSION OF THE ASSETS, SECURITIES, PROPERTIES AND ACCOUNTS OF LATE JAVED IQBAL GHAZNAVI reported as PLD 2010 Karachi 512"*

Further, the schedule of property (Annexure-A) also include '*Welfare Fund & Union Fund*' which from their *apparent* meaning appear to be not part of '*TARKA*' as concluded in said case of *Erum* (supra) that:

*'Thus, there is no dispute, that the rights and claims of the deceased which he had during his life time, but does not includes that it (TARKA) shall include any other amount which is given / paid by the employer.'*

Thus, if the above benefit '*welfare fund & union fund*' was / is purely aimed for specific purpose and object and deceased was not legally competent and entitled to raise a claim in that respect in his life time then same shall not include in '*TARKA*' rather same shall go as per its object. Needless to add that *even* consents of legally entitled person shall not change the status of *legally entitled persons* nor such consent can allow an authority to include those in list of *legally entitled* who *otherwise* are not.

7. In view of above legal position, petitioner and other legal heirs have no right over service benefits, except the objector (widow) as already granted by the Bank in her favour.

8. Let me insist that since as per earlier orders, the sale proceeds of property (house) has been agreed as Rs.130,00,000/- which the petitioner has to pay. Accordingly Application (CMA No.1052/2011) is disposed of. Petitioner shall deposit the share of the objector within fifteen days, in case of failure Nazir shall re-asses the value of immovable property.

Imran/PA

**J U D G E**