

IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui, C.J  
Mr. Justice Jawad Akbar Sarwana.

**Special High Court Appeal No.258 of 2024**

Bank Islami Pakistan Limited  
Versus  
Mst. Farah Ansari and others  
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Date of hearing: 09.12.2024

Date of short order: 09.12.2024

Date of Reasons: 10.12.2024

Mr. Shaikh M. Danial, Advocate for the Appellant.

Mr. Saadat Yar Khan, Advocate for Respondent No.1.

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

**Muhammad Shafi Siddiqui, C.J.-** This appeal is arising out of an order passed by the learned Single Judge of this Court in Execution Application No.20/2019 whereby twenty percent penalty on the sale price of the subject property was ordered/imposed, to be paid by the Bank to the objector.

2. We have heard learned counsel and perused the material available on record.

3. A banking suit No.B-17/2018 was decreed on 29.01.2019, in consequence whereof Execution No.20/2019 was filed arraying in column No.12 of the Execution Application a number of properties from (A) to (G). One such property at serial No.(D) in the Execution Application is objected by the objector by moving an application under Order-XXI Rule-58 read with Rule-26. It was prayed therein that the subject property is independently owned by one Farah Ansari and should not have been arrayed as an asset of the judgment-debtor for the recovery of the decretal amount. There was no such prayer in the application which seeks imposition of cost on account of arraying this property as one of the properties of

the judgment-debtor. The application kept pending for some time and on 10.01.2022 the prayer of the application with reference to para-12(D) of the Execution Application was determined and sale of the House No.36/1, Khayaban-e-Shujat, Phase-V, DHA, Karachi, was resisted and property was removed from array.

4. In November, 2023, after almost two years, another application under Section-19(7)(b) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 [*FIO, 2001*] read with Section-151 CPC was filed that the property of the objector remained under cloud for over three years due to mala fide of the decree-holder, therefore, a penalty be imposed up to twenty five percent of the sale price of the property.

5. At the very outset, this point of malafidely impleading and arraying the property in the Execution Application was taken in the earlier application on 30.5.2019 available at page-73 being CMA No.309/2019 on which the order dated 10.01.2022 was passed and despite para-8 of the affidavit it was never considered to be a case of misstatement, fraud or misleading this Court and no penalty was imposed of any nature whatsoever. After almost two years of the passing of the order, the aforesaid application was filed whereby the penalty of twenty five percent was claimed.

6. Initially, it is apparently barred under Order-II Rule-2, as this relief was otherwise available when the earlier application was filed when mala fide was attributed to the decree-holder by arraying this property as one of the properties of the judgment-debtor. The principles of Order-II Rule-2 CPC are equally applicable. Secondly and more importantly, Section-19(7)(b) of the FIO, 2001 is not applicable to the facts and circumstances of the case. Section-19 Sub-section-7 discussed the procedure likely to

be followed by the Banking Court for the purpose of investigation of claims and objections in respect of attachment for the sale of any property whether or not mortgaged, pledged or hypothecated. Sub-clause-(b) of Sub-section-7 of Section-19 of the FIO, 2001 deals with the situation/event if the claims or objections of objectors are found by the Banking Court to be mala fide or filed merely to delay the sale of the property which shall impose penalty upto twenty percent of the sale price of the property. This sub-clause is not for the benefit of the objector, rather it is for the benefit of the decree-holder if the sale is hindered or objected by the claimant/ objector and such claims or objections are found to be mala fide or filed merely to delay the sale of the property, the court could then impose penalty upon the objector and claimant upto twenty percent. The effect of Sub-clause-(b) of Sub-section-7 of Section-19 of the FIO, 2001 is such that this fine could only be imposed on the objector/claimant whose claims are found to be frivolous.

7. These provisions does not cover the claim of the objector under the scheme of 2001's Ordinance, however if they so desire, they may independently initiate proceedings for the recovery of the losses that they have allegedly sustained during which the property remained under the cloud and subject to of course that the delay was attributed by the decree-holder.

8. The appeal in view of the above reasoning was allowed by a short order dated 09.12.2024 and these are the reasons for the same.

Dated:- 10.12.2024

CHIEF JUSTICE

JUDGE

Ayaz Gul