

Form No: HCJD/C-121
ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.381 of 2020

Muhammad Safdar.
VS
Irfan Nazir and 02 others.

Writ Petition No.382 of 2020

Nusrat Bibi.
VS
Irfan Nazir and 02 others.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07.02.2020.	Mr. Imran Feroze Malik, Advocate for the petitioners in both petitions.

The instant order shall decide the abovementioned writ petitions as common questions of law and facts are involved.

2. The facts, in brief, are that a suit was filed by respondent No.1, wherein it was alleged that one Haji Zahoor Ahmad promised to transfer land, measuring 5-Kanals in Sanjalian, Bharakahu, Islamabad to respondent who paid sum of Rs.82,00,000/-. The said Hji Zahoor Ahmad failed to transfer the land and for repayment of that amount issued cheques, which when were presented were dishonoured. Respondent filed a suit under Order XXXVII, Rules 1 and 2 C.P.C. for recovery of amount of Rs.82,00,000/- with

Mesne profit; the referred suit was decreed. In the execution proceedings, the petitioners furnished surety for payment of sum to the respondent on behalf of Haji Zahoor Ahmad. Due to non-fulfillment of the obligation by the referred person, the learned Trial Court directed to sale/auction of the properties of the petitioners, vide order dated 31.10.2019. The said order was challenged by the petitioners through separate civil revisions, which were dismissed.

3. Learned counsel for the petitioners, *inter-alia*, contended that they are not liable in any way; that the properties ought not to be auctioned/sold. When confronted whether any objections were filed before the learned Trial Court, the answer was in the negative.

4. Arguments advanced by learned counsel for the petitioners have been heard and the documents placed on record examined with his able assistance.

5. The grievance of the petitioners is in respect of order regarding sale of the properties of the petitioners as they stood surety undertaking payment of decretal amount. The petitioners instead of availing the remedy of filing objections regarding the auction of the properties in the execution

chose to challenge the orders by way of revision. Be that as it may, they have a right to file objections under Order XXI C.P.C. or other applicable law challenging the sale/auction.

6. In view of the above, the instant petitions are **disposed of** with the observation that the petitioners may approach the learned Court executing the judgment and decree passed in favour of respondent No.1 and may raise any legal or factual objection regarding the auction of their properties. The learned Trial Court shall not be prejudiced by any observation made by the learned Revisional Court.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua