

IN THE HIGH COURT OF SINDH AT KARACHI

J.M No.48/2013

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DATE                      ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Applicant No.1                      :        M/s.Pearl Fabrics Corporation,  
Applicant No.2                      :        Shaikh Manzar Alam  
Applicant No.3                      :        Mrs. Nazia Manzar Alam  
Applicant No.4                      :        Adnan Manzar

Through Mr. Sohail Hameed, Advocate

Respondent No.1                    :        M/s. KASB Bank Limited,  
Through Mr. Ravi R. Pinjani, Advocate

Respondent No.2                    :        Abrar Hassan s/o Wali Hassan,  
Nemo for Respondent No.2)

Date of hearing:                    :        01.10.2014

**ORDER**

**Nazar Akbar, J.** The applicants are Judgment Debtors in Banking Suit No.B-169/2010 and they have filed this application under Section 12(2) CPC to challenge the order dated **08.4.2013** passed in **Ex.No.7/2013** in suit No.B-169/2010 and another order dated **24.2.2013** passed in **Ex.No.19/2013** in the same Suit No.B-169/2010. The respondent Banking Company is decree holder and they have filed counter affidavit to the said application.

2. I have heard the learned counsel for the parties and perused the written arguments filed by the applicant. The only ground taken by the learned counsel is that the order dated **08.4.2013** in Ex.No.7/2013 was passed by the Banking Court on an application filed by the Respondent under **Order XXIII Rule 1(2) CPC** read with Section 151 CPC and the provision of **Order XXIII CPC** are not applicable in execution of decree or order in terms of **Rule 4 of Order XXIII CPC**. He has further contended that if there was any defect in the execution application the respondent should have file an application in terms of **Order XXI Rule 17 CPC** for rectification of the defect in the execution application which was not done by the respondent and therefore, in the given facts of this case filing of a fresh application after withdrawal of the earlier execution application being contrary to provisions of **Order XXIII Rule 4 CPC**, the Court had no jurisdiction to entertain second execution application.

3. Learned counsel for the Respondent has contended that the provisions of **Section 12(2) CPC** are not applicable as it is not a case of passing an order without

jurisdiction. Admittedly this Court has exercised its power in terms of **Section 19** of the **Financial Institutional (Recovery of Finance), Ordinance 2001** (hereinafter referred to as Finance Ordinance of 2001) and as such the Court even otherwise has jurisdiction to pass any order consider appropriate for the satisfaction of its decree. He has drawn attention of this Court to the execution application, which has been filed under **Section 19** of the Finance Ordinance of 2001 read with **Order XXI Rule 11 CPC**. He has further contended that the counsel for the applicant has not alleged any misrepresentation or fraud against the respondent in obtaining the orders impugned through this application and the orders impugned are not without jurisdiction.

4. In para-D of the application the Judgment Debtors themselves have admitted that the proceeding before the Banking Court were in terms of **Section 19(2)** of the Finance Ordinance 2001 and as pointed out by the respondent in their counter affidavit, the applicants have ignored the third part of the power conferred on the Banking Court under **Section 19(2)** of the Finance Ordinance of 2001 whereby the Banking Court is authorized to execute its decree *“in such manner as the Banking Court may at the request of the Decree Holder consider appropriate”*. Therefore, the Banking Court has exercised its jurisdiction to execute the decree by permitting the decree holder to withdraw the execution application which contained certain inherent defects and file an execution application afresh in accordance with law.

5. Mr. Sohail Hameed, learned counsel for the applicants has contended that since execution application has fulfilled the requirement of **Order XXI Rule 11(2) CPC** therefore, the provisions of **Order XXI Rule 17 CPC** should have been invoked for amendment to cure the defect, if any, and provisions of **Rule 4 of Order XXIII CPC** should have been respected and followed by dismissing the application for withdrawal of execution proceeding filed by the respondent. This is too technical approach to defeat the rights of respondent under a consent judgment and decree. This argument may be a valid argument in execution proceeding arising out of a money decree passed by an ordinary Civil Court in a suit under Summary Procedure on Negotiable Instrument in terms of **Order XXXVII CPC**, but not in the proceeding under **Section 19** of the Finance Ordinance of 2001. While interpreting the provision of **Sub-section (2) of Section 19(1)** we should not curtail powers of banking Court under **sub-section (1)** of the said section. The two sub-sections of **Section 19** of the Finance Ordinance of 2001 have to be read together. To appreciate the unlimited authority of banking Court to ensure recovery of banking loans decreed by the Court as expeditiously as possible without being hampered by intricate provisions of Civil Procedure Code to delay the recovery of loan and minimize its adverse effect on decretal amount with ever growing inflation and

devaluation of Pakistan currency on daily basis. The **Section 19(1)** and **(2)** of the Finance Ordinance 2001 are reproduced below:-

**19. Execution of decree and sale with or without intervention of Banking Court.-** (1) Upon pronouncement of judgment and decree by a Banking Court, the suit shall automatically stand converted into execution proceedings without the need to file a separate application and no fresh notice need be issued to the judgment-debtor in this regard. Particulars of the mortgaged, pledged or hypothecated property and other assets of the judgment-debtor shall be filed by the decree-holder for consideration of the Banking Court and the case will be heard by the Banking Court for execution of its decree on the expiry of 30 days from the date of pronouncement of judgment and decree:

Provided that if the record of the suit is summoned at any stage by the High Court for purposes of hearing an appeal under section 22 or otherwise, copies of the decree and other property documents shall be retained by the Banking Court for purposes of continuing the execution proceedings.

(2) The decree of the Banking Court shall be executed in accordance with the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) or any other law for the time being in force or in such manner as the Banking Court may at the request of the decree-holder consider appropriate, including recovery as arrears of land revenue.

6. The impugned orders were passed by this Court in exercise of powers under **Section 19** of the Finance Ordinance 2001 and the insistence of the learned counsel for the applicants that the provisions of Civil Procedure Code had been violated by the Court in allowing to withdraw the execution application and permitting to file an execution afresh is misconceived. The Banking Court derives power for execution of its decree from **Section 19(1)** of the Finance Ordinance, 2001 and not from **Sub-section (2)** of the said section. The reference to the provisions of the Code of Civil Procedure, 1908 in **Section 19(2)** of the Finance Ordinance 2001 is for the purpose of adopting a “procedure” for execution of its decree by a banking Court. The procedure to be followed by a Court and exercise of its authority are two different things. The powers conferred on a Court under Civil Procedure Code is alien to the powers conferred on the banking Court. The authority / power of banking Court is not subservient to the powers conferred on Civil Court under the Code of Civil Procedure. The plain reading of **Section 19(1)** of the Finance Ordinance of 2001 suggests that for the purpose of execution of its decree, the banking Court on expiry of 30 days from the date of pronouncement of judgment and decree is not required to wait for a “separate application” for execution of its decree. On pronouncement of judgment and decree, the banking Court assume the role of an executing Court forthwith and without break the proceedings of the suit banking Court is converted into an executing Court. The only duty of respondent after the pronouncement of

judgment and decree was to give/provide details of the mortgaged property and other assets of the judgment debtors to the banking Court to satisfy execution of its decree the way it takes. However as a practice the Banking Courts allow the banking company to file a formal execution application in terms of **Order XXI Rule 11 CPC** for the sake of convenience to obtain satisfaction of the decree passed by the banking Court. Merely by accepting an application under any of the provisions of Civil Procedure Code does not mean that the proceedings are converted into an execution of a decree of an ordinary suit and the power conferred on the banking Court under **Finance Ordinance 2001** stand compromised/nullified. It is by now settled principle of interpretation of statute that all the provisions of a statute are to be read together and any particular provision in a statute is not to be considered in isolation unless and until there is clear cut conflict with it is irreconcilable. In the case in hand the insistence of the learned counsel that since the respondent has filed execution application by fulfilling the requirement of **Order XXI Rule 11 CPC**, the proceedings before the Banking Court should be governed by Civil Procedure Code alone amounts to read the first two lines of **Section 19(2)** of the Finance Ordinance 2001 in isolation from the other sub-sections of **Section 19** of the Finance Ordinance 2001. This is precisely misinterpretation of **Section 19(1) & (2)** of the Finance Ordinance 2001 which have to be read together. Under **Sub-section (1) of Section 19** of the Finance Ordinance, 2001 when no formal application for execution of decree is required by the banking Court for execution of its decree and the banking Court is free to adopt any manner / method to ensure satisfaction of a decree, the powers of banking Court cannot be curtailed on the ground that respondent has chosen one particular mode out of three modes/procedure available with the banking Court to accomplish the duty assigned to the banking Court in terms of **Section 19(1)** of the Finance Ordinance, 2001. Once the judgment is pronounced by the banking Court, the charging section for execution of decree is **Sub-section (1) of Section 19** of the Finance Ordinance 2001 and all the provisions from **sub-section (2) to (7)** of Finance Ordinance, 2001 are meant to enable the banking Court to achieve the purpose of expeditious recovery of loan through the Special Law. Therefore, any embargo in terms of **Order XXIII Rule 4 CPC** regarding applicability of provisions of **Order XXIII CPC** in the execution proceeding has no bearing on the power of banking Court in execution of a decree in a banking suit. Irrespective of the fact that certain provisions of Civil Procedure Code were mentioned on the application of respondent in executing of a decree the banking Court in dismissing the earlier execution application as withdrawn and allowing the decree holder / respondent to file an application afresh has the authority / power to pass such an order and such power originates from **Section 19(1)** of the Finance Ordinance, 2001 is protected by **Section 4** of the Finance Ordinance 2001 giving on

overriding effect to the provisions of Ordinance 2001 once the provisions of Civil Procedure Code. In any case no prejudice has been caused to the Judgment Debtor by this act of the Court, whereby not only formal execution application was accepted though it was not required but on another formal request of the decree holder, it was allowed to be withdrawn and replaced with fresh application. All this exercise was only a "procedure" adopted by a banking Court to execute the decree passed by the banking Court and this has not caused any prejudiced to the Judgment Debtor of a consent decree. As discussed above, it was well within the power of the banking Court to pass such order and therefore, these orders cannot be deemed to be orders passed without jurisdiction.

7. The applicants / Judgment Debtors though filed this application under Section 12(2) CPC has challenged the attachment order dated 22.4.2013 in the execution proceedings of a consent decree. The application on the face of it was frivolous and it was filed merely to object to the attachment order and thereby delay the sale of attached properties. There was no question of lack of jurisdiction to pass the impugned orders and the applicant / Judgment Debtors have not alleged any fraud or misrepresentation against the respondents in obtaining the impugned order. I have dealt with the question of jurisdiction / authority of the Banking Court in passing the impugned order and found that there was no jurisdictional defect in passing the impugned orders. Thus none of the ingredients of **Section 12(2)** were available to the applicant / Judgment Debtors to challenge the impugned orders by invoking the jurisdiction of this Court under **Section 12(2) CPC** and on top of all, this exercise was initiated by the applicants who have **consented** to the decree against themselves and the execution of consent decree under the cover of pendency of this application has been delayed by almost one year. Therefore, this application of the Judgment Debtors who have consented to the decree against them on 6.4.2012 is dismissed with 10% penalty of the sale price of the property attached by order dated **22.4.2013** in terms of **Section 19(7)(b)** of the Finance Ordinance 2001.

Karachi  
Dated: \_\_\_\_\_

JUDGE

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