

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Syed Hasan Azhar Rizvi  
Ms. Justice Musarrat Hilali  
Mr. Justice Naeem Akhtar Afghan

**CIVIL PETITION NO. 4194 OF 2023**

[Against the order dated 27.09.2023 passed by Islamabad High Court,  
Islamabad, in FAO No. 104 of 2023]

***Tariq Zubair Khan***

*...Petitioner(s)*

***Versus***

***Mst. Tabassum Khan and others***

*...Respondent(s)*

For the Petitioner(s)	:	Mr. Muhammad Ikram Chaudhry, ASC
For the Respondent(s)	:	N.R
Date of Hearing	:	19.04.2024

**JUDGMENT**

**SYED HASAN AZHAR RIZVI, J.-** This petition under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") is directed against order dated 27.09.2023 ("**Impugned Order**") passed by the Islamabad High Court, Islamabad ("**High Court**") whereby First Appeal Against Order No.104 of 2023 filed by the petitioner (*Tariq Zubair Khan*) was dismissed

2. The brief facts giving rise to the present petition are that the petitioner and respondents No. 1 to 6 are brothers and sisters *inter se*. The predecessors of the parties i.e. father and mother died on 15.12.1999 and 07.07.2012 respectively leaving behind certain properties. Respondent No.1 to 5 instituted a suit for possession through partition against the present petitioner and Respondent No.6 and the preliminary decree was passed on 27-10-2017.

Pursuant to preliminary decree, the trial court appointed Court Auctioneer to conduct an auction of House No.582, Street No.13, Sector G-10/1, Islamabad ("**Suit Property**"). On 24.06.2023 petitioner filed objections on the report submitted by the Court Auctioneer. The same was dismissed on account of petitioner's failure to deposit the 20% (twenty percent) of the sum realized at the sale vide order dated 12.07.2023.

Being aggrieved with the order, the petitioner preferred an appeal against the said order before the High Court which also met the fate of dismissal vide order dated 27.09.2023, hence this petition.

3. The learned counsel for the petitioner has contended that the Courts below have erred in law and not appreciated the law in its true perspective; that objection application was made under Order XXI, rule 84 of the Code of Civil Procedure, 1908 ("**CPC**") but it was decided within the limits of Order XXI, Rule 90; that impugned judgment is based on mere technicalities thus not sustainable in the eyes of law.

4. We have heard the learned counsel for the petitioner and perused the material available on the record.

5. It transpires from the record that sale of suit property through auction took place on 24.06.2023. Therefore said sale of the property could have been challenged under Order XXI, rule 89 or 90 of CPC. Record reveals that, petitioner did not apply to set aside the sale through auction either under Order XXI, Rule 89 or Rule 90. Rather he filed objections pursuant to Rule 84 of the said order against the report of the Court Auctioneer alleging that the sale through auction took place with fraudulent and *malafide* means.

6. At this juncture, it is significant to understand the scheme provided for sale of an immovable property to satisfy the execution of decree under the CPC. Order XXI CPC itself is an exhaustive order and provides a comprehensive mechanism regarding the execution of the decree. For the satisfaction of the decree by the sale of suit property, Court issues a proclamation of sales through public auction in accordance with provisions of Order XXI, rule 66 of CPC. Eventually, the court decides the mode of making the proclamation to comply with provisions of Order XXI, rule 67 of CPC. The next stage in sale through public auction is the deposit of twenty-five percent of the amount of purchase money followed by the full amount of purchase money on the fifteenth day from the sale of the property to satisfy the requirements of Order XXI, rules 84 and 85 respectively. Any person aggrieved of auction proceedings may make an application under rules 90 or 91 for setting aside the sale on the grounds of irregularity or fraud.

7. The contention raised by the learned counsel for petitioner, that application was made under Order XXI, rule 84 but it was decided within the limits of Rule 90 of Order XXI, is not tenable in eyes of law. It is pertinent to reproduce this rule for ease of reference:

**"84. Deposit by purchaser and re-sale on default-**

(1) On every sale of immoveable property the person declared to be the **purchaser** shall pay immediately after such declaration a deposit of twenty five per cent on the amount of his purchase money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be resold.

(2) Where the decreeholder is the purchaser and is entitled to set off the purchase money under rule 72, the Court may dispense with the requirements of this rule."

*(Emphasis added)*

It is clear from a bare reading of *supra* rule that the **purchaser** is required by law to immediately pay twenty-five

percent of purchase money and there is no word that suggests objections to auction proceedings may be filed by the owner/legal heirs of the owner of the subject property under this rule. Moreover, petitioner in this case, was not a purchaser but his predecessors in interest are the owner of the subject property, hence, he could not have invoked this rule.

8. This Court in the case of *Muhammad Attique vs Jami Limited and others (PLD 2010 SC 993)* has ruled that:-

"36. ... In an auction proceedings title in the property not transferred in favour of the highest bidder, at the time when auction was held and offer was forwarded to the Court for acceptance, the Court sale for immovable property under Order XXI, Rule 84 is subject to proceedings under Orders XXI, Rules 89, 90 and 91, as result of which sale may either be set aside or confirmed. Once the sale is confirmed, section 65 C.P.C. provides that ownership right in the immovable property will be deemed to have vested in the succeeding bidder retrospectively from the date when action was held."

It is evident from the portion reproduced above that Order XXI rule 84 CPC is subject to Order XXI rule 90 of CPC. Hence, the objections were not maintainable under rule 84 CPC.

9. In the case at hand, the trial court deemed the objections filed by Petitioner as an application under Order XXI, Rule 90 CPC.

For the ready reference, rule 90 is reproduced below:

**"Application to set aside on ground of irregularity of fraud.---**Where any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud:

[Provided further that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty percent of the sum realized at the sale, or furnishes such security, as the Court may direct].

(Emphasis added)

Above rule demonstrates that sale may be set aside on the grounds of material irregularity or fraud under Order XXI, Rule 90 CPC wherein the applicant has to establish substantial injury sustained by him owing to such material irregularity or fraud in the sale by public auction. Additionally, applicant has to comply with the second proviso to this rule by depositing twenty percent of the sum realized at the sale. The rationale behind the second proviso is to discourage the frivolous objections frustrating the execution of the decree. In view of above, Trial Court rightly observed that objections are within the purview of Order XXI, rule 90 CPC rather than under rule 84 CPC.

10. The second proviso to the Order XXI, Rule 90 CPC came under discussion before this court in the case of *Mst. Samrana Nawaz and others vs MCB Bank Ltd and others* (PLD 2021 SC 581) wherein it has ordained:-

"The expression "as the Court may direct" leaves little room to speculate whether the applicant is to deposit the 20% of the sale amount at the time of filing the objection petition or at a subsequent stage under direction of the court. The expression "such amount not exceeding twenty percent" further strengthens the position that the amount required to be deposited by the applicant is to be determined by the court which must not exceed twenty percent of the sale amount but can be less than that. An applicant cannot anticipate what the direction of the court would be in this regard and, therefore, he cannot deposit the requisite amount at the time of filing the objection petition. The mandatory requirement of the second proviso appears to become operative only once the court determines the "amount not exceeding twenty percent of the sum realised at the sale" and directs the applicant to deposit the same."

11. In the present case, record reveals that the trial court directed the petitioner vide order dated 12.07.2023 to deposit twenty percent of the sale proceeds but he failed to do so. Neither he made any application for an extension of time nor showed any willingness to deposit such an amount. The trial court has rightly

observed that there had been an inordinate delay in the execution of the decree and six years had already elapsed.

12. The learned counsel for the petitioner has not been able to point out any misreading or non-reading of the material on record that could justify interference with the concurrent findings rendered by the *fora* below.

13. Accordingly, for the reasons stated hereinabove, we find the impugned order to be well reasoned which is based on proper appreciation of facts and law.

14. Consequently, present petition being bereft of merit is dismissed and leave to appeal is refused.

15. Above are reasons for our short order announced on even date.

Judge

Judge

Judge

**Bench.II**  
**Islamabad**  
19.04.2024  
APPROVED FOR REPORTING.  
*Paras Zafar, LC/*

