

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

C.P. No.D-788 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
	For orders on M.A. No.1965/2020. For hearing of M.A. No.5575/2016. For hearing of main case.

12-11-2020

Mr. Imdad Ali R. Unar advocate for petitioner.
Mr. Zaheeruddin Leghari advocate for respondent No.2.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

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Learned counsel for the petitioner submits that petitioner was a successful bidder in respect of the mortgaged property, however, sale could not be confirmed on account of pendency of applications of the surety. Consequently petitioner also moved an application for confirmation of the bid. He further submits that the petitioner had already deposited the entire amount i.e. 25% bid amount and balance 75% whereafter she preferred application for confirmation of her bid in terms of Rule 85 of Order 21 CPC, yet while hearing the application of surety, the application of the petitioner was dismissed whereas that of the surety was allowed perhaps on the count that the decretal amount was deposited by Judgment Debtors before confirmation of sale. Counsel submits that this would deprive the petitioner from her rights arising out of the auction proceedings.

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

Apparently Rule 89 of Order 21 provides a right not only for a person having owned the property but also having an interest in the property. By virtue of executing a surety document, the surety deem to have developed an interest in the mortgaged property as all rights arising out from being acted as surety including right of redemption, and interest out of mortgaged property should have passed on to surety on payment of amount under the Contract Act. Be that as it may, with reference to the amount offered by the auction purchaser the Banking

Court was otherwise not satisfied and he could have put it for re-auction, however, before such time could be reached, the amount as outstanding in terms of the decree was settled as alleged and ordered. Counsel for petitioner submits that had it been decided by the Banking Court that it was not satisfied with the amount offered in the auction and had it put to re-auction, things could have been different and he would have conceded and participated in the re-auction, and even now he submits that he would concede if the property is put to auction.

Perusal of impugned order revealed that J.Ds before the sale could be confirmed, satisfied the decretal amount and has also deposited the bid amount with addition of 5 % over bid offered by petitioner. Order 21 Rule 89 enabled the Judgment Debtor/ surety to act within its frame and offer bid amount with addition of 5%. In view of these facts we deem it appropriate that no case for any interference is made out however, as conceded by respondent, in case any amount is still outstanding and required executing court to put mortgaged property to auction, the case of petitioner be considered in priority and if not the amount be released as deposited by the Judgment Debtor/ surety immediately. With this observation the petition has served its purpose and accordingly disposed of.

JUDGE

JUDGE

Irfan Ali