ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI SPL.HCA NO. 240 /2015

Date Order with signature of Judge 1) For orders on office objectiona/w reply as at "A".

- 2) For orders on CMA No. 2457/2015.
- For hearing of main case. 3)

24.11.2015.

Mr. Shoaib M. Rashid Advocate for the Appellant.

Mr. Khalid Javed Khan Advocate for the Respondent.

Through instant appeal the appellant has impugned order dated 7.4.2015, whereby, a learned Single Judge on the Banking side of this Court, while allowing application of respondent under Section 16 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, has directed the Official Assignee to sell the pledged goods through public auction.

Counsel for the appellant contends that no sale can be ordered in respect of the pledged goods in terms of Section 16 of the Ordinance, 2001, whereas, the leave to defend application filed by the appellant is still pending, however, through impugned order the entire relief claimed by the respondent bank in the Suit has been granted.

On the other hand, Counsel for respondent submits that instant appeal has become infructuous as pursuant to the impugned order, the Official Assignee has conducted the auction of pledged goods, and, the appellant being aggrieved by acceptance of the bid price had impugned subsequent order(s)passed in the Suit through other appeals which have been dismissedvide order dated 14.10.2015 by a Bench headed by the Hon'ble Chief Justice. He further submits that the impugned order has been acted upon, whereas, more than 80% of the pledged goods have been sold, and the amount so realized has been deposited with the Official Assignee who has invested the same in a Government's profitable instrument, therefore, in any case no prejudice has been caused to the appellant by the impugned order.

We have heard both the Counsel and have perused the record. Counsel for the appellant has not denied that pursuant to the impugned order, auction proceedings were initiated by the Official Assignee and majority of the pledged goods have been sold and being aggrieved by the amount of bid / auction price, they had preferred two Special High Court Appealsbearing No.288 and 299 of 2015, which have been dismissed vide order dated 14.10.2015 by a bench headed by the Hon'ble Chief Justice. The only objection raised by the Counsel for the appellant is that no order of sale could have been passed on an application under Section 16 of the Ordinance, 2001.

No doubt, Section 16 of the Financial Institution (Recovery of Finances) Ordinance, 2001 provides for attachment of a property before judgment or appointment of a Receiver with intent to preserve the mortgage pledged, hypothecated, assigned or otherwise charged property to protect the interest of the financial institution, however, it does not mean that the Banking Court has no power to sell the movable property so attached if the property is perishable and/or loosing its value or utility for the simple reason that a Banking Court while exercising civil jurisdiction has all the powers vested in a civil Court under the Code of Civil Procedure 1908 and to protect the interest of both the parties has powers to pass all just and equitable orders. Perusal of the order impugned reflects that the pledge cotton bales as per report of Official Assignee were quite old and were deteriorating rapidly. The Court further to strike a balance has directed the sale through public auction and investment of sale proceeds in Government Profitable Scheme, the order therefore appears to be unexceptionable.

Additionally, the order impugned before us has already been acted upon and it was for the appellant to raise such objectionbefore the bench who was seized with their appeals in respect of the auctionproceedings being carried out on the basisof the impugned order. Notwithstanding this, it further reflects from our record that the appellant had also impugned the same order passed in another Suit bearing No.B-63 of 2012 between the same parties by filing Special HCA No 330 of 2015 which we have already dismissed on 19.11.2015 for non-prosecution.

In the circumstances, we do not find any substance in the instant appeal as the appellant has failed to make out any case for indulgence. Accordingly the same is herebydismissed along with all pending applications.

JUDGE