

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
I.A. No. 26 of 2020
(M/s. MCB Bank Ltd Vs M/s. Khan Autos Engineers & 3 others)

Dated	Order with signature of Judge
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Hearing Case (Priority)

1. For orders on office objection a/w reply at A
2. For hearing of Main Case
3. For hearing of CMA No. 1502/2020 (stay)

Dated 13.02.2024

Syed Danish Ghazi Advocate for the Appellant

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Muhammad Shafi Siddiqui, J.- The Appellant filed a suit under banking jurisdiction as Suit No. 432 of 2010 for the recovery of amount extended as loan to the Respondent No.1, whereas, the Respondent Nos. 2 and 3 are the guarantors/mortgagees. The suit was decreed in the sum as identified in the judgment against the Defendants and the decree was drawn accordingly.

2. It is Appellant's case that inadvertently it was not a mortgaged decree that was passed and was only a money decree, however, against all the Defendants who were arrayed in the suit. No appeal preferred against the said judgment. When the Execution application was preferred, the Appellant sought attachment of a property which in fact was a mortgaged property by virtue of an application which was dismissed in limine as impugned. The impugned order was passed whereby the Appellant was directed to approach the proper forum under Section 27 of the Financial Institution (Recovery of Finances) Ordinance, 2001 ("FIO") as the judgment and decree could not be recalled, per findings.

3. We have heard the learned counsel and perused the judgment and decree as well as the order passed by the learned Banking Court.

4. It is not a case apparently for a modification or recalling the judgment that was passed against the Defendants being Respondents here. In the Execution Application the Appellant seeks attachment of the property which though claimed to have been mortgaged but even otherwise could have been attached in lieu of a money decree alone; as being a money decree granted by the Banking Court against the Respondents. This property could also be attached. There was no reason to have discarded the application for attachment of the property under the garb of Section 27 of the FIO, as we do not see that the Appellant has sought any modification in the order/judgment whereby suit was decreed.

5. We therefore, deem it appropriate to recall the impugned order dated 21.01.2020 and remand the case back to the Executing Court i.e. Banking Court No.II at Karachi for deciding the application under Order XXI Rule 54 read with Rule 64 of C.P.C. on merits, after notice to the Respondents.

6. The appeal along with listed application stand disposed of in above terms.

JUDGE

JUDGE

Amjad PS