

## IN THE HIGH COURT OF SINDH AT KARACHI

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

### **First Appeal No.18 of 2023**

M/s. Mazhar Ghullam Lotia & Co. and others  
Versus  
SME Bank Limited and another  
.-.-.-.-.-.

***Date of hearing: 20.12.2023***

Syed Aijaz Hussain Shirazi, Advocate for the Appellants.

Mr. Aga Zafar Ahmed, Advocate for Respondent No.1.

Ms. Nousheen Khan Tajamul and Mr. Tajamul Hussain Lodhi,  
Advocates for Respondent No.2.  
.-.-.-.-.-.

### **J U D G M E N T**

**Muhammad Shafi Siddiqui, J.-** We have heard learned counsel for the parties and perused the material available on record.

2. Record reveals that since 2017 numerous attempts have been made to auction the property but judgment-debtors kept on interfering on the count of valuation of the property. The last attempt was made in pursuance of sale proclamation and the auction was conducted on 10.01.2023 at 02:00 PM. Two bidders have participated and the bid of respondent No.2 was considered as highest, that is Rs.3.6 million. The 25% of the bid amount was deposited, whereas, on its confirmation, the balance amount of Rs.27,00,000/- was also deposited through pay order on 25.01.2023.

3. In para-2 of the application under Order-XXI Rule-90 on which the impugned order was passed, it is claimed that fraudulently the valuation was carried out which was incorporated in the sale proclamation, however, they (judgment-debtors) were

unable to show if at the relevant time when the sale proclamation's terms were finalized it was objected, after notice to him (proprietor) and before offer was accepted. There was nothing to prevent the judgment-debtors from bringing a better buyer than the offer was made or within 30 days of acceptance and until such time it was confirmed. The application was thus dismissed with cost of Rs.50,000/- followed by confirmation of sale of the mortgaged property in favour of the auction purchaser/respondent No.2 Syed Muhammad Jaffer Qadri son of Syed Sabir Ali Qadri with direction to the Nazir to issue sale certificate. We have been informed that even the sale certificate has been issued. Nonetheless, there is nothing in the application under Order-XXI Rule-90 which could be construed as a fraud or irregularity that was allegedly committed. Forced sale value though is not visualized in Order-XXI Rule-66, yet it was incorporated in the terms of proclamation as equity discharge.

4. No case within the frame of Order-XXI Rule-90 has been made out and so as a consequence whereof it does not call for interference insofar as the confirmation of the sale of the mortgaged property is concerned, which was sold at the highest price at the relevant time.

5. Learned counsel, however, at the conclusion of the arguments submitted that an exaggerated cost of Rs.50,000/- was imposed as against the property which was auctioned at an amount of Rs.3.6 million. We have perused the order of 11.02.2023 passed on an application under Order-XXI Rule-90 CPC and with the understanding of respondents' counsel it is reduced to Rs.5,000/-, as agreed.

6. These are the reasons of our short order dated 20.12.2023 whereby the instant First Appeal was dismissed.

Dated:-22.12.2023

JUDGE

JUDGE

Ayaz Gul