

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Ex. No.35 of 1993
Ex. No.25 of 1996
Ex. No.40 of 2009

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For orders as to maintainability of Ex.Application.
2. For hearing of CMA No.381/2014

19.02.2015

Mr. Neel Keshav, advocate for D.H in Ex.No.40/2009.
Mr. Anwar Ahmed Siddiqui, advocate for D.H in
Ex.Nos. 35/1993 and 25/1996.
Mr. Muhammad Aqil, advocate
Mr. Moin Azher Siddiqui, advocate
Ch. Abdul Rahseed, advocate

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1. After detailed arguments from the learned counsel, it is emerged that the property in question i.e. Plot No.H-23, Improvement Scheme No.3, known as Moin Estate and construction company Landhi Industrial Area, Near Dawood Chowrangi, Karachi was not mortgaged with any of the banks. However, owner who are Directors have obtained various loans without mortgaging this property and decrees were passed against them. The first decree of UBL in suit No.351 of 1989 is dated **09.12.1990** and second decree in suit No.480 of 1989 is dated **18.02.1990** and the said property was attached on **28.3.1995** in **Execution No.35 of 1993**. This attachment order has never been challenged. However, the judgment debtor offered release of attached property on payment of Rs.90 Million to the NBP and ultimately by order dated 13.05.2014, in **Execution No.35 of 1993** the liability of Judgment Debtor No.5 was discharged in presence of Mr. Neel Keshav, advocate for decree holder in

Execution No.40 of 2009. Mr. Neel Keshav, learned counsel, has contended that in his execution application J.Ds are same and the property was once again attached by this Court on **13.11.2014**. The above order was without prejudice to the rights of bonafide purchaser of the property in question. Admittedly until **13.11.2014** there was no attachment order in the Execution No.40/2009. Learned counsel Mr. Neel Keshav, has conceded that the manner and method in which the attached property has been sold or settled with NBP by the J.D. No.5 in Ex.No.35/1993 and Ex.No.25/1996 is not under dispute. Mr. Neel Kashev, advocate, is to satisfy the Court whether he would claim satisfaction of his decree from NBP under Section 173 of CPC on the basis of law of CIRC or on the basis of attachment order dated 13.01.2014 towards satisfaction of the decree in Ex.No.40/2009 which is contested by the new purchaser.

2. On **04.12.2014**, the decree holder herein has filed CMA No.381 of 2014 and prayed that the amount of money realized by NBP in Execution No.35 of 1993 may be distributed amongst all the decree holders in terms of **Section 173** of CPC. The instant application is fatal to the concept of attachment of property of J.D. if it all continues to be attached. Once he has filed his claim on the sale proceeds of the attached property by involving provisions of **Section 173** CPC, he is estopped to seek or claim attachment of same property again.

Adjourned to 12.3.2015.

JUDGE