

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-7397 of 2022

Date	Order with signature of Judge
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DIRECTION.

1. For orders on CMA No.33153/2022.
2. For orders as to maintainability of Petition.

20.12.2022.

Mr. Nehal Khan Lashari, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, seeking to assail the proceedings initiated by the Banking Court No.II, at Karachi in Execution Application No.38 of 2014 so as to auction certain immoveable properties and machinery of the Judgment Debtor, being the Respondent No.3, which were mortgaged/hypothecated, as the case may, be in favour of the Decree Holder, being the Respondent No.2.

The Petition proceeds on the basis that a Certificate under Order XXI Rule 83 (2) CPC had been issued by the Executing Court to the Respondent No.3, so as to enable it to sell such properties/machinery through a private transaction, with the Petitioner having then entered into an Agreement with said Respondent on 08.03.2021 for Sale/Purchase of the hypothecated machinery, for a sum of Rs.310,160,000/-, with an advance payment of Rs.5.00 Million said to have been made, of which Rs.0.5 Million were paid through a Pay Order and Rs.4.5 Million in cash. It is said that only part of that amount was deposited in Court and certain applications filed by the Petitioner so as to raise such a grievance and advance his cause came to be dismissed on 05.10.2021, with the Court then going on to direct the Decree Holder vide Order dated 31.10.2022 to deposit the publication charges for purpose of the sale/auction of the properties.

In that backdrop, the Petitioner seeks that the Orders of the Court below be set aside and that the Petitioner be permitted to deposit the remaining amount due towards the sale of the immovable properties and machinery and be declared to be the legal purchaser thereof, with permission also being sought for the Petitioner to appoint its guards to secure the machinery pending determination of the Petition.

Having considered the matter, it is manifest that the case of the Petitioner is in relation to a private transaction arising outside of the Court, and the fraud, if any, perpetrated by the Respondent No.3 also lies beyond the scope of underlying proceedings. That being so, we are of the view that the Petition is misconceived, as no case for interference stands made out in exercise of the Constitutional jurisdiction of this Court. Hence, while granting the application for urgency, we hereby dismiss the Petition *in limine*.

JUDGE

CHIEF JUSTICE

MUBASHIR