

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P.No.D-131 of 2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before:-

Mr.Justice Muhammad Ali Mazhar

Mr.Justice Agha Faisal

Mrs.Noor Jehan Hussan

& othersPetitioners

Versus

M/s.United Bank Ltd.

& another.....Respondents

10-05-2019

Mr.Abdur Rehman, Advocate for the Petitioners

Mr.S.M. Awan, Advocate for the Respondent No.1

Muhammad Ali Mazhar, J: The instant constitution petition has been filed to assail the order dated 25.11.2017 passed by Banking Court No.III at Karachi, which is reproduced as under:-

“25.11.2017.

Case called. Plaintiff and his advocate called absent. Mr.Peer Ali Shah advocate is present on behalf of defendant 2 to 5. Defendant 1 is exparte. Ld. Advocate for defendant filed objections on commissioner report. Heard ld. Advocate for defendant on objections to commissioner report. Objections dismissed. Case is adjourned to 19.12.2017 for final arguments.”

2. The brief facts of the case are that Commissioner was appointed to record evidence. The Commissioner vide his report dated 21.08.2017 due to absence of defendants to pursue the proceedings vigilantly closed the side and sent the matter to the court. Mr.Abdur Rehman, Advocate for the Petitioner submits that before the Commissioner he had completed cross-examination of the plaintiff and their side was closed, however, at the time of leading evidence by the defendants the side was closed. Learned counsel for the respondent No.1 submits that the Commissioner had

provided ample opportunity to the petitioner but they failed to lead any evidence.

3. Be that as it may, the first question arises as to whether the Commissioner was given any power by the court to close the side? or he could have filed the reference in court for passing orders to close the side of the defendants. It is a matter of record that no application has been filed in the trial court for reopening of the side.

4. Keeping in view the niceties of Section 22(6) read with Section 27 of the Financial Institutions (Recovery of Finances), Ordinance, 2001, an application should have been moved to the trial court for reopening of the side of the defendants. Learned counsel for the respondent No.1 submits that if any application is filed by the petitioner for reopening the side he will give his no objection to save the time. By consent this petition is disposed of in the terms that the petitioner will file proper application for reopening of side in the trial court and the trial court shall decide the application within a period of 10 days from the date of filing of application.

Judge

Judge

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