ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI C.P. No.D-8472/2018

Date Order with Signature(s) of Judge(s)

<u>Present</u> Mr. Justice Muhammad Ali Mazhar. Mr. Justice Arshad Hussain Khan.

Muhammad Noman Saigal & another	Petitioners
Versus	
Summit Bank Ltd & another	Respondents

Date of hearing, 03.12.2020

Mr. Ahmed Masood, Advocate for the Petitioners Mr. Ali T. Ibrahim, Advocate for the Respondent No.1 Barrister Hussain Bohra, Assistant Attorney General

Muhammad Ali Mazhar, J:. The petitioner has challenged the order dated 13.11.2018 passed by the Banking Court No.II, at Karachi in Execution Application No.167 of 2013 (Suit No.347 of 2011). At the very outset we raised a question that how the petition is maintainable against the order of Banking Court in execution proceedings rather than filing of an appeal. The learned counsel for petitioner argued that now the appeal has become time barred. In the prayer clause of the petition the petitioners have also challenged order dated 13.10.2018 but their counsel argued that there was a typographical mistake but as a matter of fact the petitioners have only challenged order dated 13.11.2018 which is impugned in this petition. Paragraph 13 of the order dated 13.11.2018 is reproduced as under:-

"13. Since the question of delivery of possession of mortgaged offices and space to the decree holder is yet to be decided and the judgment debtor No.2 is also party in execution application bearing No.52 of 2015 pending before the learned Banking Court No.V, Karachi, therefore, in my humble view, at this stage payment of leftover amount of auction amount after adjustment of outstanding liabilities, cannot be made to the judgment debtor No.2."

In our view the Banking Court has only observed in this order that the factum of question of delivery of possession of mortgaged offices and space to the decree holder is yet to be decided therefore the payment of leftover amount of auction amount after adjustment of outstanding liabilities cannot be made to the judgment debtor No.2. The very nature of this order unequivocally demonstrates that the matter is to be decided by the Banking Court and how at this stage the petitioners are aggrieved. The learned counsel for the petitioners submits that they will approach the Banking Court for passing order in view of Paragraph 13 of the order dated 13.11.2018. In view of the statement the petition is disposed of accordingly. However, in terms of order dated 13.11.2018, the Banking Court may pass an appropriate order in accordance with law after providing opportunity of hearing to the parties.

JUDGE

MUSHARRAF ALI

JUDGE