

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
First Appeal No.133 of 2025

DATE: **ORDER WITH SIGNATURE(S) OF JUDGE(S).**

Hearing Case [Priority]

1. For order on office objection / reply 'A'
2. For hearing of Main Case
3. For hearing of CMA No.1298/2025

15.01.2026

Mr. Mukhtar Ahmed Kobhar, Advocate for the Appellant

Mr. Rameez Adnan Ansari, Advocate for Respondent No.1.

Sardar Mushtaq Ahmed, Advocate for Respondent No.3.

Through the instant Appeal, the Appellant has challenged the Order dated 30.08.2025 [the “**Impugned Order**”], rejecting the Application of the Appellant for setting aside the sale in favour of Respondent No.3 [Muhammad Suleman – Action Purchaser].

Learned Counsel for the Appellant contends that the latter has interest in the **Subject Property** viz. House No.B-202, Block-13, F.B. Area, Karachi, Ground + 1 Floor with roof, as he is occupant of ground floor having purchased the same vide Sale Agreement dated 12.10.2012 from Ali Farhan – Respondent No.2 – Judgment Debtor. Contends that the stance of the Appellant / Applicant / Intervenor was not appreciated by the learned Banking Court while dismissing his Application, which Order is also contrary to the record, because the Appellant has not only deposited the sale price but also paid a part of it to Respondent No.1 – MCB [Muslim Commercial Bank Ltd.] – Decree Holder. He has also placed reliance on Section 53(A) of the Transfer of Property Act, 1882, and argued that since possession of the Subject Property was handed over to the Appellant, therefore, he has interest in the Subject Property and his status falls within the ambit of Rules 89, 90 of Order XXI of CPC. He has cited the following case law in support of his arguments_

- i. 2019 S C M R 321
[*Muhammad Khalil versus Messrs Faisal M.B. Corporation and others*];

- ii. 2018 C L D 233
[*Siraj Ahmed through L.Rs. versus Faysal Bank Limited and others*]; and
- iii. 2015 C L D 40
[*Haji Zahid Saeed versus Messrs Asif Brothers and others*].

The above line of arguments of the Appellant's Counsel is opposed by the learned Counsel for Respondent No.1 – MCB. He has referred to the various Paragraphs of the Impugned Order and specially about the latest Application, which was filed on 21.05.2025 when the Subject Property was already put to auction, *whereas*, learned Counsel for Respondent No.3 [Auction Purchaser] has referred to the Mortgage Deed of 23.08.2008 [at page-175] and states that admittedly the Subject Property was purchased when it was mortgaged and that too since it is a registered mortgage, the Appellant was in knowledge of the said charge and encumbrance upon the Subject Property. Has referred to Certificate of Sale issued in his favour by the Banking Court, which is of 04.09.2025.

Arguments heard and record perused.

On a question, Learned counsel for Respondent No.1 – D.H.-Bank states that the amount has not been released due to pending litigation, *whereas*, learned Counsel for the Respondent No.3 – Auction Purchaser has stated at bar that till date the possession has not been handed over to him.

The only evidence available in the record is that a Pay Order of Rs.2.4 Million [at page-43] was deposited with the Nazir Office of the Banking Court, *whereas*, two other Pay Orders of Rs.2.5 Million and 5.8 Million dated 19.05.2025 and 28.06.2025, showing Decree Holder-Bank as beneficiary, were never paid to it, as denied by its Counsel during hearing.

The Application, which was dismissed through the Impugned Order is available at page-29, wherein, permission was sought to deposit the amounts [as mentioned above] and the third and last amount of Rs.8.3 Million was to be deposited on 30.09.2025, even after the confirmation of the auction proceeding [on 30.08.2025]. The original decretal amount as mentioned in the final decree [at page-171] is Rs.9,046,238/-, however, it kept on increasing as the Decree was not satisfied and the decretal amount at the relevant time when the Subject Property was put to auction was

Rs.1,42,76,836/- as mentioned in the Public Auction [at page-191], but the Subject Property was purchased by the Respondent No.3 – Auction Purchaser for Rs.490,000,00/- [Rupees Four Crore and Ninety Lacs only]. There is no complaint that the total sale price was not deposited within time and in this regard, Paragraph-5 of the Impugned Order is quite specific.

Gist of the Judgments relied upon by the learned Counsel for the Appellant, is that Rule 89 of the Order XXI of CPC has been legislated to safeguard legitimate interest of those who have interest in the property so that they can redeem the same at the time of auction / sale, and / or the mortgaged property should not be sold at throwaway price. The present set of facts are distinguishable, because the Subject Property has been sold on a much higher price than the decretal amount and similarly, the Appellant does not have any interest as such in the Subject Property except his Agreement to Sell for which the proceeding is still *sub judice* before the Court of law, so also observed in the Impugned Order; conversely, the interest in the Subject Property is of Decree Holder-Bank being the mortgagee, as envisaged under Section 58 of the Transfer of Property Act; **secondly**, undisputedly, the Sale Agreement is of subsequent date when the Subject Property was already mortgaged with the Decree Holder-Bank; **thirdly**, the Pay Orders and Cheques [purported], appended with the above Application of the Appellant, do not even satisfy the decretal amount and is far less than the sale price on which the Subject Property is sold.

In view of the above, there is no plausible ground to interfere in the Impugned Order. Consequently, instant Appeal is dismissed along with all pending application(s), if any, with no order as to costs. However, it is necessary to observe and direct that the Banking Court shall proceed further in the matter for releasing the amount to the Decree Holder and handing over the possession to the Purchaser in view of the Sale Certificate. The Banking Court and the Representative of the Bank shall calculate the up to date decretal amount and only that **amount will be released** from the sale price and the remaining amount will be kept with the Banking Court and if the Judgment Debtor applies for release of the same, then his Application will be decided in accordance with Law and Rules.

Judge

Judge