

IN THE HIGH COURT OF SINDH AT KARACHI

Execution No. 69 of 2004

1. For hearing of CMA No. 19 of 2016.
2. For hearing of CMA No. 202 of 2015.
3. For hearing of CMA No. 361 of 2015.

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Mr. Mustafa Ali, Advocate for Decree Holder.
Dr. Muhammad Farogh Naseem, Advocate for Judgment Debtor.
Ms. Soffia Seed, Advocate for Applicant (NBP).

Date of hearing : 11.02.2016

Date of Order 12.02.2016

ORDER

1. **CMA No. 19 of 2016:** Through instant application, plaintiff seeks; “to allow the Decree Holder to participate in the public auction dated 15.02.2016 and to offer its bid in this regard.
2. Learned counsel for the for Decree Holder contends that pursuant to decree dated 29.08.2002, decree holder preferred Execution Application which was allowed by this Court vide order dated 12.06.2009. The Judgment debtors *however* assailed the same in appeal which was disposed of with certain conditions through order dated 17th November 2014. Albeit, that order was by consent, but judgment debtors assailed the same before the apex court and same is pending for adjudication. In pursuance of execution proceedings, sale proclamation was issued for 6th April 2015 but before that date Judgment Debtors succeeded to get stay order by this Court. However, same was vacated on 27th April 2015 by this court. Proclamation was also issued for second auction, though stay application was moved by judgment Debtors but they failed to get stay and by the consent of parties 11th July was fixed for auction

which *however* failed as none participated in auction hence third auction is fixed to be held on 15th February 2015. Learned counsel, while referring to order 21 rule 72 Civil Procedure Code 1908, contends that same is directory in nature and can be *voidable* but not *void*. He refers case laws reported as Manilal Mohanlal Shah and others vs. Sardar Sayed Ahmed Sayed Mahmud and another [AIR 1954 S.C. 349 [relevant page 351, para 7]. He further contended that CMA No. 123 of 2015 was disposed of with direction to the parties that they shall estimate the value and provide the same before the Nazir of this Court within certain period, decree holder submitted such valuation but Judgment Debtors failed to submit the same, however, at later stage such valuation was filed by D/H. It is contended that the office is bound to implement the execution order and if none is participating, in that way decree holder cannot be deprived from his valuable right which was adjudicated by the competent court. He further agitated that such participation and auction proceedings with regard to any bid are subject to confirmation of this Court, therefore, participation of decree holder would not prejudice the substantial cause of judgment debtors.

3. In contra, learned counsel for the judgment debtors contended that there is dispute with regard to original decree as judgment debtors entered into fresh agreement with the decree holder, hence judgment debtor he has satisfied the decree and that issue is yet to be adjudicated. He further asserted that in execution appeal consent order was passed hence this Court is bound to execute that order and not the decree. It is contended that in fact plaintiffs have tried to usurp all shares of the defendant while privatizing the bank and such issue is pending adjudication before this Court. In case such property of the defendant is auctioned then it would affect upon 22% shares, as claimed by the

defendants (J/D) with the company of plaintiffs. He seriously opposed that this Court is required to determine the reserved price before issuance of proclamation and Nazir is not competent to decide the reserve price. He further contends that affidavit supported with application is not justifying the participation of decree holder in auction proceedings. He refers INVESTMENT CORPORATION OF PAKISTAN v. MUHAMMAD BILAL AHMED and others [2008 CLD 313], Muhammad Amin alias Jaloo v. Judge Banking Court and others [2011 CLD 280], MUHAMMAD AFZAL KHAN versus NATIONAL BANK OF PAKISTAN [2015 CLD 464], MUHAMMAD HASSAN v. Messrs MUSLIM COMMERCIAL BANK LTD through Branch Manager and 3 others [2003 CLD 1693], AIR 1987 SC 2081, SHAHID ALI v. Mrs. AZIZ FATIMA and others [PLD 2010 SC 38], LANVIN TRADERS, KARACHI v. PRESIDING OFFICER, BANKING COURT NO.2, KARACHI and others [2013 SCMR 1419], NATIONAL BANK OF PAKISTAN vs. SAF TEXTILE MILLS LTD [PLD 2014 SC 283] and M. Varadarajulu Pillai v. Gendapodinanniar and others [AIR 1950 Madras 392].

4. In rebuttal, learned counsel for the decree holder contends that issue of reserve price is answered by recent unreported judgment dated 05.01.2016 passed by honourable Apex Court in Civil Review Petition No.383/2005 in Civil Appeal No.670/2002 (Zakaria Ghani and 4 others versus Muhammad Ikhlaq Memon and 8 others).

5. I have heard the respective parties and have *carefully* examined the available material.

6. Before proceeding further, I feel it proper to say that one must always keep it in mind that purpose of vesting the Court with power to *attach*

and sale property of *judgment debtor* is nothing but to satisfy the *decree* as is evident from Rule 64 of the Order XXI Civil Procedure Code 1908 which reads as:-

‘Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

The deliberate use of *part thereof*, in above provision, is sufficient to indicate that material object is to *satisfy the decree* but since the Courts are ultimate *guardians* of the rights of *individuals* therefore a mechanism (*procedure*) has been laid in subsequent *rules* so as to avoid any *prejudice* to rights and interests of *judgment debtor* even who despite being declared *judgment debtor* continues with a *fair treatment*.

7. Reverting to the merits of the case, I would say that though the *judgment debtor* has raised number of legal plea (s) to resist the *auction proceedings* but *nowhere* denied the right of the *decree holder* to have his adjudicated claim satisfied through *legal* course which includes *attachment of property* of judgment debtor or *part thereof* to be followed by *auction* and *sale* even. Thus, this reduces controversies to *legal* plea (s) which are:-

- i) *determination of reserve price* before proceeding for *auction with reference to Order XXI r 66*;
- ii) *eligibility of Decree holder to participate in auction proceeding*.

I would take the first legal objection *first* which shall remain short if a reference is not taken which is:-

'66- (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible-

a) the property to be sold;

b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

c) any encumbrance to which the property is liable;

d) the amount for the recovery of which the sale is ordered; and

e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

(Emphasis supplied)

The Rule 66(1) *no doubt* is mandatory in nature which leaves the Courts with no plain reading of the above makes it quite clear that the *provision* is mandatory in nature whereby the *auction* of property, *intended to be sold* for satisfaction of decree, shall not be held without *proclamation* (*i.e the act of saying something in a public, official, or definite way*). The object and purpose of *proclamation* is nothing but to have an *open, fair and transparent auction* so as to eliminate all chances of any *maneuver* at the cost of the rights and interest of the *judgment debtor*. Therefore, a *proclamation* is a ***must*** and failure thereof shall result in *setting aside* such exercise unless the *judgment debtor* validates the same by open and clear stance.

8. The Rule 66(2) to (4) of the Code defines how the *proclamation* is to be drawn-up and what measures are to be considered by the Court(s) so as to *satisfy* the decree without prejudicing the rights and interest of the *judgment debtor* or any other person, having interest in such *property* which is evident from the use of the phrase '*for a purchaser to know in order to judge of the nature and value of the property*', so used in the Rule-66(2)(e) of the Code, hence, I can conclude that any *irregularity* in *drawing up* the ***proclamation*** are *procedural* and *directory* in nature and *unless* complains to have resulted in serious *prejudice* to *judgment debtor*, shall not be taken *fatal*. Thus, it can *now* safely be concluded that a *proper* *proclamation* is a mandatory requirement before proceeding to conduct *auction* which is aimed to:

- i) *put a participant / purchaser on notice of **amount for the recovery of** which the auction is being conducted & to let them judge the nature and value of the property, including any encumbrance e.t.c;*
- ii) *give wide publicity to the sale of the property so that maximum number of people may turn up to participate in it*

- iii) *put judgment debtor on notice about date, time and place of auction proceedings so as to witness fair and proper conduct of auction proceeding by one authorized under rule 65 of the Order XXI because his rights is confined to bids that match the price the property deserves;*
- iv) *put decree holder on notice about date, time and place of auction proceedings so as to witness any maneuver failure of auction proceedings because his interest is confined to satisfaction of decree unless permitted to participate in auction proceeding within meaning of Rule 72 of Order XXI;*

In the case of Messrs LANVIN TRADERS, KARACHI v. PRESIDING OFFICER, BANKING COURT NO.2, KARACHI and others [2013 SCMR 1419] relied by learned counsel for the *judgment debtor* that:

“8. A look at the above quoted provision would reveal that it has provided an exhaustive procedure for the proclamation of sales by public auction, How the proclamation of the intended sale shall be caused to be made; how shall it be drawn up after notice to the decree holders and the judgment debtors and how would it state the time and place of sale and specify as fairly and accurately as possible (a) the property to be sold, (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government, (c) any encumbrance to which the property is liable, (d) **the amount for the recovery of which the sale is ordered**, and (e) every other thing which the Court considers material for a purchaser to know in order to Judge the nature and value of the property. **In the absence of any of the particulars, listed above**, the purpose of sale cannot be achieved.

In the above, the ‘*inquiry to fix reserved price*’ is not mentioned in list, required for drawing up the *proclamation* but does include **the amount for the recovery of which the sale is ordered.** Further, the purpose and object of *proclamation* has been made clear in the case of Muhammad Attique v. Jami Limited (2015 SCMR 148) wherein honourable Apex Court as:

6. A careful reading of the above quoted provisions would reveal that **the purpose behind their enactment, as for as it can be gathered from the words used therein, was to give wide publicity to the sale of the property so that maximum number of people may turn up to participate in it and give bids that match the price the property deserves.** The words used in the aforesaid provisions may not sound mandatory and according to the judgment rendered in the case of Ghulam Abbas v. Zohra Bibi and another (PLD 1972 SC 337) are directory in their nature. But if we interpret these provisions by ignoring the purpose behind them then a sale held in the chambers of secrecy would be as good as the one held in accordance with the provisions of the Code. Failure to comply with such provisions, therefore, cannot be light ignored. We, in view of the surroundings we live in, where people do not know what is happening to their next door neighbors or outside their houses, would rather desire the involvement of even electronic media for the publicity of such sale or auction so as to ensure compliance with the letter and spirit of the law. Therefore, the argument that the provisions contained in Rule 54 as well as 67 of Order XXI are directory in nature and failure to comply therewith cannot undo an auction could be held to be correct so long as it does not cause prejudice to any of the stakeholders. But where it is otherwise, failure to comply with the provisions cannot be brushed aside without due application of mind. The Court has to undo a sale if failure to comply with the provisions causes injustice. Needless to reiterate that these provisions have been enacted to advance and not to impede the cause of justice.

(Emphasis supplied)

9. The above discussion and careful reading of the above provision makes it clear that term '*reserved price*' is not mentioned but phrase '*amount for the recovery*' has been used. This is *necessary* to be mentioned because **attachment, auction and sale** *only* take place in consequence of failure of the *judgment debtor* to satisfying the decree. It is *normally* the decree holder who chooses the *property* of the *judgment debtor* for satisfaction of decree by *legal*

course of **attachment, auction and sale** therefore, mentioning of amount evaluated by *decree holder* or least *decreetal amount* is necessary in *proclamation* which, *per decree holder* was sufficient for satisfaction of decree. Thus, the reserve price, in ordinary auction proceedings, shall not be less than the '*decreetal amount*'. The provision *nowhere* permits an inquiry by the Court to determine the *price* of the attached property before *auction* thereof. Notice (s) to parties, *including* judgment debtor, does not mean to allow *judgment debtor* to claim or value his attached property *exorbitantly* and to take the same as '*reserved price*'. If so, the *auction proceedings* shall never bring a fruit which *ultimately* mean to make all such proceedings redundant.

10. In the case of *Lavin Traders* (supra) and *National Bank of Pakistan v. SAF Textile Mills Ltd.* (2014 PLD SC 283) section 15 of the Ordinance, 2001 was under discussion and fixation of *reserve price* was insisted in such back-ground, as is evident from the operative part of case of *National Bank of Pakistan* (supra) that:

*'41. The conscious exclusion of remedies and deliberate omissions provide for a due process of conduct of sale including the absence of the necessity to fix a reserve price becomes even more significant, as the **Financial Institution has been clothed with the right to purchase the property but by it to public auction at the highest bid. No permission, in this behalf, is required from any Court, as is in the normal course of terms of C.P.C.** Thus, in fact, it is a Financial Institution, which is **the seller, buyer, the auctioneer and the beneficiary,** hence enabled to **take full advantage of the misfortune of the mortgagor / debtor** thereby facilitating predatory and exploitative behaviour which perhaps would not sit well with Article 3 of the Constitution.'*

In said case, the criterion and difference between auction proceedings for one of Ordinance, 2001 and the other under Order XXI rule 66 of the Civil Procedure Code, 1908 has been acknowledged and fixation of the *reserve price* is in such

back-ground. In an *ordinary* auction proceedings the *seller, buyer, the auctioneer and the beneficiary* are not one and same as is *normally* in an auction in a Financial Institution matter (Ordinance, 2001) hence, I humbly say that this would not *stricto sensu* apply to an auction proceedings, being conducted in an *ordinary* civil suit. In support of such view, I would take guidance from the case of Lavin Traders (supra), relied by learned counsel for the *judgment debtor*, wherein it is observed as:

*'10. Getting down to the brass tacks of the case,...*We , would have accepted even this argument or interpretation had the price fetched through the sale so called, **matched at least the decretal amount.**

Things have *now* been clear in the recent *unreported judgment dated 05.01.2016 passed by honourable Apex Court in Civil Review Petition No.383/2005 in Civil Appeal No.670/2002 (Zakaria Ghani and 4 others versus Muhammad Ikhlaq Memon and 8 others)* relied by the counsel for the *decree holder*, relevant paragraph Nos.24, 26, 27 and 28 are as under :-

24. The case of Lanvin Traders, Karchi Vs. Presiding Officer, Banking Court No.2, Karachi (2013 SCMR 1419) stresses importance of fixing the reserve price. We may note straightaway that there are certain important distinguishing features in this case. In the present case the question of non-mention of the reserve price has not been raised at all at any stage of the proceedings including the arguments before us in the present review petition. However, this question was specifically raised and argued in the Lanvin Traders case. Secondly, note should also be taken that in the Lanvin Traders case the objection was not merely in relation to the non-mention of the reserve price but, as stated in paragraph 10, "getting down to the brass tacks of the case, it will be seen that it was not a single lapse which flashed by without causing harm to any. It was rather a series of ploys which appears to have been employed to harm one and benefit another." **Thirdly, it should also be noted that in paragraph 11 it was specifically recognized that "agreed that the expression "reserve price" does not find mention in the relevant rule but the words**

used and the rule pointedly hint thereto". Furthermore, it was held "we therefore are constrained to hold that the whole proceedings from inception to the end have not been held in accordance with law and thus cannot be blessed with any sanctity". (*it should incidentally be noted in passing that this is a majority judgment with a dissenting judgment also and a review petition has been admitted for hearing against it which is pending before this court*). Since this case is distinguishable it is not necessary to dwell further on it. Insofar as the subsequent case of National Bank of Pakistan vs. Saf Textile Mills Ltd. (PLD 2014 SC 283) is concerned it simply places reliance thereon and primarily dealt with the question of the constitutionality of non-judicial sales of property.

26. At this point we can conveniently examine the concept of reserve price. What exactly does it mean. This is a well known concept and we can, by way of example, refer to the following definition contained in Business Dictionary.com.

"Reserve price; lowest fixed price at which an item is offered at an auction sale and (1) at which it will be sold if no higher price is bid, or (2) below which the seller is not obligated to accept the winning bid."

The reserve price is often, although not invariably, fixed in sales of property by the owners thereof. Its relevance and importance depends on the circumstances in which the sale is being held. For example, in cases of Government owned property which is being privatized *a reserve price is often fixed but is deliberately not disclosed to the public at all. **The fixation of the reserve price is intended to be an internal guide to the Government in taking a decision as to whether or not to carry out a sale of the property at the highest price bid.*** The reason it is not disclosed to the bidders is that this may actually cause a loss to the Government. This would be because bidders would assume that if the Government, on the basis of its internal evaluation of the property, had come to a conclusion as to the actual value of the property, they would be reluctant to offer amounts substantially higher. This then is the reason why fixation of a disclosed reserve price could cause a loss to the owner of the property. We now turn to Court auctions. **In the case of property which is being privatized it is within the sole discretion of the owner, namely the Government, to decide whether it wishes to sell or not to sell and at what price. However, in the case of Court auctions the judgment debtor has no such right.** Indeed if it were left to him he would say that *no sale should be carried out, or, he would indicate an exorbitantly high price, so as to ensure that no bid would be received and the property would remain in his possession indefinitely.* In auction sales it is the Court which therefore has to decide.

The court in taking the decision essentially strikes a balance in terms of which it is fair to both the decree holder and the judgment debtor. It however always bears in mind the fact that, after a decree has been passed, the decree holder has a crystallized legal right to get the property sold if the judgment debtor persists in not paying the decretal amount. A judgment debtor cannot plead that prices are abnormally low at present and if the sale is delayed for some months or years a higher price could be obtained. The court will simply ensure a fair and even playing field and then proceed to sell or dispose of property at the highest price someone is prepared to pay at the prevalent time and in those circumstances. A judgment debtor cannot object to the same because when he fails to discharge his obligation to pay the decretal amount he must suffer the consequences. Insofar as potential bidders are concerned it is obvious that the Nazir's valuation of the property is not likely to be decisive one way or the other. All bidders would unquestionably carry out their independent valuation of the property before making an investment. Thus the reserve price in the normal course has not special significance. However the position would be different in cases of manifest fraud. If, for example, an auctioneer is acting in collusion with someone and proceeds to dispose of the property at a nominal price without making the requisite publicity then most certainly the court would intervene to prevent such a fraud taking place. It is for this very reason that if a judgment debtor is apprehensive of foul play he should make a specific request in advance, or as soon as practicable thereafter, to have a reserve price fixed. The Nazir always issues a notice before issuing a sale proclamation so the judgment debtor has an opportunity to object. It is primarily in his interest to decide whether fixation of a reserve price is in his interest or not. He may for example feel that it is not advisable since lower bids may come as a result thereof. He has to take a decision, one way or the other.

27. It should be remembered that the reserve price is never set by means of a judicial determination since that would be clearly impracticable inasmuch as the court can only decide matters on the basis of evidence. The important point to bear in mind is that once the plaintiff's rights have crystallized in a court decree the burden has to be on the judgment debtor since his duty is clearly to comply with the terms of the decree. If he feels that he is being harmed by some ministerial order, which is not in accordance with law, it is his clear duty to assert the same before the court rather than waiting to raise it at the stage of appeal, or further appeal, or in review, or not at all (*as in the present case*) and except the court to do it for him. If he wishes to avail a legal right he must assert it. He cannot be allowed to

do nothing and then after the passage of many years in which third party interest have been created to rely on a technical objection to delay the course of justice. In this connection it would be pertinent to note that in the judgment under appeal this court has rightly relied on the following passage from an earlier judgment:

“The maxim “actus curiae neminem gravabit” come into play, with a view to obviate hardships and which may otherwise be the result of the errors of the Court itself. Thus where a non-compliance with the mandatory provisions of a law occurs by complying with the direction of the Court, which is not in conformity with the law, the party complying therewith is not to be penalized. Indeed, the law becomes flexible to absorb such abnormalities and treat the infractions as harmless. Where the directions issued while administering the law have been followed but is found that the authority itself had acted in deviation of the law in some particulars, the party acting in accordance with such directions is not held to be blameworthy.”

28. The facts of the present case provide an excellent illustration for the applicability of the above principles. **The judgment debtor had four opportunities to raise an objection about the non-mentioning of the reserve price at the time of issuance of the sale proclamations.** He then failed to raise this objection before the trial court, the division bench of the High Court, and before this court either in appeal or in the review. Now it is clear that there is no conceivable way by which the auction purchaser can be blamed for the act of the court in not mentioning the reserve price. He was not even a party to the court proceedings at the time the auction proclamations were prepared and issued. We are unable to see how it would further the ends of justice if we were to now non-suit the auction purchaser for the error of the court and the negligence of the judgment debtor.”

(Underlining has been sullied for emphasis)

Thus, suffice to say that determination of ‘reserve price’ is not requirement of the Order XXI rule 66 of the Code while dealing with ordinary auction proceedings but amount evaluated by *decree holder* or least *decreeted amount* would be sufficient.

11. In the instant matter, the *proclamation* has been done which contains the amount, *evaluated* by decree holder and is more than the decreed amount for recovery whereof the auction is being conducted; further the present *judgment debtor* has been in *active* knowledge and notice of the *auction* schedule and its place hence deliberate negligence / failure of *judgment debtor* in avoiding to give an *expected* price shall *in no way* result in making the *enabling* provisions for satisfaction of the decree *redundant* which cannot be *legally* stamped particularly when *judgment debtor* still continues with a right to seek setting aside of the *sale* within resort to Rule 90 of Order XXI of the Civil Procedure Code 1908 subject to establishing *serious injury / material prejudice*. Further, it is also a matter of record that the *judgment debtor* despite notice for submitting *evaluated price* failed to submit the same hence cannot take any advantage of his own failure who *even otherwise* cannot determine a *price* exorbitantly particularly in view of Order XXI rule 69(3) Civil Procedure Code 1908, provides an opportunity to *judgment debtor* to get auction / sale stopped by tendering the *decree amount*. There can be no dispute that a *judgment debtor* shall always be interested in keeping the *attached property* with him which object, he (*judgment debtor*), can only be achieved by delaying or defeating the auction proceedings by different *means* including exorbitant amount for his property therefore, much has not been left at discretion of *judgment debtor* in Order XXI rule 66 Civil Procedure Code 1908 except a procedure, providing an opportunity to him (*judgment debtor*) to witness fair and transparent auction. It is also a matter of record that *judgment debtor* has not raised such plea at earlier two occasions but has raised this plea *for the first time* when the *decree holder* requested for permission to participate in auction proceedings. This also goes to show the *intention* of *judgment debtor* to defeat or least delay the auction

proceedings which otherwise is aimed by *legislature* to satisfy the claim of a decree holder which he earned after *due process of law*.

12. In view of above discussion and guidelines of the Honourable Apex Court I am not inclined to accept the *first objection* regarding non-determination of reserve price as an embargo to proceed for auction of property, to be sold in an *ordinary* civil matter.

13. Now, I shall attend to the *second objection* regarding application of the *decree holder* i.e *eligibility of decree holder* to participate in auction proceedings. I have no hesitation in saying that provision of Order XXI rule 72 of the Code is *permissive* in nature because a permission to *decree holder* only earns him a right to participate but in *no way* shall mean or influence the *auctioneer* or prejudice the right of other participants to bid for the property under *auction*. In short, permission under this provision shall clothe the *decree holder* with status of a mere *participant* and nothing else. Thus, I find no legal justification to decline the request of the *decree holder* to participate in the auction and accordingly the application is allowed which *however* shall not earn him any advantage over other participants but the *auctioneer* , as authorized under Rule 65 of Order XXI Civil Procedure Code 1908 shall continue with same obligation / duty to ensure a fair and transparent *auction proceedings* on scheduled date, time and place. However, since there is a consent over not auctioning the *machinery*, as described in the application, hence the *auctioneer* shall not include the same in auction proceedings.

14. As regard the plea of order in *appeal* it would suffice to say that since failure on part of the *judgment debtor* is evident in making compliance of *agreement* as is evident from last order, passed in said appeal which is::

‘While confronted with such contention of the learned counsel for respondent and in view of the orders passed by this Court as referred to hereinabove on the basis of undertaking given by the appellants through its Director Muhammad Saleem and the learned counsel, the Director of the appellants company present in Court along with learned counsel for the appellants, have candidly stated that they will not press the listed applications, as according to learned counsel for appellants, the same were filed due to inadvertence and in view of some misunderstanding, whereas, the appellants never intended to abuse the process of law or to make an attempt to frustrate the orders of this Court and further extended their no objections *if instant appeal may be disposed of on the basis of undertaking given by the appellants for payment of Rs.1235 million in favour of the respondent bank.*

6. Accordingly, both the listed applications being CMA No.2864 and 2865 of 2014 are hereby dismissed as not pressed, whereas, instant High Court Appeal is disposed of along with listed applications by consent of the parties and their respective counsel in the terms as already recorded hereinabove.”

Hence this ground is also not available with the *judgment debtor* to delay the auction proceedings.

15. With regard to CMA No.202/2015 listed at serial No.2, it is pertinent to mention that same relates to previous proclamation, hence same is dismissed being infructuous. Accordingly CMAs listed at serial No.1 and 3 are allowed.

Sajid

J U D G E