

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

First Appeals No. 60 of 2020 and 42 of 2021

Abdul Basit Khan
Versus
Bank Islami Pakistan Limited & others

Date of Hearing: 07.11.2023

Appellant: Through Mr. Muhammad Ali Waris Lari Advocate

Respondent No.1: Through Mr. Faiz Durrani Advocate.

Respondent No.4: Through Mr. Sohail Abbas Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The subject matter of these two appeals filed on 18.11.2020 and 14.04.2021 is a judgment dated 22.05.2017 (underlining is for emphasis) in a Banking Suit No.586 of 2016 filed by respondent No.1 against respondent No.2 in terms whereof suit was decreed followed by Execution No.93 of 2017. The instant appeals are in respect of a property, which was mortgaged with the bank/ respondent No.1 and is being auctioned to satisfy the decree. Appellant has put appearance on 09.11.2018 and raised objections to the auction. Although the orders impugned in these appeals have no nexus to each other as far as legal aspect is concerned but since facts are common as being arisen out of the same judgment and decree and questioned auction proceedings, we propose to decide them through this common judgment.

2. We have heard learned counsels however since counsel for appellant is unable to assist the Court properly we summoned the R & P

of the suit and execution from the Banking Court and have perused the record.

3. In First Appeal 60 of 2020 appellant has not challenged a specific order but all the orders passed in the execution application. Perusal of record from R & P however reveals that on 11.01.2020 appellant's two applications one under section 12(2) CPC and the other under Order I Rule 10 CPC were dismissed for non-prosecution against which appellant on 13.10.2020 filed "application for recalling above referred order dated. 24.01.2020" (the correct date is 11.01.2020; there is no order of 24.01.2020). This application via a short order on diary sheet of 22.10.2020 was dismissed by executing Court on merit on the count that the appellant has no locus standi in terms of the provisions of Section 2(c) of Financial Institutions (Recovery of Finances) Ordinance, 2001 against which First Appeal 60 of 2020 was filed.

4. Learned counsel for appellant has relied on a sale agreement between one Shakil-ur-Rehman and Abdu Basit Khan, appellant, (Page-63 of execution file). It is alleged that Shakil-ur-Rehman had purchased the subject property from one Muhammad Fayyaz who is alleged to have taken loan on behalf of respondent No.2, the judgment debtor. Appellant for this event pleads fraud and misrepresentation in terms of Section 12(2) CPC. However, from record it appears that the subject property in terms of registered sale deed (Page-103 of execution file) is in the name of the judgment debtor and admittedly mortgaged with the bank hence no fraud with "Court" appears to have been committed. In fact at the best the appellant can plead such fraud against the vendor of the agreement, referred above, who entered into the agreement with the appellant despite not being an owner, for which he (appellant) could avail the remedy available to him under the law. But this does not fit in the frame of Section 12(2) CPC for the purposes of present proceedings.

5. Furthermore, it is an admitted position that this lis is in respect of some financial facilities extended by the respondent No.1 to the respondent No.2 i.e. financial institution and customer in terms of provisions of Financial Institutions (Recovery of Finances) Ordinance, 2001 and under no stretch of imagination the appellant can be termed as a “customer”. For the convenience sake Section 2(c) of Financial Institutions (Recovery of Finances) Ordinance, 2001 is reproduced as under:-

“2(c) “customer” means a person to whom finance has been extended by a financial institution within or outside Pakistan and includes a person on whose behalf a guarantee or letter of credit has been issued by a financial institution as well as a surety or an indemnifier”.

6. Learned counsel has not been able to point out if appellant comes in any of the categories defined above. Hence the appellant is none but a stranger to these proceedings and the observation of the executing Court does not call for any interference as it is a dispute between financial institution and the customer and appellant is thus not in any way a proper and necessary party and that too after the disposal of suit, when it was decreed and execution proceeded.

7. In First Appeal No.42 of 2021, on more or less similar facts, appellant has challenged order dated 22.03.2021 passed on application under section 47 read with order XXI Rule 60 CPC.

8. Learned counsel for appellant has argued his case only on the factual aspects of the matter relying on the sale agreement, which, as observed in above paragraphs, does not confer any right or title upon the appellant. Learned counsel has also pleaded that he has deposited entire decretal amount with the executing Court who had accepted it hence a title is created. This is also misconceived in the sense that it is a prerequisite in such executing proceedings and in lieu of such deposit

the auction proceedings were halted. Learned counsel in support of this contention has relied on same decisions in specific performance cases, which cannot be applied in these proceedings.

9. A perusal of impugned order reveals that the Banking Court has very elaborately discussed the provisions of Section 47 and Order XXI Rule 60 CPC. Section 47 stipulates power of the executing Court to determine questions arising out between the parties to the “suit” whereas in the instant case appellant has come in picture after passing of the judgment and decree hence a stranger in view of above findings. Similarly, in terms of Order XXI Rule 60 CPC release of a property from attachment can be allowed only in case the objector/claimant had a title or right over it, whereas in the instant case on one hand appellant has no valid title in his favour and on the other there is a registered document whereby the judgment debtor is the sole owner of the subject property. Learned counsel has not been able to show as to how this agreement could come in the way of execution of the decree while applying Order XXI Rule 60 CPC as mere agreement does not confer any title and furthermore the subject property in terms of registered sale deed is in the name of the judgment debtor hence any agreement with a stranger is of no value.

10. It is also very pertinent to note that admittedly the appellant is claiming the alleged title over the subject property in terms of a sale agreement of 19.08.2017 i.e. about three months after passing of the judgment dated 22.05.2017. Thus, an inference can be drawn that the judgment debtor, in order to frustrate the decree, has managed the things in collusion and league with the appellant. In case such practice is allowed, we are afraid that it will give a tool in the hands of such litigants to abuse the process of law vis-à-vis satisfaction of the decree merely on the basis of an agreement, which is private document and

that too between the strangers, as observed above. Indeed, these kind of litigations should have nipped in the bud in a shortest possible time rather than to keep it lingering.

11. In view of above both the appeals are misconceived and merit no consideration. Consequently the same are dismissed along with pending applications. R & P be sent back.

Dated:

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