

IN THE HIGH COURT OF SINDH, KARACHI

***Before: Muhammad Iqbal Kalhoro &
Mohammad Abdur Rahman, JJ,***

Special High Court Appeal No.107 of 2025

**Bank Alfalah Limited
Vs.
Syed Zulfiqar Ali Rizvi & others**

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1. For orders on office objections a/w reply at "A"
 2. For hearing of main case.
 3. For hearing of CMA No.1027/2025.

Appellants: Mr. S. Aijaz Hussain Shirazi, Advocate.
Respondents: Raj Ali Wahid Kunwar, Advocate
Date of hearing: 13 August 2025
Date of decision: 13 August 2025

J U D G E M E N T

MOHAMMAD ABDUR RAHMAN, J Through this Special High Court Appeal, maintained under Sub-Section (1) of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as the "Ordinance, 2001"), the Appellant impugns an order dated 5 June 2025 that was passed by a learned Single Judge of this Court on CMA No. 433 of 2025, being an application maintained by the Respondent No. 1 under Section 151 of the Code of Procedure in Execution Application No. 13 of 2016 emanating from Suit No. B-130 of 2009 (hereinafter referred to as the "Impugned Order"), seeking directions that the Appellant deposit the title documents of various properties, that were mortgaged with the Appellant, with the Official Assignee of this Court and which application was allowed on the first date of hearing without issuing notice to the Appellant or other Respondents and also seeking the suspension of proceedings for contempt that have been instituted as against officers of the Appellant, on the basis of CMA No. 457 of 2025 that has been maintained by the Respondent No. 1, for allegedly violating the Impugned Order..

A. Facts

(i) Financial Facilities, Suit No. B-130 of 2009 and Decree dated 20 January 2015

2. The Appellant provided financial facilities to the Respondent No. 1 amounting to US \$ 5,000,000 under various agreements for financing. The financial facilities that were provided were, inter alia, secured by a mortgage over three immovable properties identified as hereinunder:

- (i) Plot No. 108/16, Survey Sheet No. 35-P/1, Block 3, Bahadur Yar Jung Co-operative Housing Society Limited, Karachi admeasuring 840 square yards (hereinafter referred to as the “Mortgaged Property No. 1”);
- (ii) Plot No. 109/16, Survey Sheet No. 35-P/1, Block 3, Bahadur Yar Jung Co-operative Housing Society Limited, Karachi admeasuring 835 square yards (hereinafter referred to as the “Mortgaged Property No. 2”);
- (iii) Plot No. 95, Khayaban e Ghazi, Phase VI, Pakistan Defence Officers Housing Authority, Karachi admeasuring 2000 square yards (hereinafter referred to as the “Mortgaged Property No. 3”).

On account of the Respondent No. 1 defaulting on his obligations, the Appellant was constrained to institute Suit No. B-130 of 2009 before this Court under Section 9 of the Ordinance, 2001 and which was decreed by a Learned Single Judge of this Court in favour of the Appellant on 20 January 2015.

(ii) Appeals maintained as against Decree dated 20 January 2015 passed in Suit No. B-130 of 2009

3. Cross Appeals were maintained as against the Decree passed in Suit No. B-130 of 2009 as hereinunder:

- (i) Special High Court Appeal No. 260 of 2015 was maintained by the Appellant as against the Decree dated 20 January 2015 that was passed in Suit No. B-130 of 2009 on the ground that the Learned Single Judge had erred in holding that a valid mortgage had not been created over Plot No. 95, Khayaban e Ghazi, Phase VI, Pakistan Defence Officers Housing Authority, Karachi admeasuring 2000

square yards and which Special High Court Appeal was allowed by this Court by an order dated 12 March 2024;

- (ii) Special High Court Appeal No. 291 of 2015 was maintained by the Respondent No. 2 and the Respondent No. 3 as against the Decree dated 20 January 2015 that was passed in Suit No. B-130 of 2009 and which was dismissed as not pressed on 12 March 2024;
- (iii) Special High Court Appeal No. 4 of 2016 was maintained by the Respondent No. 1 as against the Decree dated 20 January 2015 that was passed in Suit No. B-130 of 2009 on the ground that the Learned Single Judge had erred in failing to conclude that “markup on markup” had been charged by the Appellants on the financing availed and that the Appellant also contributed to excessive mark up being charged by failing to permit the Appellants to sell certain quantities of rice that had been hypothecated with the Appellant. A Division Bench of this Court had, by an order dated 12 March 2024, dismissed Special High Court Appeal No. 4 of 2016; and
- (iv) Special High Court Appeal No. 13 of 2016 was maintained by the Respondent No. 2 and the Respondent No. 3 as against the Decree dated 20 January 2015 and which Special High Court Appeal was dismissed on 12 March 2024.

Apparently, CPLA No. 532-K of 2024 has been preferred before the Supreme Court of Pakistan by the Respondent No. 1 challenging the Decree dated 20 January 2015 that was passed in Suit No. B-130 of 2009 and which is pending adjudication.

4. During the pendency of Special High Court Appeal No. 291 of 2015, an order was passed on 29 April 2016, in that Appeal, staying proceedings in Execution Application No. 13 of 2016 that had been presented to implement the Decree dated 20 January 2015 that was passed in Suit No. B-130 of 2009 in the following terms:

“ ... *In the two appeals before us, there are interim order in the appeal filed by the bank. Learned counsel for the appellants in Special High Court Appeal NO. 291/2015 draws attention to his application for interim relief. However, but without prejudice to the case of the parties on the merits and even with regard to any submission that the parties may make at any subsequent stage with regard to interim relief or otherwise, since different parties including Banks have filed appeals against same Judgment and Decree, further proceedings in Execution with regard to the same are suspended.*”

This order remained operative until 12 March 2024 when Special High Court Appeal No. 291 of 2015 was dismissed as not pressed along with all pending applications on that date.

(iii) Applications and Orders in Execution Application No. 13 of 2016

5. On 18 April 2016 orders were passed in Execution Application No. 13 of 2016 directing that the Official Assignee was to be appointed as a commissioner inter alia for the sale of the properties mortgaged with the Appellant but which was stayed by the order dated 29 April 2016 passed in Special High Court Appeal No. 291 of 2015 as referred to hereinabove. However, during the pendency of the interim order dated 29 April 2016 passed in Special High Court Appeal No. 291 of 2015 the following order was, **on the first date and without notice**, passed on 21 August 2020 on CMA No. 143 of 2020 that was maintained in Execution Application No. 13 of 2016 on an application that was maintained under Order XXI Rule 2 read with Section 151 of the Code of Civil Procedure, 1908 by the Appellant and the Respondents No. 2 and the Respondent No. 3 seeking to enter into a partial settlement and inter alia pursuant to which title documents of the Mortgaged Property No. 1 and the Mortgaged Property No. 2 were to be redeemed and to be handed over by the Appellant to the Respondent No. 2 and the Respondent No. 3 and which order read as hereinunder:

“ “2. This is an application jointly filed by the decree holder and judgment debtors No.2 and 3. The decree holder and judgment debtors No.2 and 3 have entered into a partial settlement agreement dated 17.08.2020 whereby the judgment debtors No.2 and 3 shall pay an amount of Rs.500.00 millions in terms of the repayment schedule of the agreement. The photocopy of the partial settlement agreement is enclosed along with the present application. Attorneys of the decree holder bank and judgment debtors No.2 and 3, who are present in Court re-affirm and verify the contents of the partial settlement agreement as well as the present application. Attorneys of the decree holder bank and judgment debtors No.2 and 3 have already filed their affidavits in support of the present application. The terms and conditions of the partial settlement agreement are in accordance with law. Therefore, the listed application is allowed. The execution proceedings against judgment debtors No.1 shall be continued.

Mr. Hashmatullah holding brief for Mr. Ijaz Ahmed Zahid, advocate submits that as Mr. Zubair Hashmi, advocate has already filed his Vakalatnama for the decree holder, therefore the Vakalatnama of Mr. Ijaz Ahmed Zahid, advocate appearing for the decree holder may be discharged and office may be directed to delete the name of Mr. Ijaz Ahmed Zahid, Advocate from the file-cover as well as from the daily Cause-List. Order accordingly.”

6. The Respondent No. 1, as against the order dated 21 August 2020 passed on CMA No. 143 of 2020, that was maintained in Execution Application No. 13 of 2016, maintained CMA No. 200 of 2020 under clause (a) of Sub-Section (7) of Section 19 read with Sub-Section (1) of Section 7 of the Ordinance, 2001 and Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908 inter alia pleading fraud and contending that the title documents of the Mortgaged

Property No. 1 and the Mortgaged Property No. 2 should not be handed over to the Respondent No. 2 and the Respondent No. 3. as he was the real owner, as to an undivided share in each of those two properties and which undivided share was respectively held by the Respondent No. 2 and the Respondent No. 3 as benamidars. The Application was fixed for orders along with CMA No. 201 of 2020 **and on which ad interim orders were passed on 5 October 2020 directing the parties to maintain status quo**. Each of these applications are still pending adjudication in Execution Application No. 13 of 2016.

7. After the disposal on 12 March 2024 of Special High Court Appeal No. 260 of 2015, Special High Court Appeal No. 291 of 2015, Special High Court Appeal No. 4 of 2016 and Special High Court Appeal No. 13 of 2016, on 14 October 2024 the Appellant requested that proceedings for sale of the remaining mortgaged property be recommenced and on which date the following order was passed on CMA No. 200 of 2020, CMA No. 201 of 2020 and on the hearing of the Execution Application:

“ ... *Learned counsel for the decree-holder contends that the pending CMA's have become infructuous as the settlement agreement that was being entertained could not be concluded on account and no any amount was received from the othersides. Learned counsel further contents that the execution proceedings were restricted on account of restraint orders as passed in the High Court Appeals, however the said High Court appeals have since been disposed wherein the decree is not disturbed. It is lastly contended that by order dated 18.04.2016 Official Assignee has already been appointed as Commissioner for realization of the amount. Learned counsel requires the proceedings be imitated further on part of the Official Assignee.*

Let notice be issued to the judgment-debtors and to the Official Assignee. In case no restrain is present proceedings for the execution may continue and report be submitted after three weeks.”

As is apparent the last paragraph of the order clarifies that the proceedings in Execution Application No. 13 of 2016 can proceed, **unless there were no restraining orders that were to be passed**. In this regard, it is apparent that it is the Respondent No. 1's contention that **restraining orders in the form of a status quo order were operative in Execution Application No. 13 of 2016 and which had been passed on CMA No. 201 of 2020 on 5 October 2020 and which are still operative.**

8. It seems that from 14 October 2024 until June 2025 the following actions occur in Execution Application No. 13 of 2026:

- (i) The Official Assignee submits Reference No. 1 of 2024 dated 16 November 2024 and which is presented in this Court on 19 November 2024 directing the parties to deposit the original title documents before this Court;

- (ii) CMA No. 2550 of 2024 is presented on 11 December 2024 by the Respondent No. 1 under Section 151 of the Code of Civil Procedure, 1908 seeking directions to restrain the Respondent No. 1 and the Respondent No. 3 from entering into any “settlement” which would result in the Appellants releasing the title documents of the Mortgaged Property No. 1 and the Mortgaged Property No. 2 to the Respondent No. 2 and the Respondent No. 3;
- (iii) CMA No. 202 of 2025 is presented on 11 February 2025 by the Respondent No. 1, inter alia, to restrain the Respondent No. 2 and the Respondent No. 3 from further creating any right, title or interest in the Mortgaged Property No. 1 and the Mortgaged Property No. 2;
- (iv) CMA No. 431 of 2025 is presented on 3 June 2025 by the Appellants under clause (1) of Rule 2 of Order XXI of the Code of Civil Procedure, 1908 contending that the Respondent No. 2 and the Respondent No. 3 had entered into an Agreement with the Appellants whereby they had partially paid the amount owed under the Decree dated 20 January 2015 that was passed in Suit No. B-130 of 2009 and had redeemed Mortgaged Property No. 1 and Mortgaged Property No. 2 in favour of the Respondent No. 2 and the Respondent No. 3;
- (v) CMA No. 433 of 2025 is presented on 4 June 2025 by the Respondent No. 1 under Section 151 of the Code of Civil Procedure, 1908 seeking directions to be given to the Appellant to deposit the original title documents of each of the properties mortgaged with the Appellant in compliance of the order dated 18 April 2016.

While notice was ordered on Official Assignee submits Reference No. 1 of 2024, CMA No. 2550 of 2024, CMA No. 202 of 2025 and CMA No. 431 of 2025; on CMA No. 433 of 2025 **on 5 June 2025 being the first date of hearing without ordering notice on the application**, directions were given that the Appellants deposit the original title documents of each of the properties that were mortgaged with the Appellant with the Official Assignee of this Court **and on which date that application was disposed off**. As compliance was not made of the order dated 5 June 2025, the Respondent No. 1 has maintained CMA No. 457 of 2025 seeking directions from this Court to institute proceedings for contempt as against various officers of the Appellant and on which notice has also been ordered.

9. To summarise, at present the following applications are pending in Execution Application No. 13 of 2016 **and each of which are listed for order and for hearing on 29 August 2025:**

S No.	Application No.	Presented by	Relevant Section	Order passed
1	CMA No. 200 of 2020	Respondent No.1	Clause (a) of Sub-Section (7) of Section 17 read with clause (1) of Section 7 of the Ordinance, 2001 read with Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908	Notice
2.	CMA No. 201 of 2020	Respondent No.1	Rule 26 of Order 21 read with Section 151 of the Code of Civil Procedure, 1908	Notice and status quo to be maintained but which order has not been recorded as having been continued.
3.	Official Assignee Reference No. 1 of 2024	Official Assignee		No order has as of yet been passed
4.	CMA No. 2550 of 2024	Respondent No.1	Section 151 of the Code of Civil Procedure, 1908	Notice waived
5.	CMA No. 202 of 2025	Respondent No.1	Rule 29 of Order 21 of the Code of Civil Procedure, 1908	Notice
6.	CMA No. 431 of 2025	Appellant	Clause (1) of Rule 2 of Order 21 of the Code of Civil Procedure, 1908	No order has as of yet been passed
7.	CMA No. 457 of 2025	Respondent No.1	Section 94 of the Code of Civil Procedure, 1908 read with Section 3 and 4 of the Contempt of Court Order, 2003 an Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973.	Notice

(iv) Suit No. 263 of 2021 (renumbered as 1st Class Civil Suit No. 8617/2025 Senior Civil Judge VIII, Karachi (East))

10. This Suit has been maintained by the Respondent No. 1 as against the Respondent No. 2 and the Respondent No 3 inter alia contending that the Respondent No. 1 was the real owner of an undivided share in the Mortgaged Property No. 1, and the Mortgaged Property No. 2 and that the Respondent No. 2 and the Respondent No. 3 held that undivided share as a benamidars. The Suit, while initially instituted before this Court and which was being heard along with Execution Application No. 13 of 2016 and which now has, on the revision of the Pecuniary Jurisdiction of this Court, since been transferred to the VIIIth Senior Civil Judge Karachi East and renumbered as 1st Class Civil Suit No. 8617 of 2025.

B. Contentions on Behalf of the Appellant

11. Mr. Aijaz Hussain Shirazi entered appearance on behalf of the Appellant Bank and contended that the Appellant has every right to redeem property that has been mortgaged with it in any manner that it deems fit and that no fetter can be placed on that right. He states that Impugned Order directly interferes with such a right and cannot be sustained. In this regard he relied on a decision of a Division Bench of this Court reported as **Muhammad Jawed through Authorized Attorney vs. First Women Bank Limited and 8 others**¹ in which it was held that proceedings in Execution Applications were to give effect to a decree until the decree stood satisfied and where a decree stood satisfied, the Execution proceedings should abate. He also relied on another judgment of a Division Bench of this Court reported as **Nazir Ahmed vs. National Bank of Pakistan and others**² and in which a Division Bench of this Court held that when a Judgment Debtor had satisfied a Decree prior to auction of a mortgaged property having been confirmed, the auction proceedings would abate.

12. Mr. Aijaz Hussain Shirazi stated that the Impugned Order was passed without notice to the Appellants and on the basis of which order, proceedings for contempt have been instituted as against the officers of the Appellant and which cannot be sustained.

C. Contentions on Behalf of the Respondent No. 1

13. Mr. Raj Ali Wahid entered appearance on behalf of the Respondent No. 1 and contended that the Appellants had been directed on 18 April 2016 to deposit the title documents of the properties mortgaged with the Appellant with the Official

¹ 2020 CLD 254

² 2021 CLD 1404

Assignee of this Court and on which compliance had not been made. He submitted that there was a dispute as between the Respondent No. 1 with the Respondent No. 2 and the Respondent No. 3 as to the ownership of the Mortgaged Property No. 1 and the Mortgaged Property No. 2 and which is the subject matter of Suit No. 263 of 2021 which was pending before this Court and which has since been renumbered as Ist Class Civil Suit No. 8617/2025 and which is pending before Senior Civil Judge VIII, Karachi (East). While no interim orders have been passed in that Suit, he maintains that the Appellant, to the prejudice of the Respondent No. 1, is purporting to enter into a settlement with the Respondent No. 2 and the Respondent No. 3 and is intending to release the title documents to the Respondent No. 2 and the Respondent No. 3. He contends that the Respondent No. 2 and the Respondent No. 3 have already entered into an Agreement to alienate the property and which will frustrate his claim to the Mortgage Property No. 1 and the Mortgaged Property No. 2. **He contends that all these actions are taking place despite the order dated 5 October 2020 that was passed on CMA No. 201 of 2020 in Execution Application No. 13 of 2016 directing the parties to maintain status quo and that this Appeal has been filed to circumvent that order.** In this regard he relied on a judgment of the Supreme Court of Pakistan reported as **Raja Talat Mahmood vs. Ismat Ehtishamul Haq**³ wherein it was held that even where an interim order had not been extended it would continue unless specifically vacated. He also, surprisingly, relied on a judgement passed by the Inland Revenue Appellate Tribunal reported as **Messrs Shaheen Air International, Karachi vs. Commissioner Inland Revenue, Zone-V, LTU, Karachi**⁴ which followed the earlier referred judgement of the Supreme Court of Pakistan. He concluded by relying on a judgement of a Division Bench of this Court reported as **Sadiq Ahmed vs. Messrs Silk Bank Limited and others**⁵ in which it was held that auction proceedings in execution proceedings that are conducted in violation of a status quo order could not be sustained.

D. Order of the Court

14. We have heard Mr. Aijaz Hussain Shirazi and Mr. Raj Ali Wahid and have perused the record.

15. Special High Court Appeal No. 107 of 2025 has been maintained by the Appellant as against the Respondents seeking:

- (i) that the order dated 5 June 2025 passed on CMA No. 433 of 2025 in Execution Application No. 13 of 2016 be set aside;

³ 1999 SCMR 2215

⁴ 2018 PTD (Trib.) 479

⁵ 2015 CLD 437

- (ii) that proceedings for contempt, maintained on the basis of CMA No. 457 of 2025 and which was premised on the Impugned Order be suspended.

After the considering the contentions of both Mr. Aijaz Hussain Shirazi and Mr. Raj Ali Wahid , we are clear that we are unable to sustain the order dated 5 June 2025 passed on CMA No. 433 of 2025 in Execution Application No. 13 of 2016 for the simple reason **that it was allowed on the very first day of it being heard and without notice being ordered on the application and by which the Appellants are clearly prejudiced as they have been issued directions without being heard.** On this ground alone the Impugned Order cannot be sustained and clearly the proceedings for contempt that have been instituted, through CMA No. 457 of 2025 in Execution Application No. 13 of 2016, which are premised on the Impugned Order also cannot be maintained. That being said, we do not wish to enter into any discussions on the merits of that application, as to whether the interim order dated 5 October 2020 that was passed on CMA No. 201 of 2020 in Execution Application No. 13 of 2016 is still continuing or for the matter on the merits of any of the other applications that are pending and which, to our mind, all warrant a hearing and which should be heard and decided together by that Court. This Appeal however must be allowed.

16. For the foregoing reasons, this Special High Court Appeal is allowed and the Impugned Order is set aside and consequentially CMA No. 457 of 2025 is, without prejudice to the Respondent No. 1 right to maintain a further application for contempt if warranted, dismissed. CMA No. 433 of 2025 is deemed to be pending in Execution Application No. 13 of 2016 and which application, after notice is ordered on it and on all other pending applications that are on the file, should be heard and decided by that Court preferably within a period of three months from the date of this order. There will however be no order as to costs.

JUDGE

JUDGE

Karachi dated 13 August 2025