

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

Suit No. B-21 of 2024  
[Zahida Ashraf & others versus the Bank of Punjab Ltd.]

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA No. 10904 of 2024.
2. For orders on CMA No. 10905 of 2024.
3. For orders on CMA No. 10906 of 2024.

**09-08-2024**

M/s. Asim Mansoor Khan and Zeeshan Bashir Khan, Advocate for the Plaintiffs.

M/s. Waqar Ahmed and Behzad Haider, Advocates for the Defendant.

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**Adnan Iqbal Chaudhry J.** - Urgency granted. Exemption granted subject to all just exceptions.

The facts are that on 05.04.2023 a consent decree was passed by the High Court as the Banking Court in Suit No. B-08/2013, whereby the Plaintiffs as borrowers were to pay the outstanding finance in installments to the Defendant bank. Upon the inability of the Plaintiffs to do so, the Defendant has now exercised its option under section 19(3) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 [FIO] to sell three of the mortgaged properties without the intervention of the Banking Court, and issued a public auction notice dated 22.07.2024. The auction is scheduled for 12.08.2024, after two days. The instant suit has been filed by the Plaintiffs to challenge such auction. By CMA No. 10906/2024 they pray for a temporary injunction to stay that auction.

2. Mr. Waqar Ahmed Advocate enters appearance for the Defendant, undertakes to file vakalatnama, and states that he waives notice of the stay application.

3. The ground taken by the Plaintiffs for staying the auction is that the market value, and consequently the reserved price of the

properties mentioned in the auction notice is less than their actual market value. Mr. Asim Mansoor, learned counsel for the Plaintiffs relies on valuation reports prepared by Joseph Lobo (Pvt.) Ltd. to show that the market value of the three properties determined by that valuator are Rs. 332.4 million, Rs. 295.9 million, and Rs. 268 million respectively; whereas the market value mentioned in the auction notice are Rs. 236 million, Rs. 211.5 million, and Rs. 196.7 million respectively. He submits that the Defendant intends to purchase the properties itself and that is why it has suppressed the actual market value. He submits that the *malafides* of the Defendant are also apparent from the fact that it did not respond to an offer of Rs. 161.17 million for the upper floors of the second property (Plot No. 3-C) that had been made by a buyer introduced by the Plaintiffs in January 2024.

4. On the other hand, Mr. Waqar Ahmed, learned counsel for the Defendant places on record three separate valuation reports for each of the three properties prepared by three different valuers to show that the auction notice takes the highest market value out of the three to arrive at the reserve price.

5. Heard learned counsel. For regulating sales of mortgaged properties under sections 15 and 19(3) of the FIO, i.e. without intervention of the Banking Court, the Federal Government has notified the Financial Institutions (Recovery of Finances) Rules, 2018,<sup>1</sup> framed in exercise of powers under section 25 of the FIO. Rule 3(b) thereof stipulates *inter alia* that for assessing the value of the property, the financial institution shall hire three valuers from the approved list of professional valuers maintained by the Pakistan Banks Association; that the highest of the three values shall be taken for fixing the reserve price; and that the valuation shall not be older than six months on the day of the auction notice. *Prima facie*, the Defendant has complied with Rule 3(b), and it is also not the Plaintiffs' case that it has not.

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<sup>1</sup> *Sheikh Kashif Imtiaz v. Faysal Bank Ltd.* (2020 CLD 904).

6. Learned counsel for the Plaintiffs submits that the valuation report produced by them is also by a valuer on the approved list of the Pakistan Banks Association. While that may be so, it is only one assessment as against the three produced by the Defendant, and secondly, it is an assessment procured by the Plaintiffs on their own. The Rules discussed above also do not envisage a valuer hired by the borrower.

7. As regards the offer of Rs. 161.17 million forwarded by the Plaintiffs to the Defendant for the upper floors (only) of one of the properties, the buyer's letter dated 31.01.2024 shows that such offer was on the condition that possession of the property be delivered on payment of only 10% of the offered amount. Mr. Waqar Ahmed Advocate appears to be correct in submitting that such an offer could not be taken seriously. In any case, the market value of that property including its ground floor mentioned in the auction notice is Rs. 211.5 million, which too seems to support the Defendant's valuation.

8. The thrust of the Plaintiffs argument is that the Defendant intends to purchase the properties itself and therefore it has motive to reduce the reserve price. In that regard, learned counsel draws attention to clause 7 of the auction notice which reads that: *"The Bank reserves the right to purchase the Mortgaged Properties by matching the highest bid."*

9. Sub-section (6) of section 15 of the FIO, which is made applicable *mutatis mutandis* by section 19(5) to sales under section 19(3) of the FIO (without intervention of the Court), explicitly allows the financial institution to participate in the public auction. But, at the same time and as a check on the financial institution, sub-section (6) of section 15 also stipulates that if the financial institution desires to purchase the property it will have to pay 10% over and above the highest bid, and then also provide an opportunity to the mortgagor to match the financial institution's bid. In other words, even if the

Defendant decides to participate in the auction, the Plaintiffs have a right to match the Defendant's bid. Learned counsel for the Defendant also acknowledges that. Therefore, the argument that the Defendant has motive to suppress the reserve price, does not gather force. Learned counsel for the Defendant adds that the Plaintiffs are also free to bring their own buyer to the auction.

10. Having said that, the auction notice nonetheless requires interference on a different ground. Clause 7 thereof holds out to the public bidders that the Defendant may purchase the properties "*by matching the highest bid.*" That much is not in accord with sub-section (6) of section 15 of the FIO. As discussed above, the Defendant cannot purchase the properties by simply 'matching the highest bid.' It has to bid 10% over and above and then invite the Plaintiffs to match that bid. In its present form, clause 7 is misleading. It appears that in drafting such clause the Defendants had in mind the proviso to sub-section (4) of section 19 of the FIO which gives the financial institution the discretion to purchase the property at the highest bid received. But that proviso is for sales made by 'inviting sealed tenders', not for sales by public auction.

11. Therefore, while rejecting the argument that the reserve price is fixed with *malafides*, the auction notice dated 22.07.2024 is set-aside due to clause 7 thereof. The Defendant may publish it afresh after amending clause 7 as noted above. CMA No.10906/2024 is disposed of accordingly.

**JUDGE**

\*PA/SADAM