IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.53 of 2019

Appellants	:	Laeeq Ahmed son of Mubeen Ahmed through Mr. Abdul Karim Lakhari Advocate
Respondents	:	M/s. Standard Chartered Bank Pakistan Ltd. & Others through Mr. Khalid Mehmood Siddiqui, Advocate for the Respondent No.1 Mr. Muhammad Khan Lakho, Advocate for the Respondent No.2. Mr. Khaleeq Ahmed, DAG.
Date of Hearing	:	04.11.2026
Date of Order	:	12.11.2026

J U D G M E N T

Amjad Ali Sahito, J-. Through this First Appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the appellant has called in question the order dated 01.08.2019 passed by the learned Banking Court-V, Karachi, whereby his application under Order XXI Rule 90 read with Section 151 CPC, seeking to set aside the auction sale of the mortgaged property, was dismissed.

2. Briefly stated, respondent No.1, a banking company, instituted Suit No.347 of 2012 for recovery of Rs.15,31,051.93, along with rental/profit, liquidated damages, cost of funds and ancillary reliefs, against the appellant. The case of respondent No.1 was that a running finance facility of Rs.14,40,000/- had been extended to the appellant on markup basis, repayable in monthly instalments under the finance agreement executed between the parties. To secure the facility, the appellant mortgaged his property bearing Plot No.AS-4, Row No.IX, Block-A, National Cement Employees Housing Society, Karachi,

measuring 180 square yards, through a Memorandum of Deposit of Title Deed and an Irrevocable General Power of Attorney in favour of respondent No.1. Upon the appellant's alleged failure to discharge his repayment obligations, the recovery suit was instituted.

3. Despite service of summons through prescribed modes, the appellant neither appeared before the learned Banking Court nor filed an application for leave to defend. Consequently, the suit proceeded ex-parte and, after recording the evidence produced by respondent No.1, judgment dated 07.02.2013 was passed, followed by decree dated 20.02.2013, for recovery of Rs.15,31,060/-. Thereafter, Execution Application No.10 of 2013 was instituted for realization of the decretal amount through sale of the mortgaged property.

4. During execution proceedings, the auction was initially scheduled for 17.12.2015. The appellant approached the executing Court for postponement of the auction and deposited Rs.7,00,000/- through a pay order dated 16.12.2015, followed by a further deposit of Rs.3,31,060/-. Subsequently, additional amounts were deposited by the appellant and his wife, including Rs.30,000/- on 26.05.2016, Rs.25,000/- on 25.09.2017, Rs.20,000/- on 25.10.2017 and Rs.50,000/- through a pay order dated 09.05.2018. The record further reflects that respondent No.1-Bank withdrew/utilized the initial amount of Rs.10,61,060/- towards the decretal liability.

5. The appellant's grievance is that, despite the aforesaid payments, the execution proceedings continued and the mortgaged property was auctioned on 05.04.2018. According to him, the auction was conducted without proper service of notice/proclamation under Order XXI Rule 66(2) CPC and without due regard to the actual market value of the property. It was contended that, although the proclamation reflected the market value at Rs.95,00,000/- and forced sale value at Rs.76,00,000/-, the property, situated in a developed locality of Gulshan-e-Iqbal, Karachi, was actually worth approximately

Rs.4,00,00,000/- to Rs.5,00,00,000/-. It was further alleged that the auction was conducted in a single sitting in the presence of only one bidder, namely respondent No.2. On these grounds, the appellant moved an application under Order XXI Rule 90 read with Section 151 CPC, which was dismissed through the impugned order.

6. Learned counsel for the appellant contended that the learned Banking Court failed to appreciate the material irregularities and fraudulent circumstances surrounding the auction proceedings. It was submitted that substantial payments towards the decretal liability had been made and accepted by the Bank, yet the mortgaged property was auctioned without compliance with the mandatory requirements of law. Learned counsel further questioned the valuation reflected in the sale proclamation and argued that the sale in favour of a solitary bidder, without proper notice to the judgment debtor, had caused substantial prejudice to the appellant. He, therefore, sought setting aside of the impugned order and the auction proceedings.

7. Conversely, learned counsel for respondent No.1 opposed the appeal and submitted that the appellant had remained absent during the recovery suit and failed to avail the remedies available to him during execution proceedings. It was contended that the appellant and his wife were fully aware of the execution proceedings and had repeatedly appeared before the executing Court but failed to discharge the decretal liability or raise objections within the prescribed period. Learned counsel further submitted that the auction was conducted in accordance with law, the sale was confirmed on 07.08.2018 and a sale certificate was issued in favour of respondent No.2. The application under Order XXI Rule 90 CPC was filed after confirmation of the sale and beyond the prescribed period of limitation. It was argued that mere allegations of undervaluation or procedural irregularity, without proof of fraud and consequential substantial injury, could not invalidate a concluded judicial sale.

8. We have heard learned counsel for the parties and examined the available record.

9. The controversy primarily concerns the legality of the auction sale, the maintainability of the appellant's application under Order XXI Rule 90 CPC after confirmation of the sale, and the legal effect of the subsequent payments made by the appellant towards satisfaction of the decree, particularly when the sale certificate had already been issued in favour of respondent No.2. These questions require consideration in the light of Order XXI Rules 89, 90 and 92 CPC, read with the relevant provisions of the Limitation Act, 1908.

10. Order XXI Rule 90 CPC provides a statutory remedy to a person whose interests are affected by an execution sale to seek its setting aside on the ground of material irregularity or fraud in publishing or conducting the sale. However, the first proviso to the said Rule makes it obligatory upon the applicant to establish that substantial injury has been sustained as a consequence of such irregularity or fraud. Thus, the mere existence of an irregularity, without proof of consequential substantial injury, is insufficient to invalidate an auction sale. The applicant must demonstrate, through cogent material, that the alleged irregularity or fraud materially affected the conduct or outcome of the auction and resulted in substantial prejudice.

11. The second proviso to Rule 90 further requires the applicant to deposit such amount, not exceeding twenty per cent of the sum realized at the sale, or furnish such security, as the Court may direct. The object of this requirement is to discourage frivolous objections intended to obstruct execution proceedings and to ensure that challenges to judicial sales are pursued bona fide. In **Mst. Samrana Nawaz and others v. MCB Bank Ltd. and others (PLD 2024 Supreme Court 873)**, the Supreme Court explained that the requirement of deposit or security is to be complied with in accordance with the direction of the Court. The executing Court, while determining the appropriate amount, is required to consider the relevant circumstances, including the

decretal amount, sale consideration, duration of execution proceedings and conduct of the applicant.

12. The aforesaid judgment also clarifies that compliance with the requirement of deposit or security does not dispense with the substantive conditions prescribed under Rule 90. The applicant must independently establish material irregularity or fraud in publishing or conducting the sale and consequential substantial injury. The Supreme Court further considered the relationship between Order XXI Rule 90 CPC and Section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, holding that the provisions are complementary and are to be applied consistently while examining objections to an auction sale conducted in execution of a decree passed by a Banking Court.

13. The legal consequences of an execution sale and its subsequent confirmation have also been explained by the Supreme Court in **Muhammad Jawed v. First Women Bank Limited and others (2020 SCMR 2134; 2021 CLD 39)**. It was held that merely declaring a bidder as the highest bidder does not confer an indefeasible right upon him. Such right crystallizes upon acceptance of the bid by the Court and deposit of the entire purchase money in accordance with Order XXI Rule 85 CPC. The sale thereafter remains subject to the statutory remedies provided under Rules 89, 90 and 91. Where no such application is filed within the prescribed period, or where an application so filed is disallowed, the executing Court is required to confirm the sale under Rule 92, whereupon it becomes absolute. Upon the sale becoming absolute, the auction purchaser acquires rights in the property under Section 65 CPC, which relate back to the date on which the sale became complete.

14. For ready reference, Order XXI Rule 92 CPC provides as follows:

> "**92. Sale when to become absolute or be set aside.—**

> **(1)** Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.
>
> **(2)** Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale.
>
> **(3)** No suit to set aside an order made under this rule shall be brought by any person against whom such order is made."

15. A plain reading of the above provision demonstrates that the Code provides a specific mechanism for challenging an execution sale and prescribes the consequences of failure to invoke the available remedies within the prescribed period. Once the sale is confirmed under Rule 92, it becomes absolute, subject to the statutory provisions. The scheme does not permit concluded auction proceedings to be reopened indefinitely through belated objections.

16. It is also necessary to distinguish the remedies available under Rules 89 and 90 CPC. Rule 89 enables a person having the requisite interest in the property to seek setting aside of the sale by depositing the amount payable to the decree-holder, after adjustment of the amount received since the proclamation, together with five per cent of the purchase money payable to the auction purchaser. Rule 90, on the other hand, provides a remedy on the grounds of material irregularity or fraud in publishing or conducting the sale, subject to proof of substantial injury. Both provisions prescribe distinct statutory remedies, and compliance with one cannot be treated as a substitute for the requirements of the other.

17. In **Mst. Anwar Sultana through L.Rs. v. Bank Al-Falah Limited and others (2014 SCMR 1222)** and **Muhammad Attique v. Jami Limited and others (PLD 2010 SC 993)**, the Supreme Court explained the legal significance of the date of an

execution sale for purposes of limitation and the rights accruing to an auction purchaser. Under Article 166 of the First Schedule to the Limitation Act, 1908, an application to set aside a sale in execution of a decree is required to be filed within thirty days from the date of sale. For this purpose, the relevant date is the date on which the Court accepts the bid and not the subsequent date of confirmation of sale. The Supreme Court, in **2025 SCMR 298**, reiterated that an application under Order XXI Rules 89 or 90 CPC is governed by the period of limitation prescribed under Article 166 of the Limitation Act, 1908, and that an auction sale cannot be disturbed on the basis of unsupported allegations or a belated challenge.

18. Applying the above principles to the present case, the auction was conducted on 05.04.2018, whereas the sale was confirmed on 07.08.2018. The appellant's application under Order XXI Rule 90 CPC was filed on 13.10.2018, beyond the prescribed period of thirty days under Article 166 of the Limitation Act, 1908. The application was, therefore, not only beyond limitation but was also instituted after confirmation of the sale. The appellant has failed to demonstrate any legally sustainable ground warranting condonation of the delay or entertainment of the application at that belated stage.

19. The record further reveals that the appellant was not unaware of the execution proceedings. His wife appeared before the executing Court on several occasions and sought time to make payment towards the decretal liability. As noticed in the impugned order, she appeared on 11.09.2017 after issuance of notice under Order XXI Rule 66 CPC and sought ninety days' time. She again appeared on 21.05.2018, after the auction proceedings, and was afforded an opportunity to settle the matter with the Bank or deposit the outstanding amount. Despite such opportunities, no effective statutory remedy was pursued within the prescribed period. These circumstances do not support the appellant's contention that the execution proceedings were conducted behind his back or without his knowledge.

20. The allegation regarding non-service of the sale proclamation under Order XXI Rule 66(2) CPC has also not been substantiated by material demonstrating consequential substantial injury. The appearances made on behalf of the appellant during execution proceedings and the opportunities afforded to his wife have been duly noticed by the learned Banking Court. No convincing material has been produced before us to displace the findings recorded in the impugned order. A mere denial of service, without establishing its material effect upon the auction proceedings and the resulting injury, cannot by itself furnish a ground for setting aside a sale subsequently confirmed under Rule 92 CPC.

21. So far as the allegation of undervaluation is concerned, the appellant asserted that the property was worth approximately Rs.4,00,00,000/- to Rs.5,00,00,000/-, whereas the sale proclamation reflected its market value at Rs.95,00,000/- and forced sale value at Rs.76,00,000/-. However, no independent valuation report, contemporaneous assessment or other reliable material has been brought to our notice to substantiate the alleged market value. The assertion that the property could have fetched a higher price, without supporting evidence, does not establish fraud or material irregularity in publishing or conducting the auction. Similarly, the presence of a solitary bidder, by itself, does not establish collusion or manipulation of the auction proceedings. The statutory requirement is proof of material irregularity or fraud resulting in substantial injury, and not merely an apprehension that the property might have fetched a higher price in a private transaction.

22. It is also significant that the valuation was disclosed in the sale proclamation and no material has been brought on record to establish that a timely objection was raised before the executing Court against the valuation so determined. The appellant cannot be permitted to revive such grievance after completion of the auction, confirmation of sale and issuance of the sale certificate,

particularly when he had opportunities to participate in the execution proceedings.

23. The subsequent deposits made by the appellant towards the decretal liability also require consideration. Such payments were liable to be duly accounted for and adjusted against the outstanding amount; however, their acceptance by the decree-holder does not, by itself, render the auction sale void or confer upon the appellant an automatic right to reclaim the mortgaged property after the sale has become absolute. The satisfaction of the decree and the validity of a confirmed judicial sale are distinct matters. Once the sale has attained finality under Rule 92 CPC, the rights of the auction purchaser cannot be defeated merely because the judgment debtor subsequently offers or deposits the amount due to the decree-holder.

24. In this regard, the distinction between the right available to a judgment debtor before completion of the statutory process and the rights accruing to an auction purchaser after confirmation of sale is material. As explained in **Muhammad Jawed (supra)**, the auction purchaser's rights remain subject to the remedies provided under Order XXI Rules 89 to 91 CPC. However, where such remedies are not invoked within the prescribed period, or are disallowed, the executing Court is required to confirm the sale under Rule 92. Thereafter, the judgment debtor cannot claim an unrestricted right to redeem the property merely by satisfying the monetary liability towards the decree-holder.

25. The subsequent proceedings before this Court, during the pendency of the appeal, are also relevant. On 01.03.2022, when the matter was partly heard, learned counsel for the appellant sought instructions regarding deposit of five per cent compensation as contemplated under Order XXI Rule 89 CPC. Accordingly, the appellant was permitted to deposit the requisite amount before the Nazir of this Court, subject to all just exceptions and objections of the respondents. On 15.03.2022, learned counsel submitted that the amount had been deposited and expressed the appellant's willingness to pay the decretal

amount along with cost of funds. Consequently, respondent No.1-Bank was directed to furnish a statement of the outstanding amount, if any, while the appellant was also directed to provide details of the payments already made.

26. Thereafter, on 05.10.2022, the appellant appeared in person and sought further time to comply with the requirements of Order XXI Rule 89 CPC. Learned counsel for respondent No.1-Bank submitted that the appellant's request could be considered in accordance with law if he paid the decretal amount along with profit and five per cent compensation to the auction purchaser. In view of the submissions made, a further opportunity was afforded to the appellant to comply with the statutory requirements.

27. A significant development took place on 13.10.2023, when learned counsel for respondent No.1-Bank produced a statement dated 12.10.2023, indicating that the Bank was willing to accept Rs.888,442/- from the appellant in full and final satisfaction of the decree. However, respondent No.2, the auction purchaser, in whose favour the sale had already been confirmed and a sale certificate issued, sought time to address the matter. In these circumstances, this Court expressly framed the question whether any settlement between the appellant and respondent No.1-Bank could be recorded at that stage, particularly when the auction sale had already been finalized and a sale certificate issued in favour of respondent No.2.

28. The order dated 13.10.2023 is significant inasmuch as it recognized that the controversy was no longer confined to the relationship between the decree-holder and the judgment debtor. Upon confirmation of the sale and issuance of the sale certificate, respondent No.2 had acquired an independent interest in the property under the judicial sale. Consequently, any settlement between the appellant and respondent No.1-Bank could not be considered in isolation or recorded in a manner prejudicial to the rights acquired by the auction purchaser. The Bank's willingness to accept the outstanding amount could resolve the monetary

dispute between the original parties, but could not, by itself, annul the confirmed sale or divest respondent No.2 of the rights acquired thereunder.

29. The subsequent proceedings dated 29.08.2025 further reflect that the appellant, along with his counsel, expressed his readiness to pay the remaining decretal amount of Rs.14,28,798/- within one month. Learned counsel for respondent No.1-Bank confirmed the payments already received and disclosed that the auction purchaser had made partial payment towards the auction proceedings, which amount was lying with the learned Banking Court and had not yet been received by the Bank. The matter was accordingly adjourned to enable the appellant to deposit the remaining amount.

30. On 29.09.2025, learned counsel for the appellant submitted that the remaining amount of Rs.14,28,798/- had also been deposited, which submission was confirmed by learned counsel for respondent No.1-Bank. It was accordingly contended that the decree stood satisfied and that the surviving controversy related to the rights of respondent No.2 as auction purchaser. In view of the nature of the controversy, this Court directed issuance of intimation notice to respondent No.2 through all modes of service, except publication, particularly through the executing Court, to ensure that he was afforded an opportunity of hearing before any determination affecting his rights.

31. The aforesaid proceedings establish that, during pendency of the appeal, the appellant ultimately deposited the remaining decretal amount of Rs.14,28,798/-, in addition to the amounts previously deposited and acknowledged by respondent No.1-Bank. The monetary liability between the appellant and the Bank has, therefore, substantially been resolved. Nevertheless, satisfaction of the decree and the legal consequences of the confirmed auction sale remain distinct matters. The former concerns the adjustment and discharge of the liability between the decree-holder and judgment debtor, whereas the latter

concerns the proprietary rights acquired by respondent No.2 pursuant to the judicial sale.

32. In this context, Order XXI Rules 84 to 86 CPC are also relevant. Rule 84 requires the auction purchaser to deposit twenty-five per cent of the purchase money immediately after being declared the purchaser, whereas Rule 85 requires payment of the entire purchase money into Court within the prescribed period of fifteen days from the date of sale. Rule 86 provides the consequences of default in making payment within the prescribed period. As explained by the Supreme Court in **Muhammad Jawed (supra)**, the rights of an auction purchaser crystallize upon acceptance of the bid and deposit of the full purchase money in accordance with Rule 85. The sale thereafter remains subject to the statutory remedies under Rules 89, 90 and 91. Upon confirmation under Rule 92, the sale becomes absolute, followed by issuance of the sale certificate under Rule 94 CPC.

33. In the present case, the sale was confirmed on 07.08.2018 and a sale certificate was issued in favour of respondent No.2. No order setting aside the confirmed sale was passed thereafter. The subsequent orders of this Court, whereby the appellant was afforded opportunities to discharge the remaining decretal liability, did not set aside the auction sale or suspend the legal consequences flowing from its confirmation. Likewise, the statement of respondent No.1-Bank expressing willingness to accept Rs.888,442/- in full and final satisfaction of the decree could not, without addressing the independent rights of respondent No.2, operate to divest him of the interest acquired under the confirmed judicial sale.

34. We are conscious that the appellant ultimately deposited the remaining amount of Rs.14,28,798/-, which was acknowledged by respondent No.1-Bank. Such payment cannot be disregarded, nor can the Bank retain or appropriate amounts received towards satisfaction of the decree without giving due credit for the same. However, payment of the decretal liability

does not automatically restore ownership of the mortgaged property to the appellant once the auction sale has become absolute in accordance with law. Any arrangement between the appellant and respondent No.1 must remain confined to their respective monetary obligations and cannot prejudice the rights of respondent No.2 unless such rights are lawfully extinguished or the auction purchaser consents to an arrangement affecting his interest.

35. It is also pertinent that respondent No.2 is not a stranger to these proceedings. He has been impleaded as a respondent and has been afforded an opportunity to address the question of his rights arising from the confirmed sale. The question framed by this Court on 13.10.2023, therefore, remains answered by the statutory consequences of confirmation under Order XXI Rule 92 CPC. A settlement between the decree-holder and judgment debtor cannot, by itself, affect the independent proprietary rights of an auction purchaser acquired through a concluded judicial sale.

36. The subsequent deposits made by the appellant, including the deposit of five per cent compensation during pendency of the appeal, cannot be treated as a timely application under Rule 89 CPC or as an order setting aside the sale under Rule 92(2). The statutory remedy under Rule 89 is required to be pursued within the prescribed period and in accordance with its specific requirements. A deposit made during pendency of the appeal, after confirmation of the sale and issuance of the sale certificate, cannot retrospectively revive an extinguished right of redemption or invalidate the concluded sale. Equally, the subsequent satisfaction of the decree cannot cure the delay in filing the application under Rule 90 CPC.

37. We may further observe that Section 151 CPC cannot be invoked to circumvent the express provisions of Order XXI Rules 89, 90 and 92 CPC or to extend a period of limitation prescribed by law. Where the Code provides a specific remedy for setting aside an execution sale, the inherent jurisdiction of the Court

cannot be exercised to grant substantially the same relief outside the statutory framework. The appellant, having failed to establish a timely and legally sustainable challenge to the auction sale, cannot invoke inherent jurisdiction to reopen proceedings which have attained finality.

38. The impugned order, though brief, has taken into consideration the material circumstances, including the appellant's knowledge of the execution proceedings, the appearances made on his behalf, the opportunities afforded for payment of the decretal amount, the date of confirmation of sale and the belated filing of the application under Order XXI Rule 90 CPC. The learned Banking Court correctly noticed that the application had been instituted beyond the period prescribed under Article 166 of the Limitation Act, 1908, and after confirmation of the sale. Its conclusion is consistent with the statutory scheme of Order XXI CPC and the principles laid down by the superior Courts.

39. For the foregoing reasons, we are of the considered view that the appellant has failed to establish any material illegality, jurisdictional defect or misreading of the record warranting interference with the impugned order. The allegations of non-service, undervaluation and fraudulent conduct have not been substantiated by cogent material satisfying the requirements of Order XXI Rule 90 CPC. Furthermore, the application was filed beyond the prescribed period and after confirmation of the auction sale. The subsequent payments made by the appellant towards satisfaction of the decree, including the remaining amount of Rs.14,28,798/-, have been acknowledged by respondent No.1-Bank and shall be duly accounted for in the execution proceedings; however, such payments do not, by themselves, invalidate the confirmed sale or extinguish the rights acquired by respondent No.2.

40. Accordingly, this First Appeal, being devoid of merit, is **dismissed** and the impugned order dated 01.08.2019 passed by the learned Banking Court-V, Karachi, is **maintained.**

Respondent No.1-Bank shall duly reflect and account for all payments received from the appellant towards satisfaction of the decree in the execution record. However, no direction for restoration of the mortgaged property to the appellant can be issued merely on the basis of such payments, in the absence of a lawful basis for disturbing the confirmed auction sale and the rights of respondent No.2 arising therefrom. There shall be no order as to costs.

JUDGE

JUDGE

KAMRAN/PS