

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No: **Writ Petition No. 65237 of 2023**

Awaiz Gohar *versus* ***Sumaira Adnan & 2 others***

| S. No. of order/ proceeding | Date of order/ Proceeding | Order with signature of Judge, and that of parties or counsel, where necessary |
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| 05.10.2023 | Mr. Muhammad Irfan Khan Ghaznavi, Advocate for the petitioner. |
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Through present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed judgment dated 19.09.2023 passed by the learned Additional District Judge Lahore and order dated 22.02.2023 passed by the learned Civil Judge, Lahore.

2. Brief facts of the case are that on 12.06.2021 respondent No. 1 filed suit titled “*Mst. Sumaira Adnan versus Awaiz Gohar*” for possession through partition with respect to the property as described in the suit (the ‘*suit property*’). On 22.02.2023 the learned trial Court declared that the internal auction has failed and started proceedings for the external auction. The said decision was assailed by the petitioner before the learned Additional District Judge, Lahore through civil revision No. 96 of 2023, which was dismissed vide judgment dated 19.09.2023. Aggrieved from the same, present petition has been filed by the petitioner.
3. Learned counsel for the petitioner has argued that the learned two Courts below have fell to

an error while ignoring section 10(4) of the Punjab Partition of Immovable Property Act, 2012 (the '*Act*'), which provides that the co-owners of immovable property can submit their written offers or counter offers; that internal auction has been declared as unsuccessful in haste and without observing the requirement of law. He has further submitted that section 10(2) of the *Act* permits the representation through authorized agent at the stage of internal auction and when passing order dated 22.02.2023 it went unnoticed that the learned counsel of the petitioner was present on the given date of hearing.

4. Heard. The documents available on the file have been perused.

5. The learned trial Court passed order for holding internal auction, after reaching to the conclusion that there is no dispute as to the ownership of the *suit property*. In pursuance to section 10(2) of the *Act*, the parties were directed to appear in person. On 18.05.2022 evaluation report of the *suit property* was submitted and the petitioner was directed to appear on 31.10.2022, when the respondent-lady remained present but the petitioner failed to appear. The case was once again fixed on the same day at 11:30 a.m. with the direction to the petitioner to appear but he neglected to obey the Court's order. Thereafter, the learned trial Court fixed the case for 23.12.2022 for the purposes of internal auction and personal appearance of the parties. On the said date the learned Court was

apprised that petitioner is out of the city and adjournment was sought by the learned counsel for the petitioner. Then on 24.01.2023 it was stated before the Court that the petitioner is suffering from COVID-19. The petitioner again failed to appear on 27.01.2023 or to make any offer or statement through his authorized agent for the progress of internal auction. This was followed by a specific direction to the petitioner to appear on 06.02.2023 but in vain.

6. These adjournments continued till 22.02.2023 when once again the petitioner instead of appearing before the Court produced a copy of some revision-petition and the learned trial Court was informed that the petitioner is out of the Country. Ultimately, on 22.02.2023 after perusing the record and in view of the conduct of the petitioner, the learned trial Court concluded that the petitioner is not interested in the internal auction and closed proceedings relating to internal auction by declaring the same as unsuccessful.

7. Section 11(1) of the Act reads as follows: -

*If the co-owners refuse to participate in the internal auction or **only one co-owner shows his willingness to participate in such auction** or the internal auction under section 10 has failed, the Court shall fix the reserve price of the immovable property and direct open auction of the property.*

(Emphasis Supplied)

8. Perusal of the above reflects that if the co-owners refuse to participate in internal auction or only one co-owner shows willingness to participate

in such auction and other(s) are not willing or when the internal auction under section 10 of the *Act* has failed, then the Court can proceed with open auction and fix the reserve price. In the present case, the learned trial Court initiated the proceedings for internal auction, under section 10 of the *Act* but the petitioner failed to appear or to make any offer for the progress in the internal auction. He continued to be absent from the learned Court and his learned counsel kept seeking adjournments on one or the other pretext between 19.04.2022 to 22.02.2023.

9. Section 14 of the *Act* provides specific period of six months to complete the proceedings in such suits from their date of institution. The present suit was filed on 12.06.2021. The process of internal auction was initiated on 19.04.2022 and the petitioner has already gained about nine months for making a suitable offer or properly assisting the learned Court in the proceedings of internal auction or show willingness to participate. By various means and adopting different tactics the petitioner defeated the very purpose of the *Act* which has been enacted for the purposes of expeditious partition of immovable properties and to provide remedy for ancillary matters. As already discussed, section 11(1) of the *Act* clearly commands to further proceed with the open auction when (i) co-owners refuse to participate in internal auction or (ii) only one co-owner shows his willingness to participate or (iii) internal auction under section 10 of the *Act* fails. The respondent-lady throughout the proceedings kept appearing, whereas,

the petitioner has even avoided to appear in person and his lawyer has shown no interest in the progress of the case or the internal auction.

10. In the Chambers Dictionary (12th Edition) the word “*willing*” is defined as ‘eager, co-operative, ready and prompt to act; voluntary; chosen; intentional’. As per Oxford Advanced Dictionary (10th Edition) the word “*willingness*” means ‘ready to do something’. In case titled “*Ms. Sara Bibi versus Muhammad Saleem and others*” (PLD 2021 Islamabad 236), it has been already observed that the word “*willingness*” also denotes the conduct of a relevant party. However, instead of taking any prompt action or to willingly participate in the proceedings, the petitioner remained extremely disinclined. His conduct has shown that he was not prepared or ready for the internal auction. He kept wasting the time of the learned trial Court and caused delay of about 9 months in just one step of the case (i.e. internal auction), entirely contrary to the intent of legislature reflected from the preamble and section 14 of the *Act*.

11. Today, the learned counsel for the petitioner has relied upon an air ticket to show that on the given day the petitioner was in *Dubai*. This air ticket does not reflect any actual travel but just the booking. The petitioner has not even bothered to provide record of his entry in *Dubai* up to this third forum. It is important to observe that the case was fixed for personal appearance in the Court when the petitioner was present in the Country but instead of

appearing in the Court, he allegedly left the Country for few days, without pleading any emergency or assigning valid reason. Even if the stance of the petitioner is correct that he went to *Dubai*, in the absence of assigning any emergency or reasonable explanation to leave the Country in defiance of the Court order, is not acceptable. The overall conduct of the petitioner, starting from 18.05.2022 to 22.02.2023 is not such that any leniency can be shown. In this long time period numerous opportunities were given to him to appear before the Court. In utter disregard of the same, not just the petitioner failed to appear but at the same time no ‘*willingness*’ or intent is shown to participate in the internal auction.

12. Learned counsel for the petitioner has failed to convince that the learned two Courts below have not adhered to the law, thus, the decisions assailed do not require any interference. Consequently, this petition is **dismissed *in limine***. No order as to costs.

(Sultan Tanvir Ahmad)
Judge

Approved for Reporting

Judge

*Announced & dictated
on 05.10.2023 prepared
and signed on 25.10.2023.*

*Iqbal**