

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
First Appeal 06 of 2019

Order with signature of Judge

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Tahir Hussain Siddiqui
Vs.
United Bank Limited & Others

1. For hearing of CMA 3389 of 2019
2. For hearing of CMA 3559 of 2019

22.11.2019

Mr. Khaleeq Ahmed, Advocate for the appellant.
Mr. Adil Khan Abbasi, Advocate for respondent 1.
Mr. Badar Alam, Advocate for respondent 4
(Auction Purchaser).

Agha Faisal, J. The present order determines the fate of the two listed applications, filed post rendering of the judgment herein dated 09.10.2019 (“Judgment”), seeking to modify the Judgment and to suspend a consequent order passed by the learned Banking Court V, at Karachi in execution proceedings.

2. Briefly stated, the present appeal was filed and ad interim orders were issued on 31.01.2019 till the next date of hearing. After obtaining ad interim orders the appellant failed to proceed with the matter, despite caution, including on 14.02.2019, 28.02.2019, 13.03.2019 and 09.04.2019. The appellant then sought time to reach an out of Court settlement with the respondent bank. On 16.04.2019, 30.04.2019, 23.05.2019, 14.06.2019, 25.06.2019, 15.08.2019, 22.08.2019, 30.08.2019, 17.09.2019 and on 04.10.2019 the appellant sought adjournments time and time again on the pretext of an impending settlement. The matter was finally heard and concluded on 09.10.2019,

when with consent of all the parties the appeal was disposed of in the following terms:

- (1) The appellant shall deposit Rs.800,000/- with the Nazir of this court on or before 15.10.2019.
- (2) In addition to above liability of Bank, the appellant shall also pay Rs.1,37,500/- equivalent to 5% of the amount deposited by the Auction Purchaser, in terms of Order 21 Rule 89 CPC.
- (3) After depositing the aforesaid amount by the appellant the Nazir may release the amount to the respondent No.1 after proper identification and verification. The amount of Rs.137,500/- shall be paid to the Auction Purchaser (Respondent No.4) after proper identification and verification.
- (4) After discharge of the liability the respondent No.1 shall redeem the original title documents of the property in question to the Nazir of Banking Court, for releasing the same in accordance with law.
- (5) After compliance of this order and issuance of certificate by the Nazir for full and final payment, the Banking Court shall also release the amount of Auction Purchaser, which he deposited against the bid amount, on proper identification and verification.
- (6) It is agreed by the learned counsel for the appellant that in case the entire aforesaid amount is not deposited with the Nazir of this court on or before 15.10.2019, the settlement shall be void and the Banking Court shall confirm the sale and execute the decree in accordance with law.
- (7) Interim orders operating herein shall subsist until 15.10.2019, whereupon they shall automatically stand vacated.

This appeal, and pending application/s, are disposed of in terms herein contained.”

The appellant did not comply with the terms as aforesaid, and instead filed the applications presently under scrutiny. CMA 3389 of 2019 seeks extension of time on the pretext that due to heavy rush in the bank the appellant was unable to deposit the requisite amount before the Court. CMA 3559 of 2019 seeks the suspension of an order passed by the learned executing court wherein the Nazir of that court was directed to issue a sale certificate in favour of the auction purchaser as well as handover vacant and peaceful possession of the property thereto. In the affidavit accompanying the latter application under consideration, a divergent view for noncompliance was given and it was stated that the said directions could not be complied with due to non-availability of the Nazir in his office.

3. The appeal was argued from its inception till its conclusion by Mr. Moulvi Iqbal Haider, Advocate, however, for the purposes of present

applications a new counsel has been engaged. Mr. Khaleeq Ahmed, Advocate submitted that the appellant remains ready to deposit the amount as directed by the Judgment and it is appropriate to enlarge the time in order to permit the appellant to comply therewith, notwithstanding the fact that such compliance was not made within the stipulated time. It was further submitted that the proceedings undertaken by the learned executing Court demonstrate undue haste and it was imperative for the learned executing Court to stay all proceedings pending there before upon institution of the present applications.

4. Mr. Badar Alam, Advocate appeared on behalf of respondent 4 (Auction Purchaser) and submitted that after rendering of the Judgment this Court has become *functus officio*, therefore, the applications of the appellant are entirely misconceived. Learned counsel submitted that the bid of the auction purchaser has been accepted, sale confirmed on 24.10.2019 and the sale certificate had also been issued in due compliance with the provisions of Order 21 Rule 92 CPC and that the property now vests in the auction purchaser. Learned counsel further submitted that a writ of possession was issued and the appellant resisted the first attempt of the functionaries to obtain possession of the auctioned property, therefore, orders were issued by the learned executing Court to seek police assistance. In conclusion, it was argued that the appellant has consistently and demonstrably tried to subvert the due process of law and has misused the indulgence of the Court. It was also stated that the present applications are yet another attempt to subvert justice, hence, merit dismissal forthwith.

5. Mr. Adil Khan Abbasi, Advocate for respondent No.1 bank seconded the arguments advanced by Mr. Badar Alam. Learned counsel drew attention to the affidavits, accompanying the two applications under scrutiny, and demonstrated that the grounds taken for noncompliance are mutually exclusive. Learned counsel submitted that the original title documents of the auctioned property have already been conveyed to the auction purchaser and all the requisite conditions for the conveyance of title stand duly concluded. Learned counsel reiterated that the appellant has been misleading this Court from the

very onset and that the present applications are yet another attempt to perpetuate fraud upon justice.

6. We have heard the respective learned counsel and have perused the record to which our surveillance was solicited. It is apparent that the Judgment was delivered with consent of all the parties before us, and that the appellant has no cavil with respect to the Judgment or to the fact that it was *inter alia* predicated upon his consent. The Judgment unequivocally records that if the directions contained therein are not adhered to, on or before the stipulated time, the Banking Court shall confirm the sale and execute the decree in accordance with law. It is an admitted position that the appellant failed to honor the prescriptions contained in the Judgment and consequently the learned executing Court acted as directed by this Court. In view hereof we proceed to address the applications under consideration.

7. There are divergent grounds taken by the appellant in the two applications under consideration, as particularized supra. In one instance it is submitted that noncompliance was due to rush at the bank, even though six clear days were provided for compliance, and in the other instance a contrary view is taken stipulating that noncompliance was due to the unavailability of the Nazir on the last day. This inconsistency is noted and does not lend any credibility to the contentions of the appellant. Learned counsel for the appellant was asked whether the purported rush of work was prevalent in the entire period provided, however, he failed to provide any cogent response. In the same vein it was queried that even if the unsubstantiated allegation, of the Nazir's absence on the last day, was sustained then what was the justification for waiting till the eleventh hour. Learned counsel replied that it was customary to leave all matters till the very end, hence, the appellant was justified in waiting till the final hour of the prescribed timeline. Notwithstanding the manifest inconsistency of grounds taken by the appellant, neither ground is considered to be satisfactory in order to consider the relief sought.

8. There is a preponderance of authority that stipulates that upon confirmation of sale and issuance of sale certificate the rights of an

auction purchaser crystalize and as such rights may not be interfered with. The honorable Supreme Court has recently maintained in the case of *Muhammad Khalil vs. Faisal M.B. Corporation & Others* reported as 2019 SCMR 321 that upon confirmation of sale and issuance of a sale certificate vested rights accrue in favor of the auction purchaser. This Bench has rendered a judgment in a similar matter, *Nazli Hilal Rizvi vs. Bank Alfalah Limited* reported as 2019 CLD 808, wherein it was maintained that once an auction purchaser acquires an interest in property then the same may not be disturbed unjustifiably. The august Supreme Court has maintained *Nazli Hilal* in its recent judgment dated 07.08.2019 in *Nazli Hilal Rizvi vs. Bank Alfalah Limited & Others CP 381-K of 2019*.

9. In view of the reasoning and rationale herein contained we are of the considered view that the applications under consideration are entirely misconceived and devoid of merit, hence, the same are hereby dismissed.

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