

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No.67 of 2020

Syed Adil Atta Hussain
Versus
M/s. Standard Chartered Bank (Pakistan) Limited and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

Hearing case (priority)

1. For order on office objection/reply "A".
2. For hearing of main case.
3. For hearing of CMA No.2707/2020 (Stay).

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Dated 01.03.2024

Mr. Haris Rashid Khan, Advocate for the Appellant.
Mr. Ghulam Rasool Korai, Advocate for Respondent No.1.
Mr. Asghar Bangash, Advocate for Respondent No.3.

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

2. In response to a decree in suit No.179/2012, execution proceedings have commenced and at one point of time the property was put to auction. Earlier an application under Order-XXI Rule-58 was filed by the appellant, which failed as could not convince the Banking Court and was dismissed.

3. In the recent past, the property was put to auction when on the crucial day the appellant yet again moved an application for redemption of the property on the count that he is a *bonafide* purchaser and has paid consideration. He placed on record an agreement of sale and payment receipts, however, it was dismissed in *limine* on the count that earlier a similar nature of application was also dismissed.

4. It appears that on the second occasion the appellant was there perhaps on behalf of the judgment-debtor, as he claimed through an agreement which seeks title on behalf of the judgment-debtor. It could have been a possibility that the bank was not informed about such transaction, however, this was not the spirit of the order impugned before us. Later in time, the Nazir has submitted its auction report on 30.11.2020. On the auction report itself and not in the execution application an order was passed that 75% of the amount be deposited (perhaps the bid amount). This was without any acceptance and the refusal of the bid offered.

5. Be that as it may, we have further been informed that the judgment-debtor himself has moved an application for the redemption of the property in terms of Order-XXI Rule-89 read with Order-XXI Rule-1(a) CPC. In all fairness, we therefore deem it appropriate that no doubt the judgment-debtor has a priority over the redemption of the property in case he intend to satisfy not only the bank's claim but also the requirement of Order-XXI Rule-89 CPC, but in the similar way the appellant's application should not have been dismissed without any reasoning whatsoever, as he has relied upon the cases reported as *PLD 2012 Sindh 381 [Ali Ahmed v. Aisha Warsi and another]* and *PLD 2018 Supreme Court 692 [Muhammad Sadiq and others v. Muhammad Mansha and others]*.

6. We, therefore, deem it appropriate, with the understanding of learned counsel for the Bank Mr. Ghulam Rasool, that not only the application of the judgment-debtor but the application of the appellant in response to the redemption of the property, be heard and decided afresh by the Banking Court, in accordance with law. The impugned order as such, since without reasoning, is set aside and the case is remanded back to the Banking Court. The auction

purchaser may also be heard along with the applicants who have moved applications for the redemption of the property.

7. The instant appeal stands disposed off in the above terms along with pending application(s).

JUDGE

JUDGE

Ayaz Gul