ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI C.P.No.D-3576 of 2018

Date Order with signature of Judge

Priority

- 1.For orders on Misc.No.16332/2018
- 2. For orders on office objection No. 19
- 3. For orders on Misc. No. 16333/2018
- 4. For orders on Misc. No. 16334/2018
- 5. For hearing of main case.

09-05-2018

Mr.Fazal-ur-Rehman, Advocate for the Petitioner.

The petitioner has filed this petition against Manager, HBFC, one private person, Sub-Registrar and Banking Court No.III for seeking directions against the respondent No.1 to cancel and withdraw all process of auction conducted in 2012 in respect of property in question. The same Petitioner filed Suit for declaration, cancellation and permanent injunction against the same parties except the Banking Court in the Civil Court and vide order date 16.9.20113 passed in Civil Suit No.248/2013 learned IInd Senior Civil Judge, Karachi (West) allowed the application under Order VII Rule 11 CPC on the ground that the suit is barred under Section 7(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, thereafter, instead of filing independent suit the petitioner filed application under Section 15(11) read with Section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 in the Banking Court No.III, through Misc. Application No.2/2013 the learned Banking Court passed the detailed order. The concluding paragraphs Nos.12 and 13 are reproduced as under:-

"12. Nothing has been brought on record suggesting that payment was made the applicant or she had approached the HBFC for settlement before or immediately after auction. No evidence has been filed by her alongwith application that she had given Rs.105,000/- to one Hashmi. Neither such receipt nor affidavit of said Hashmi has been filed by the applicant

alongwith this application in order to establish her contention that payment of Rs. 105,000/- was made by her to Mr. Hashmi. Furthermore she had taken contradictory stands in the application, at one stage she has stated that in the month of March, 2013 she due to sickness went to the house of her daughter at Nawab Shah and on her return respondent No.2 came to her and upon inquiry she came to know that her mortgaged plots had been auctioned by the HBFC to the respondent No.2 (auction purchaser) and on the other hand she stated that she filed a civil suit bearing No.248 of 2013 for permanent injunction in which she came to know that her plots have been auctioned by the HBFC to the respondent No.2

13. Since no reasonable grounds could be made by the applicant to investigate further into the matter therefore the instant application filed by the applicant Mst.Zulekhan Awan is dismissed."

Instead of availing appropriate remedy in accordance with law which might include filing of appeal against the order dated 22.9.2017 of the Banking Court, the petitioner has preferred to file this constitution petition only against the auction proceedings conducted in the year 2012. It is well settled that disputed question of facts cannot be decided in the writ jurisdiction.

After arguing at some length, the learned counsel for the petitioner agrees to avail appropriate remedy. In view of his above statement, this petition is disposed of accordingly.

Judge

Judge