

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.1068 of 2018

Liaquat Dawood Kukda  
Versus  
Syed Hashim Raza & others

Date	Order with signature of Judge
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1. For order on maintainability of this suit vide order dated 30.3.21.
2. For hearing of CMA 8070/18
3. For hearing of CMA 2246/19

**Dated: 12.10.2022**

Mr. Muhammad Ali Lakhani for plaintiff.  
Mr. Abdul Shakoor for defendant No.1.  
Ms. Sofia Saeed for defendant No.2.

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1&2) Adjourned.

3) In this suit for specific performance, cancellation, damages and permanent injunction, an application under order VII rule 11 CPC has been filed by defendant No.1 for rejection of plaint.

Heard the counsels.

Brief facts of the case are that for the recovery of certain outstanding amount, a banking suit No.85 of 2015 was filed before Banking Court No.1 in respect of mortgaged property by defendant No.2 against plaintiff and another, which property is also subject matter of this suit. The Banking Suit was decreed on 29.07.2015 followed by execution application No.15 of 2017. Subsequent to the decree, a tripartite agreement was executed on 24.02.2016 between plaintiff, defendant No.1 and defendant No.2 i.e. mortgagee bank. Clause 4, on last page of the agreement, provides that parties agreed to the redemption of original documents which were in custody of Soneri Bank

Limited as Mortgagee. The documents were handed over to the vendee upon receipt of decretal amount.

However, there is another agreement dated 31.05.2016 executed between plaintiff and defendant No.1 and that is available at page 101 of the file as Annexure P/10 that set the controversy between plaintiff and defendant No.1 at rest subject to its proof. In pursuance of Clause 4 of this agreement also, available at page 3, the second party i.e. defendant No.1 obliged to keep the documents as surety for the payment made by defendant No.1 to defendant No.2 Bank. Perhaps plaintiff's case is that he borrowed money from defendant No.1 for repayment to Bank and defendant No.1 retained the documents as surety. It is this agreement and/or arrangement, which is subject matter of this suit and performance of which is sought against defendant No.1 and not against Bank.

Prima facie it is case of the plaintiff that it was only a loan borrowed by the plaintiff for the repayment to the mortgagee Bank and defendant No.1 is only required to retain the documents until payment is made to him back. These are tentative facts of the case and on this count application under order VII rule 11 CPC has been filed on the proposition that the Banking Court has virtually adjudicated all the controversies and has directed for the execution of the conveyance deed in respect of the suit property in favour of defendant No.1, irrespective of any arrangement between plaintiff and defendant No.1.

I am afraid that performance of the later agreement executed between plaintiff and defendant No.1, cannot be undertaken to be adjudicated by the Banking Court and/or could be denied. Even at the execution stage in a banking case, if in this suit prima facie case is made out while hearing injunction application the "defendant No.1" can be restrained from executing any conveyance deed. The facts in the above

terms are distinguishable in a normal routine case when property in a banking suit is auctioned and third party buy out the property on payment of consideration or repayment of loan and in that case officer of the Court would convey a title. However, in the instant case, as there is apparently a civil dispute in the shape of an agreement dated 31.05.2016 and I am of the view that even question of *res judicata*, as argued, would not apply as the only question arising out of the instant case is performance of subsequent agreement dated 31.05.2016. Section 11 CPC would not come in the way as it talks about the “competent Court” and the “relief claimed” in the suit. The Banking Court was neither a competent Court to adjudicate upon performance of subsequent agreement of 31.05.2016 nor was it (subsequent agreement) a subject matter of banking suit before Banking Court.

Consequently, the application in hand filed under order VII rule 11 CPC merits no consideration and is accordingly dismissed.

**Judge**