

Civil Revision No.779 of 2011

Dr. QAMAR MAHMOOD and 2 others VERSUS RUKHSANA KAUSAR ETC.

20.12.2011 Mr. Ghazanfar Ali Syed Advocate for Petitioners.
Mr. Umar Abdullah Advocate for Respondents.

This civil revision has been directed against the orders dated 10-2-2011, 18-2-2011, 24-2-2011 and 1-3-2011 passed by the learned Civil, Judge, Lahore, whereby a sale certificate as a result of auction proceedings conducted during the execution proceedings of the property in question was confirmed.

2. Briefly stating, the facts of the case for the purpose of instant civil revision are that a suit for partition of property through sale and division of shares was decided through a preliminary decree dated 21-10-2008 and a Local Commission was appointed, for the auction of the subject property, through the same order. The auction proceedings were ultimately finalized by the Local Commission so appointed and the subject property measuring 10 marlas, 25 square feet situated at 700 Shadman Lahore was sold away for a sum of Rs.1,10,00,000 on 3-10-2009 in favour of respondent No.4 Aziz Ahmad. On account of clerical mistake regarding the mentioning of the sale price by Court Auctioneer/Local Commission incorrectly misplacing the digit in the Court Auctioneer report dated 7-10-2009

describing the sale price as Rs.100,100,000 instead of Rs.1,10,00,000. The petitioners filed an objection petition under Order XXI, Rules 26, 90 read with section 94(E) of C.P.C. His precise contentions raised in the arguments before the learned Civil Judge were that the auction proceedings conducted reflecting the sale price of Rs.1,10,00,000 by the Court Auctioneer is not a transparent one and the entire Court proceedings are vitiated. This objection petition by the petitioners was dismissed by the learned Civil Judge vide order dated 8-1-2010 and following paragraph-4 of the said order is important and is reproduced:--

"Perusal of the record reveals that the Court-Auctioneer conducted the proceedings in accordance with law after due publication and fulfilling the requirements. So far as the contention of the applicant that one of the bid has written as 10 Crore is just a clerical mistake because in writing it is clearly shown as Rs.1,10,00,000, so in addition to above one Zero is just a clerical mistake and does not vitiate the whole proceedings of the Court-Auctioneer. In addition to this, it was 10-Marlas house which was auctioned at Rupees 1,10,00,000 which is quite reasonable amount and I do not find any cogent reason for suspension of auction of Court- Auctioneer proceedings. Resultantly, application for cancellation of sale/auction-proceedings being devoid of force is hereby dismissed. This order be attached to the main file."

3. The petitioners are stated to have assailed the order dated 8-1-2010 through a revision petition preferred before the learned Additional District Judge, Lahore which remained pending for about one year as per learned counsel for the parties and was returned to the petitioners for presenting the same before the proper Court because the learned Additional District Judge did not have the pecuniary jurisdiction to adjudicate upon the matter involving value of

Rs.1,10,00,000. The order dated 8-1-2010 thus attained finality as it was not further assailed by the petitioners. After that the learned Civil Judge through the impugned orders passed on different dates confirmed the sale in favour of the respondent No.4 and directed the sale certificate to be issued in favour of the respondent No.4 vide order dated 10-2-2011. Mr. Muhammad Amjad Nisar, Advocate was appointed as Local Commission to get the sale-deed registered in favour of respondent No.4. In the order dated 18-2-2011, the draft of sale-deed was approved by the learned Civil Judge. Vide order dated 24-2-2011, the order for handing over the sale-deed to the respondent No.4 was passed by the learned Civil Judge; Vide order dated 1-3-2011, warrant for delivery of possession of the subject property in favour of auction purchaser/respondent No.4 was filed, upon which notices were issued to the parties on 4-3-2011. All these interim orders have been assailed by the petitioners through the instant civil revision.

4. Notice was issued to respondents out of whom only respondent No.4 has contested the instant civil revision.

5. It is contended by the learned counsel for the petitioners that the auction proceedings were not legally conducted by the Court Auctioneer. After raising a number of objections about the auction proceedings, the learned counsel for the petitioners contended that if the sale price as reflected in the report of the Court Auctioneer to be Rs.100,10,00,00 is

admitted by the other side, the petitioners would not press the civil revision and would be satisfied for their respective shares to be granted to the petitioners out of this price mentioned. In the alternative, the learned counsel contended that the orders passed by the learned Civil Judge dated 10-2-2011, 18-2-2011, 24-2-2011 and 1-3-2011 were passed in the absence of the petitioners and, therefore, suffer from violation of the principles of natural justice and are liable to be set aside.

6. The learned Counsel for respondent No.4 has argued that the clerical mistake in the sale price mentioned by the Court Auctioneer was of no consequence, because in the report the Court Auctioneer wrote down in letters the actual sale price of the auction as one crore ten lacs against Rs.1,00,10,0000 mentioned with misplacement of digit '0' wrongfully and thus, objection as raised by the learned counsel for the petitioners that it was Rs.100,10,0000 was rejected by the learned Civil Judge vide order dated 8-1-2010. This order dated 8-1-2010 of the learned Civil Judge was first assailed through a revision petition by the petitioner which revision petition was returned by the learned Additional District Judge to be presented before the competent Court and was not further pursued and the order dated 8-1-2010 attained finality. It is next contended that the orders assailed in the instant civil revision are miscellaneous orders which were passed in consequence of the confirmation of the Court Auction and do not suffer from any illegality. It

was further argued by the learned counsel for respondent No.4 that the proceedings were conducted in the presence of the learned counsel for the petitioners in the two orders dated 10-2-2011 and 18-2-2011. The learned counsel relied upon the judgment reported as Haji Inayat Ali v. Haji Rehmat Ali and 16 others (2010 MLD 894), whereby the legal proceedings recorded by the Courts are given authenticity. The learned counsel for respondent No.4 further argued that sale has been conducted in accordance with law and consequently the orders passed by the learned Civil Judge in pursuance to the proceedings of the Court Auctioneer need no interference.

7. I have considered the arguments of the learned counsel for the parties.

8. The objection of the petitioners with respect to some irregularities in the Court auction proceedings has been duly considered and rejected by the learned Civil Judge vide order dated 8-1-2010 against which although the petitioners are stated to have first preferred a civil revision before the learned District Court, which civil revision was admittedly returned by the learned Additional District Judge Lahore on the ground of lack of pecuniary jurisdiction of the said Court to adjudicate upon the same and the petitioners admittedly did not assail the order dated 8-1-2010 any further which order thus attained finality. The contention of the learned counsel for the respondent No.4 regarding the clerical

mistake mentioned, in the sale-price has been duly taken note of in paragraph-4 in the order dated 8-1-2010 passed by the learned Civil Judge as reproduced above. The subsequent orders dated 10-2-2011, 18-2-2011, 24-2-2011 and 1-3-2011 assailed through the instant civil revision are interlocutory and consequent orders which have been passed upon the finality of the court auction proceedings. The argument of the learned counsel for the petitioners that the price mentioned in the Court auctioneer report to be Rs.100,10,0000 acceptable to the petitioners, clearly reflects mala fides of the petitioners in assailing the Court auction proceedings. The contention of the learned counsel for the petitioners that the orders were passed in the absence of the petitioners carries no legal weight as authenticity is attached to the legal proceedings in the orders. The order sheet of the learned Civil Judge reflects presence of the learned counsel for the parties particularly on 10-2-2011 and 18-2-2011 which orders are reproduced below:--

"10-2-2011. Present: Counsel for the parties:

Order of the learned appellate court has been received by which the appeal was dismissed. Perusal of the file further reveals that sale consideration has already been deposited, therefore, let a sale certificate be issued in favour of the purchaser with the direction to submit the draft in this regard and for the registration of the sale-deed Mr. Mir Amjad Nisar, advocate is hereby appointed as local commission to get the property registered in the name of Aziz Ahmad according to the draft submitted in the court by the successful purchaser. Fee of local commission is fixed as Rs.20,000. To come up for report on 1-3-2011.

Announced:

10-2-2011.

Sd/-

18-2-2011: Present: Counsel for the parties.

Draft has been submitted by the purchaser. Perusal of draft reveals that it is in accordance with the sale proceedings and same is hereby approved with the direction to the local commission namely Mir Amjad Nisar, advocate to get registered the suit property in the name of Aziz Ahmad. To come up for report on 1-3-2011.

Announced.

18-2-2011

Sd/-

9. The subsequent orders dated 24-2-2011 and 1-3-2011 are also consequent orders as being the result of the confirmation of the auction proceedings and all these miscellaneous and consequential orders have been passed in accordance with law. No violation of any specific provision of law has been pointed out by learned counsel for the petitioners during his arguments and the orders passed are also not violative of any law. This civil revision being devoid of any legal force is accordingly dismissed.

(NASIR SAEED SHEIK)
Judge