

IN THE HIGH COURT OF SINDH, KARACHI
 Special High Court Appeal No.98 of 2018
 [M/s. National Bank of Pakistan Ltd. v. M/s. Shoaib Corporation & others]

Present:
 Mr. Justice Muhammad Iqbal Kalhoro
 Mr. Justice Muhammad Hasan (Akbar)

- 1.For orders on office objection a/w reply at A
- 2.For hg of main case

19.09.2025.

M/s. Ziaul Haq Makhdoom and Fatima Ashfaq, advocates
 for appellant.
 Mr. Muhammad Arif Shaikh, advocate for respondent No. 3.

J U D G M E N T

=====

MUHAMMAD IQBAL KALHORO J: Respondent No. 1 availed a financial facility against property/ plot of land with all present and future construction thereon, bearing No. Naiclass-24, Survey No. 285, situated at Deh Dih, Taluka Imrahim Haidery, District Malik, Karachi measuring 15 acres, mortgaged by respondent No. 3 as security in the sum of Rs.48,033,239.00. Respondent No. 1 defaulted; hence, the suit was filed by the bank for recovery of the amount, which was decreed. In execution application, it transpired that original owner of the property was Muhammad Ibrahim Malik, and he had surrendered the mortgaged property in favour of Government after NAB Reference was filed against him on the basis of provisions of the Sindh Urban State Land (Cancellation of allotments, Conversions, and Exchange) Ordinance, 2001 that the said property was allotted to him below the market value.

2. When the execution proceedings progressed further, the report came that property was taken possession of by the Government of Sindh in terms of the surrender deed; hence, the decree could not be satisfied. Later on, the said execution application was disposed of on the basis of a compromise, whereby respondent No. 3 had submitted eight cheques of the decretal amount, with the condition that the mortgaged property would still stay mortgaged with the bank/appellant until the cheques were encashed. The cheques got bounced on presentation; hence, application was filed for resurrection of execution application. Again, in 2017 compromise was struck between the parties and the term of the compromise was that the mortgaged property should be sold out to a third

party and proceeds thereof be adjusted towards decretal amount. Hence, the matter was referred to Nazir to pursue the process.

3. At one point in time, Nazir submitted the report that in terms of Ordinance 2001, the challan has been issued in favour of respondent No.3 by Government of Sindh for depositing differential amount over the property and that the original owner Muhammad Ibrahim Malik had surrendered the property in favour of the Government on account of filing of reference illegally after selling of the same to respondent No. 3.

4. When the report was placed before the learned single Judge, he passed the impugned order holding that the property since stood surrendered in favour of the Government, the same was not available for sale to satisfy the decree; and that the execution application had already been disposed of in 2007 by way of compromise. Hence, without taking further proceedings, he consigned the execution application to the record. Hence this appeal.

5. Grievance of the appellant bank is that the public money is involved in the matter. The decretal amount has not been recovered yet and if the execution proceedings are consigned to the record, the bank will be left with no option to get the decree executed. Learned counsel has further submitted that the learned single Judge without adverting to the scheme of Ordinance 2001 and its effect on the surrender of the land by Muhammad Ibrahim Malik in terms of plea bargain with the NAB or its earlier sale to respondent No. 3 has non-suited the bank by consigning the execution proceedings to the record which has resulted into miscarriage of justice. Learned counsel has submitted that if the matter is remanded to the Executing Court, he will file a fresh execution application making Government of Sindh as one of the respondents and legal heirs of Muhammad Ibrahim Malik, who since has passed away and who had surrendered the property in favour of the Government, so that the stance of all the parties involved could come on record and the issue is decided once and for all.

6. Respondent No. 3 is present in person along with his counsel, who has filed power today and has given no objection.

7. We have gone through the record and are persuaded by the submissions made by learned counsel for appellant. It is apparent that the public money has been lost forever because of the impugned order if it is

allowed to sustain. The law does not recognize a situation of stalemate where a party in whose favour the decree has been passed is non-suited because of certain technicalities coming in the way of executing the decree. In this case, the important factors are that Muhammad Ibrahim Malik, who had surrendered the property in favour of the Government, had already sold out the same to respondent No. 3 by means of irrevocable power of attorney and handing over possession thereof. And only then respondent No. 3 had mortgaged the same with the appellant bank as security and against such mortgage the financial facility was granted. Whether the subsequent surrender by Muhammad Ibrahim Malik, therefore, was valid or not and whether the provisions of Ordinance 2001 were relevant to sold-out-land or not are important to be decided. All these factors are important and need to be considered by the Executing Court before passing any final order. We, therefore, set aside the impugned order, allow the appellant bank to file a fresh application in execution proceedings by making Government of Sindh as party and also find out legal heirs of Muhammad Ibrahim Malik and make them parties so that the issue once and for all is resolved and decided in accordance with law.

The appeal is accordingly disposed of in above terms.

JUDGE

JUDGE

HANIF