

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,**  
**HYDERABAD.**  
**1st Appeal No.D — 10 of 2020.**

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DATE	ORDER WITH SIGNATURE OF JUDGE[s]
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Present.  
Mr. Justice Muhammad Shafi Siddiqui.  
Mr. Justice Irshad Ali Shah.

Date of Hearing: 10.05.2022.  
Date of Order: 13.05.2022.

Appellant: JS Bank Limited through Mr. Imran Ali Burano  
Advocate for the appellant.

Respondent No.1: Ghulam Shabbir through Mr. Muhammad Sulleman  
Dahri Advocate.

**MUHAMMAD SHAFI SIDDIQUI, J.-** Appellant a banking company, being aggrieved of an order passed by Banking Court No.1 Hyderabad in Suit No.154 of 2019 have preferred this appeal by impugning the judgment and decree passed in favour of respondent after dismissal of leave application by a common order.

2. Brief facts are that the respondent filed a suit for recovery of immovable property (gold ornament) weighing 163.200 grams being pledged goods against which the loan was obtained. As against the pledged goods a loan of Rs.3,46,200/- was sanctioned in the name of respondent and an amount of Rs.3,38,375/- on 09.01.2019 was disbursed in the account as Gold finance after deducting miscellaneous expenses. This facility is required to be repaid through monthly installments of Rs.13,338/-. It is claimed that in July 2019 when respondent contacted for the repayment of one of the installment he was informed that the deposited gold has already been auctioned and hence in consequence whereof he filed the aforesaid suit before the Banking Court No.1 Hyderabad for the recovery of the moveable pledged assets and damages under section 9 of the Financial Institutions (Recovery of Finance) Ordinance 2001.

3. Notices and summons were served upon the appellant who filed a leave application under section 10 of the Financial Institutions (Recovery of Finance) Ordinance 2001. Appellant stated that in leave to defend application that the respondent has committed default in the repayment of loan and for the recovery of the outstanding dues auction proceedings were initiated after notice to respondent through courier as well as leading newspapers. Two notices claimed to have been served, 1st on 24.4.2019 for an outstanding amount and 2nd notice of 15.05.2019 for outstanding loan, however, compliance was not made. Since the respondent claimed to have defaulted, the auction proceedings were conducted, terms of which were supported by the letter of pledge which enabled the Bank to exhaust the remedy under the Contract Act being not in consistent with the provisions of the Financial Institutions (Recovery of Finance) Ordinance 2001.

4. We have heard the learned counsel and perused the material available on record.

5. The Banking Judge of Banking Court No.1 Hyderabad has discussed the fact of the case in detail in the impugned judgment. The Banking Judge misconceived the facts that it was a case of mortgaged property and hence relied upon Section 15 of the Financial Institutions (Recovery of Finance) Ordinance 2001. Section 15 of the Financial Institutions (Recovery of Finance) Ordinance 2001, specifically deals with the immoveable mortgaged property and not a pledged property, as in this case. The procedure of auction as undertaken is not explained by the respondent to be inconsistent with the scheme of Financial Institutions (Recovery of Finance) Ordinance 2001, which could be held to be unlawful in terms of Section 4 of the Financial Institutions (Recovery of Finance) Ordinance 2001. It may have procedural defects as pleaded in the plaint but within frame of law which was applied i.e. Contract Act, inconsistency in terms of section 4 is not established. The Banking Judge has relied upon the provisions of Section 15 which claimed to have been violated. At page 5 of the impugned order the Banking Judge observed that the Bank has annexed courier receipt showing an attempt to effect service of notices but the

Banking Judge stated it to be "insufficient proof" for the delivery of notices to the respondent at the given address. It is observed in the order that neither the name nor address of Ghulam Shabbir is mentioned in the receipt. The Banking Court further observed that after effecting service through courier a generalized form of public notice was issued to all concerned (All those customers who pledged goods) where "link" was given to and for all defaulters including the respondent. This para at page 05 further disclosed that the list of the bidders who participated the auction proceedings has not been provided along with the application who attended in the auction.

6. The ratio of the order was that Section 15 of the Financial Institutions (Recovery of Finance) Ordinance 2001, was not applied in its letter and spirit and the service of notice before auction was not established.

7. We are of the view that all these questions of facts and law are in fact substantial questions of facts and law and should have entailed grant of leave for the disposal of the suit on merit after recording evidence rather than a summary dismissal, as adopted. Contrary to above, not only the leave application was dismissed but the suit was decreed along with damages to which no evidence was available.

8. We are also of the view that the public notice "alone" in the newspaper, as issued by the Bank in the "generalized form" for the auction of pledged goods of different customers including gold ornaments of respondent, without any specific name of alleged defaulter(s), could hardly meet the requirement of law for effecting service of notice before auction, either under the Contract Act or the Financial Institutions (Recovery of Finance) Ordinance 2001. Such notices should be specific and in personam. It is for the banking court to see whether the service was effected through courier or otherwise. Without further expressing ourselves as far as Section 15 of the Financial Institutions (Recovery of Finance) Ordinance 2001, or requirement of any of the provision of Contract Act is concerned, as it may cause prejudice to either party at trial, we deemed it appropriate, as above to allow this appeal, set-aside the impugned judgment and decree, grant leave to appellant and remand the case

to the Banking Court for a fresh disposal after recording evidence, with no order as to costs.

JUDGE

JUDGE

A.