

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 1315 of 2013

Order with signature of Judge(s)

1. For hearing of CMA No.18098/2015 (u/o VII Rule 11)
2. For hearing of CMA No.11743/2013 (u/o XXXIX Rule 1 & 2)
3. For examination of parties/settlement of issues

20.08.2018

Mr. Ghulam Mujtaba Phull, Advocate for the Plaintiff
Mr. Liaquat Ali, Advocate for Defendant Nos.1
Mr. Abid Naseem Advocate for Defendant No.3

After hearing the counsel at length in these applications, where the Plaintiff's stance is that the Defendant No.1 who was his friend approached him seeking assistance in settling Defendant's liability with the Bank (Defendant No.3) and entered into an agreement with him and also signed a Power of Attorney in his favour, as well as, put him in possession of the mortgaged property and the Plaintiff was required to negotiate manner of return of the loan taken by the Defendant No.1 from the Bank. It is the contention of the counsel that the Plaintiff approached the Bank for releasing of the property by settling the loan and he made an application to become Intervenor in Suit No. 1008 of 2011, which was filed by the Bank against Defendant No.1, however the said application was dismissed and against which he filed a Constitution Petition which is yet to be decided. He however after all the assertions made admitted that not a single penny has been paid by the Plaintiff in respect of the property in question to the Bank and that he has been in possession of the mortgaged flat since 2014.

Learned counsel for Defendant No.1 submits that on friendly terms Defendant No.1 approached the Plaintiff for having the matter resolved as to end the controversy with the Bank put the Plaintiff into possession of the flat as security in anticipation of the Plaintiff making payment of the loan amount to the Bank, however rather making the payment to the Bank, the Plaintiff dragged the issue unnecessarily and did not pay a single penny. To the extent that

through the judgment dated 16.02.2016 the learned Banking Court No.V at Karachi was pleased to pass judgment/decreed against the Defendant No.1. Since as matter of fact no material financial assistance came from the Plaintiff, the Defendant No.1 filed a rent application against the Plaintiff for his ejection as he was not paying the rent which application is still pending.

Learned counsel for the Bank submits that the judgment dated 16.02.2016 is crystal clear in this regard as no payment was either made by the Plaintiff nor the Defendant No.1, thus execution is pending, which has been hindered by the mere pendency of the instant suit/application.

Heard the counsel and reviewed the record.

While there are counter claims between the private parties as the Defendant No.1 reached to the Plaintiff for financial assistance and put the Plaintiff in possession of the mortgaged property however admittedly the Plaintiff did not pay any sums to the Bank and resultantly vide the judgment referred hereinabove the Banking Court has ordered sale of the property to satisfy the financial facility provided by the Bank. It is also admitted that the Defendant upon not having been provided the contractual amount by the Plaintiff sought cancellation of the Power Attorney as well as filed a rent application against the Plaintiff who was allegedly occupying the property in question without any legal cause. As consideration is the most vital component of any sale transaction which clearly has not been made by the Plaintiff towards the Defendant No.1 resulting the defendant's property having now been put into public auction, against which there is valid claim of the Bank, this triangular controversy per all the counsel present could best be resolved by giving the Plaintiff opportunity to participate in the auction proceedings and if he so wishes, to permit him matching the highest bid received in respect of the sale of the property.

These applications are accordingly disposed of in these terms. The execution proceedings pending with the Banking Court No.V to proceed in accordance with law giving Plaintiff equal right to participate in the bidding and later to match up highest bid, if he wishes. The exercise to be accomplished within three weeks.

The earlier granted stay is accordingly vacated to achieve the above end.

JUDGE

Barkat Ali, PA