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JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Civil Revision No.09 of 2023

Ghulam Muhammad

Versus

Muzammil Hussain & others

J U D G M E N T

Date of hearing: 08.09.2026.

Petitioner by: Mr. Javed Ahmad Khan, Advocate.

Respondents by: Mr. Muhammad Azhar Khan, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through the instant civil revision petition, the petitioner has called in question the judgment dated 23.11.2022 passed by the learned Additional District Judge, Sahiwal, whereby his appeal against the order dated 17.05.2022 passed by the learned Civil Judge, Sahiwal, was dismissed. By the said order, the learned Executing Court confirmed the auction sale of the suit property in favour of respondent No.1/plaintiff No.1 and directed issuance of sale certificate.

2. Briefly stated, the respondents instituted a suit for separate possession through partition in respect of immovable property measuring 04 Marlas and 05 Sarsahies, comprised in Khewat No.993, Khatooni No.1024 and Qitat No.24, out of total area measuring 189 Kanals 19 Marlas 05 Sarsahies, corresponding to 82/68390 share as reflected in the Jamabandi for the year 1998-99 of District Sahiwal. The learned Executing Court determined the rights and respective shares of the parties and passed a preliminary decree. Subsequently, the property was found incapable of convenient partition by metes and bounds, whereafter proceedings for disposal of the property under the

Punjab Partition of Immovable Property Act, 2012 (hereinafter, “**the Act of 2012**”) were initiated. The preliminary decree determining the title and respective shares of the co-sharers has neither been challenged before this Court nor is its validity in issue in the present proceedings. The controversy is, therefore, confined to the subsequent proceedings concerning disposal of the property through auction and, in particular, whether the auction culminating in the order dated 17.05.2022 was conducted and confirmed in accordance with the statutory scheme.

3. Learned counsel for the petitioner contends that respondent No.1/plaintiff No.1 had made an offer of Rs.50,00,000/- on 21.11.2020, which was accepted on 18.12.2020, but instead of giving effect to the said offer in accordance with law, the learned Executing Court proceeded with an auction which ultimately fetched only Rs.36,50,000/-. He submits that there was no lawful and reasoned determination of reserve price and that the statutory procedure governing internal and open auction was not followed. He further submits that the petitioner himself moved an application seeking fixation of the reserve price, wherein he pointed out that the schedule rate was Rs.6,80,000/- per marla, whereas the value of the property proposed to be auctioned was Rs.8,00,000/- per marla, and requested fixation of the reserve price accordingly. He also sought enhancement of the guarantee amount to Rs.100,000/-. He adds that these material objections, as well as those concerning notice, publication, auction plan and deposit of the auction price, were not properly considered by the learned Courts below.

4. Conversely, learned counsel for the respondents supports the impugned decisions. He submits that the auction was conducted pursuant to orders of the competent Court, the successful bidder completed the requisite formalities and the sale consideration was distributed amongst the co-sharers. He contends that several co-sharers received their respective shares without objection and that respondent No.1, being a co-owner, was legally entitled to participate in the auction, hence he prayed for dismissal of the present revision petition.

5. Arguments heard. Available record perused.

POINT FOR DETERMINATION

6. The controversy does not relate to determination of title or shares of the parties, those matters having already been concluded through the preliminary decree. The principal question requiring determination is whether, after the property was found incapable of convenient partition, the learned Executing Court proceeded with the internal and, thereafter, open auction in the manner contemplated by the Act of 2012, and whether the auction sale could validly be confirmed without satisfactorily establishing compliance with the statutory safeguards relating to reserve price, transition from internal to open auction, the auction plan, notice, bidding, and payment of the sale consideration.

STATUTORY SCHEME AND ITS SEQUENTIAL CHARACTER

7. The Act of 2012 provides a special and self-contained mechanism for disposal of jointly owned immovable property where convenient partition by metes and bounds is not practicable. Section 10 contemplates disposal through internal auction amongst the co-owners. Under this provision, the Court is required to determine the reserve price, require the co-owners to appear personally or through duly authorized agents, conduct the internal auction in Court, and maintain a record thereof. The co-owners may submit written offers or counter-offers until the highest offer is made, and if the highest bidder complies with the statutory requirement regarding deposit of the auction price, the Court may proceed to confirm the sale. Section 11, by contrast, contemplates *open auction* only in specified eventualities, namely, where the co-owners refuse to participate in the internal auction, only one co-owner shows willingness to participate while the others are unwilling, or the internal auction under Section 10 has failed. Upon such eventuality, the Court is again required to fix the reserve price and thereafter appoint a Court Auctioneer, who must

submit an auction plan containing the prescribed particulars for approval and publication before conducting the open auction. The statutory scheme, therefore, does not place internal and open auctions on the same footing, nor does it leave the choice between the two entirely to the discretion of the Court; open auction is a statutory consequence of the failure or ineffectiveness of internal auction in the circumstances specified by Section 11. This sequential character was also recognized by this Court in Awais Gohar v. Sumaira Adnan and another (2024 CLC 251), wherein it was held that where the co-owners refuse to participate in the internal auction, only one co-owner shows willingness, or the internal auction fails, the Court may proceed to open auction under Section 11.

8. The rationale underlying this statutory sequence is equally significant. An internal auction gives existing co-owners the first opportunity to acquire the property amongst themselves, whereas an open auction exposes the property to the wider market only after the statutory conditions for such transition have arisen. The distinction is intended to balance the interests of co-owners and to secure an effective and transparent mode of disposal of jointly owned property. Consequently, the conditions precedent to an open auction cannot be treated as empty procedural formalities; the Court must be able to demonstrate from the record why the internal mechanism came to an end and why the statutory threshold for invoking Section 11 had been crossed.

MANDATORY CHARACTER OF THE STATUTORY CONDITIONS

9. Whether a statutory requirement is mandatory or merely directory is ordinarily determined by reference to the language employed, whether the provision is designed to protect a substantive right, and whether the statute prescribes, expressly or by necessary implication, a consequence for non-compliance. Judged in the light of these considerations, the requirements embodied in Sections 10 and 11, namely, fixation of a reasoned reserve price, exhaustion of the

internal auction before resort to an open auction, appointment of a Court Auctioneer, and preparation, approval and publication of an auction plan, cannot be regarded as mere procedural niceties incidental to the sale. They exist to safeguard the proprietary interest of co-owners in property that is brought to compulsory sale, and compliance with them is the very foundation of the Court's authority to confirm the sale, not merely an aspect of its regularity. These provisions must, accordingly, be construed as mandatory. It follows that non-compliance with them cannot be treated as a curable irregularity to be overlooked once a sale has, in fact, taken place; it goes to the root of the jurisdiction to confirm.

EFFECT OF THE OFFER OF RS.50,00,000/-

10. In this backdrop, the offer of Rs.50,00,000/- allegedly made by respondent No.1 on 21.11.2020 and accepted on 18.12.2020 assumes considerable significance. The said offer cannot, merely because it was accepted, be treated in isolation as a concluded private sale, since the property was jointly owned and its disposal, after initiation of partition proceedings, was regulated by the Act of 2012. At the same time, the offer constituted material evidence concerning the value of the property and the course of the internal auction proceedings, and could not lawfully be ignored without assigning reasons. The subsequent auction fetched only Rs.36,50,000/-, which is Rs.13,50,000/- less than the earlier offer. This difference is substantial and called for judicial consideration, particularly where the statutory scheme itself places importance on determination of a reserve price before auction. The disparity, by itself, does not establish fraud, collusion or mala fide, nor does it automatically confer upon the petitioner or any other co-sharer a right to have the property sold at the earlier offered price. It nevertheless constituted a circumstance which required the learned Executing Court to determine: whether the offer formed part of the internal auction proceedings; whether it was accepted in a manner contemplated by Section 10; whether the offeror

thereafter complied with the statutory requirements applicable to an internal auction purchaser; whether the internal auction was lawfully concluded or failed; and what relevance, if any, the offer retained in determining the reserve price for the subsequent auction.

11. The record, however, does not disclose a satisfactory determination of these foundational questions. The learned Courts below appear to have proceeded substantially on the fact that an auction was ultimately conducted and that respondent No.1 emerged as the highest bidder. This approach overlooks the statutory stages preceding the actual bidding. The validity of a sale cannot be examined merely from its endpoint; where a statute prescribes a sequence of conditions leading to the sale, the legality of the preceding steps is necessarily relevant to the validity of the eventual confirmation.

WHETHER INTERNAL AUCTION LAWFULLY FAILED

12. The first material question, therefore, is whether the record establishes lawful completion or failure of the internal auction under Section 10. The material available does not satisfactorily demonstrate that:

- (a) the reserve price for the internal auction was formally determined on the basis of relevant material;
- (b) all eligible co-owners were duly required to participate personally or through authorized agents;
- (c) written offers or counter-offers were invited and properly recorded in the manner contemplated by Section 10;
- (d) the offer of Rs.50,00,000/- was examined in the context of the internal auction proceedings;
- (e) the person making the highest offer was dealt with in accordance with Section 10; and
- (f) the internal auction was formally concluded or declared unsuccessful on a legally sustainable basis.

These omissions assume importance because Section 11 does not become operative merely because the Court ultimately chooses to hold an open auction. There must first be a factual and legal foundation for the transition from Section 10 to Section 11.

13. The judgment in *Awais Gohar* (supra) does not dilute this requirement; rather, it illustrates the distinction. In that case, the record showed repeated opportunities afforded to the co-owner to participate in the internal auction, his continued absence and failure to make an offer, and the resultant conclusion that the internal auction had failed. It was in that factual setting that resort to open auction was upheld. The present record, as presently examined, discloses no comparable, reasoned determination identifying the precise statutory contingency that authorized the transition to open auction.

In *Naseem Bibi and 2 others v. Imran Qayyum and 2 others* (2025 CLC 813), this Court emphasized that the provisions of the Punjab Partition of Immovable Property Act, 2012 prescribe a sequence of procedural steps which must be adhered to by the Court. It was held that the presence of the co-owners or their authorized agents, proper determination of the reserve price and opportunity to submit written offers are material safeguards in internal-auction proceedings. Failure to comply with such requirements was held to offend the principles of natural justice and the constitutional guarantees embodied in Articles 4 and 10-A of the Constitution. This judgment reinforces the principle that the statutory requirements governing an internal auction are not directory matters which may be overlooked at convenience. They are intended to ensure that every co-owner receives a meaningful opportunity to participate and that the property is not disposed of without a transparent and legally sustainable process.

RESERVE PRICE AND OPEN AUCTION SAFEGUARDS

14. Once an open auction is resorted to, Section 11 imposes its own safeguards. The Court must fix the reserve price; a Court Auctioneer must be appointed; an auction plan in the form of a public notice containing the prescribed particulars must be submitted for approval; and the auction must thereafter be conducted in accordance with the approved and published plan. The statute further regulates bid security and payment of the auction price. These requirements are designed to

ensure transparency, meaningful participation, and protection of the interests of all co-owners. The petitioner had specifically drawn the attention of the learned Executing Court to the valuation aspect by moving an application for fixation of reserve price and referring to the schedule rate of Rs.6,80,000/- per marla and a proposed value of Rs.8,00,000/- per marla. These figures were not necessarily binding upon the Court, but they were certainly relevant material. The Court was required either to determine the reserve price on their basis or, if it considered them unreliable or insufficient, to obtain or consider appropriate valuation material and record reasons for the determination made.

15. The significance of reserve price is not merely mathematical; it operates as a statutory safeguard against disposal of the property at an unreasonably depressed value. Before confirming a sale, therefore, the Court must satisfy itself that the reserve price was lawfully fixed, that the auction was conducted within the parameters prescribed by law, and that the highest bid was acceptable within that statutory framework. The mere emergence of a highest bidder does not, by itself, dispense with these requirements. This principle is consistent with the broader jurisprudence governing judicial auctions. Although the provisions of Order XXI, C.P.C. governing execution sales cannot be mechanically imported into proceedings governed by the special Act of 2012, the jurisprudential principle remains instructive that the Court must apply its judicial mind to the legality and transparency of auction proceedings before confirming a sale. In Mst. Samrana Nawaz and others v. MCB Bank Ltd. and others (PLD 2024 SC 873), the Supreme Court reiterated the importance of the statutory safeguards governing challenges to auction sales and emphasized that the legal requirements surrounding an auction cannot be treated as matters of mere form. Likewise, in Noor Badshah v. House Building Finance Corporation (PLD 2006 Lahore 771), this Court held, in the context of a judicial auction, that acceptance of a bid contrary to the court-fixed reserve price constituted a material irregularity, and that where

the sale itself was rendered invalid, its subsequent confirmation could not cure the defect.

16. In Muhammad Afzal Khan and another v. National Bank of Pakistan through Branch Manager and another (2015 CLD 464), this Court observed, in the context of execution proceedings, that the purpose of fixing a reserve price is to protect the rights of the judgment-debtor and to ensure that the property is not sold at a throw-away price. Though the said case arose under a different statutory regime, the underlying principle is instructive: the Court, while executing or supervising a sale, must not prefer the mere completion of execution proceedings over the protection of the proprietary rights of the affected parties. Likewise, in Messrs Vital Chemical Corporation through Proprietor and others v. MCB Bank Limited and others (2026 CLD 96), this Court stressed that the reserve price in a public auction must be determined in a transparent manner and that the property should fetch the best possible price. The Court emphasized the importance of independent valuation and wide publicity so that the auction may attract meaningful participation from the public at large. The said authority arises under the Financial Institutions (Recovery of Finances) Ordinance, 2001 and Order XXI, Rule 66, C.P.C.; therefore, its provisions cannot be mechanically applied to proceedings under the Act of 2012. Nevertheless, the principle that a judicially supervised auction must be transparent, based upon reliable valuation material and conducted in a manner calculated to secure the best possible price, is of general relevance. In Al-Hadi Rice Mills (Pvt.) Ltd. through Chief Executive and 4 others v. MCB Bank Limited and 6 others (2023 CLD 85), this Court held that substantial lapses in the conduct of an auction, including defects relating to reserve price, valuation and compliance with the prescribed procedure, could render the sale invalid and incapable of confirmation. Similarly, in Husnain Cotex Ltd. and others v. Waseem Sana and others (PLD 2018 Lahore 871), the importance of fairness, impartiality, transparency and strict adherence to the legal requirements governing auction proceedings was emphasized. These

judgments demonstrate that the emergence of a highest bidder is not, by itself, conclusive of the legality of the auction. The Court must examine whether the process leading to the bid was lawful, fair and transparent. Where the initial process is founded upon a material statutory defect, subsequent steps dependent upon it may also be rendered unsustainable. It is, however, necessary to observe that every procedural deviation does not necessarily invalidate an auction. The Court must distinguish between an inconsequential irregularity and a defect which goes to the jurisdiction, statutory foundation or fairness of the sale. The present case, however, is not founded upon an isolated technical objection. The objections cumulatively concern the transition from internal auction to open auction, determination of reserve price, approval and publication of the auction plan, notice, bidding and compliance with the statutory requirements relating to payment of the purchase price. Where the record does not satisfactorily establish compliance with these foundational requirements, confirmation of the sale cannot be sustained merely because the highest bidder has emerged or the sale consideration has subsequently been distributed.

17. It may also be observed that the presumption of regularity attaching to official and judicial acts (*omnia praesumuntur rite esse acta*) operates only in the absence of a specific challenge. Once a party specifically pleads, and points to material suggesting, non-compliance with the mandatory pre-conditions of a sale, as the petitioner did here through his application for fixation of reserve price and his objections regarding notice, publication and deposit, the presumption of regularity yields to the requirement of actual proof. A Court cannot decline to record the requisite finding on such a specific challenge merely by presuming that the process, having concluded, must have been regular.

DEPOSIT OF AUCTION PRICE

18. The objection regarding deposit of the auction price also required specific determination. Section 11(5) of the Act of 2012

prescribes that the successful bidder in an open auction shall deposit earnest money equal to twenty percent of the bid price immediately upon conclusion of bidding, and the remaining amount within seven days. Section 15 makes the provisions of the C.P.C. applicable only to the extent that they are not inconsistent with this special statutory scheme. The learned Courts below were, therefore, required first to identify the governing statutory regime and then to determine whether the successful bidder complied with the requirements prescribed thereunder. The petitioner had specifically raised an objection regarding payment of the auction price; the impugned judgments, however, contain no clear finding identifying the date of the auction, the date and manner of deposit of the twenty percent earnest money, the date of deposit of the remaining amount, or the statutory provision under which such deposits were accepted. These matters were material before confirmation of sale, because, under the statutory scheme, confirmation follows compliance with the prescribed conditions rather than merely the conclusion of bidding.

19. In Sheikh Ameen-ur-Rasheed v. Shaikh Mamon ur Rasheed and 4 others (2023 YLR 2683), the Balochistan High Court, while dealing with auction proceedings arising out of a partition dispute, emphasized the importance of notice to the affected parties, fixation of reserve price, compliance with the prescribed procedure and deposit of the balance sale consideration within the statutory period. The Court held that non-observance of such mandatory requirements could vitiate the auction proceedings. Although the said judgment arose under Order XXI, C.P.C., and not directly under the Act of 2012, it supports the broader proposition that the Court must not confirm an auction sale without first satisfying itself that the mandatory conditions relating to notice, reserve price and payment of the sale consideration have been fulfilled.

PAYMENT TO CO-SHARERS AND SUBSEQUENT ACQUISITION OF SHARES

20. The subsequent distribution or receipt of sale proceeds by some of the co-sharers cannot, by itself, validate a sale that was otherwise

conducted contrary to the statutory scheme. However, the subsequent acquisition by respondent No.1/auction purchaser of the shares of other co-sharers is a material circumstance which cannot be ignored while moulding the relief. Such subsequent acquisition has the effect of altering the extent of the proprietary interest held by the auction purchaser and must be taken into account before directing the drastic course of a fresh auction of the entire property. The rights acquired by respondent No.1 from the other co-sharers, if duly established through legally admissible documents, shall consequently be determined separately from the petitioner's subsisting share, and the latter's interest shall be dealt with in accordance with law.

PARTICIPATION OF RESPONDENT NO.1 AND EFFECT OF ACQUIRED SHARES

21. There is no merit in any objection founded merely upon respondent No.1 being a co-owner. Section 11(2) expressly permits a co-owner to participate in an open auction, and his status as a co-owner does not, therefore, disqualify him from becoming the auction purchaser. More importantly, the record is now required to be considered in the light of the fact that respondent No.1/auction purchaser has subsequently acquired shares from certain other co-sharers. The real question, therefore, is not merely *who* purchased the property at the auction, but what proprietary interest respondent No.1 presently holds in the suit property and what legal consequence should follow in respect of the petitioner's remaining share in view of the defects or objections raised against the auction proceedings.

JUDICIAL AUCTION AND MOULDING OF RELIEF

22. A judicial auction is fundamentally different from an ordinary private transaction. The Court does not merely facilitate a bargain between willing parties; it exercises statutory authority for the disposal of property affecting the proprietary interests of all co-sharers. The process must, therefore, satisfy the requirements of procedural fairness and inspire confidence that the property was exposed to a transparent mechanism and that the interests of all

concerned were adequately protected. At the same time, while determining the appropriate relief, the Court is required to take into account subsequent events which have a direct bearing upon the proprietary interests of the parties. Where the auction purchaser has, subsequent to the auction, lawfully acquired the shares of other co-sharers, the relief should be moulded so as to protect the petitioner's subsisting share without unnecessarily disturbing rights validly acquired by the auction purchaser from other co-sharers.

23. Equally, every procedural deviation does not necessarily invalidate an auction. The Court must distinguish between an inconsequential irregularity and a defect that goes to the jurisdiction, statutory foundation, or fairness of the sale. The present case is not founded upon an isolated technical objection. The objections cumulatively concern the very transition from internal auction to open auction, determination of reserve price, approval and publication of the auction plan, and compliance with the statutory requirements relating to payment of the purchase price. These objections require determination; however, their legal effect must also be considered in the context of the subsequent acquisition of shares by respondent No.1. In these circumstances, the appropriate course is not to order a fresh auction of the entire property without first determining the petitioner's subsisting interest and its market value.

SCOPE OF REVISIONAL INTERFERENCE

24. It is a settled principle that a revisional Court, exercising jurisdiction under Section 115, C.P.C., does not ordinarily interfere with concurrent findings of fact merely because another view of the evidence is possible. Interference becomes warranted, however, where the Courts below have failed to exercise jurisdiction vested in them, have exercised jurisdiction not vested in them, have acted in disregard of mandatory statutory requirements, or their conclusions are founded upon misreading, non-reading, or a failure to consider material evidence. The present case falls within this exception. What is impugned here is not merely a finding on a disputed question of fact,

but the absence of considered findings on material statutory pre-conditions governing confirmation of the sale under a special enactment. The matter, therefore, requires reconsideration by the learned Executing Court in accordance with the statutory scheme, while moulding the consequential relief in view of the subsequent acquisition of shares by the auction purchaser.

CONCLUSION

25. For the reasons discussed above, the auction sale cannot be sustained in its present form insofar as it affects the petitioner's share without determination of the objections raised by him and the present proprietary position of respondent No.1/auction purchaser. At the same time, the subsequent acquisition by respondent No.1 of the shares of other co-sharers is a relevant subsequent development which must be given due effect. Therefore, before directing any fresh auction, the learned Executing Court shall determine, on the basis of legally admissible material, the petitioner's subsisting share in the suit property and the prevailing market value of the property corresponding to such share. Thereafter, respondent No.1/auction purchaser shall be afforded an opportunity to pay to the petitioner the amount representing the market value of his share, as determined by the learned Executing Court. If respondent No.1 is ready and willing to pay such amount within the time and in the manner determined by the learned Executing Court, there shall be no necessity to conduct a fresh auction in respect of the petitioner's share. If, however, respondent No.1 declines or fails to pay the determined amount within the prescribed time, the petitioner's share shall be dealt with through a fresh auction in accordance with the Act of 2012 and all other applicable provisions of law.

26. Accordingly, the learned Executing Court shall proceed afresh, without disturbing the preliminary decree determining the title, rights and respective shares of the parties. It shall first determine the shares/interests lawfully acquired by respondent No.1/auction purchaser from other co-sharers and the extent of his resultant present

interest in the suit property. It shall thereafter determine the petitioner's subsisting share and the market value attributable to that share, on the basis of reliable and legally admissible valuation material. After such determination, respondent No.1 shall be given an opportunity to satisfy the value of the petitioner's share by payment thereof; failing such payment, the petitioner's share shall be subjected to fresh auction in accordance with the statutory procedure.

27. While determining the market value, the learned Executing Court shall consider the earlier offer of Rs.50,00,000/- dated 21.11.2020, its alleged acceptance dated 18.12.2020, the subsequent auction price of Rs.36,50,000/-, the applicable schedule rate, the valuation material placed on record and any other relevant material available before it. None of these figures shall, however, be treated as conclusive by itself. The earlier offer shall neither be treated as a concluded sale merely by reason of its alleged acceptance nor be disregarded as irrelevant material. The valuation shall specifically relate to the petitioner's share in the property, and any amount already received by or attributable to the petitioner shall be duly accounted for while determining the amount, if any, payable to him.

28. For the foregoing reasons, the instant civil revision petition is **partly allowed** to the extent the impugned auction affects the petitioner's subsisting share. The matter is remanded to the learned Executing Court, which shall, without disturbing the preliminary decree, first determine the shares lawfully acquired by respondent No.1/auction purchaser from the other co-sharers, and thereafter determine the petitioner's subsisting share and the market value attributable thereto, having regard to the material discussed in paragraphs 25 to 27 above, with any amount already received by or attributable to the petitioner being duly adjusted. Respondent No.1 shall thereafter be afforded an opportunity to pay the petitioner the amount so determined, within the time fixed by the Executing Court. If such payment is made within the stipulated period, no fresh auction shall be required in respect of the petitioner's share; if not, the

petitioner's share shall be subjected to fresh auction in accordance with the Act of 2012 and applicable law. The rights, if any, lawfully acquired by respondent No.1 in the shares of the other co-sharers, not being the subject matter of this challenge, shall not be disturbed by this judgment, subject to their validity being established before the Executing Court if questioned. The preliminary decree shall remain intact, and this remand shall not be construed as a declaration that the entire auction is void. The learned Executing Court shall endeavour to conclude this exercise within three months of receipt of a certified copy of this judgment. There shall be no order as to costs.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Sultan