

IN THE HIGH COURT OF SINDH, KARACHI
First Appeal No. 64 of 2018
[Muhammad Younus Khamisani v. M/s. Summit Bank Ltd. & others]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

- 1.For hg of CMA No.82/19
- 2.For order on Office objection/reply A
- 3.For hg of main case
- 4.For hg of CMA No.1648/18

16.04.2025.

Mr. Rehman Aziz Malik, advocate for Appellant.
Mr. Ali. T. Ibrahim, advocate for respondent No.1.
Mr. Muniruddin, advocate for respondents No. 2 to 4.
Raj Ali Wahid, advocate holding brief for
Mr. M.G. Rehman Korai, advocate for applicant/intervener.

O R D E R

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MUHAMMAD IQBAL KALHORO J: A suit was filed by respondent No. 1 against respondents No. 2 to 4 before Banking Court at Karachi for recovery of finance amounting to Rs.36,519,151.06. It was decreed in terms of judgment and decree dated 22.12.2009 and 10.02.2010. In execution of said judgment and decree, the mortgaged property viz. Plot No.DP-6A, Sector 12-D, North Karachi Industrial Area, Gabol Town, Karachi was ordered to be auctioned. The appellant purchased the property in the process, however, was not given possession of the property. Meanwhile judgment debtors viz. respondents No. 2 to 4 filed an application under section 12 of Financial Institutions (Recovery of Finances) Ordinance, 2001 seeking reversal of judgment and decree on the ground that they were not served with the notice. This application was allowed and the judgment and decree were set aside. However, meanwhile, application filed by appellant under section 19(5) read with Section 15(6) of FIO 2001 seeking possession of the property was taken up and dismissed through the impugned order on the ground that very judgment and decree pursuant to which the sale took place had been set

aside under section 12 of FIO 2001. This order has been challenged by the appellant in this appeal. Meanwhile, one Muhammad Faisal Khursheed has filed an application under Order 1 Rule 10 CPC to be impleaded as party on the ground that he is in possession of the property in terms of purchase from judgment debtors through a sale agreement, for the execution of which, he has also filed a civil suit for specific performance of contract against the judgment debtors.

2. Counsel for applicant/intervener is not present and on his behalf Raj Ali Wahid, advocate has held brief.

3. We have heard the parties at some length. During the arguments, it has transpired that in subsequent proceedings after application under section 12 of FIO 2001, the suit was again decreed in favour of the bank. Now there is a second judgment and decree in favour of the bank and the bank had already sold the property to the appellant in terms of the first decree but the appellant was not given possession of the property. It is admitted that when this order was passed, the first judgment and decree were no more in the field and had been set aside on an application under section 12 of FIO 2001. After the second judgment and decree, again in favour of the bank, the appellant has not filed a second application before the Banking Court under the said provision of law seeking possession of the property on the ground that in the second round of litigation also the suit has again been decreed in favour of the bank and the bank has already executed a Conveyance Deed in his favour.

4. Learned counsel for the bank has argued that although the first judgment and decree were set aside by the Banking Court in terms of Section 12 of FIO 2001 but the sale was not touched upon; hence, the

sale had been completed and no exception could be taken to it, not the least when subsequently the suit has again been decreed in favour of the bank.

5. Be that as it may, we are of the view that when the impugned order was passed there was no judgment and decree in the field in favour of the bank. And influenced by such fact the Banking Court proceeded to dismiss the application. Not touching the sale meanwhile in favour of the appellant by the Banking Court in the order could be to protect his right in the property till decision on the application under section 12 of FIO, 2001 was made. However, since then, the situation has changed and even in the second round of litigation, the suit has been decreed in favour of the bank. And the Bank is competent to sell the property, which option it seems the bank has already exercised in favour of the appellant. In view of this fact, now there is no impediment and the Banking Court is empowered to rehear the application and decide it in view of new development.

6. It is our view, therefore, the appellant should be heard again on his application under section 19(5) read with Section 15(6) of FIO 2001 and unless something new comes on the record, his application shall be decided accordingly. The right of intervener, if any, shall also be decided at the time of hearing of such application, if he approaches the Court. We are hopeful that the Banking Court will conclude the matter within a period of two months from today under intimation to this Court through MIT-II.

The appeal is accordingly disposed of in above terms along with pending applications.

JUDGE

HANIF

JUDGE

