

IN THE HIGH COURT OF SINDH AT KARACHI

I.A. No. 29/2010.

Dated: 16.04.2018.

From,

Assistant Registrar
Civil Appellate Branch

To,

The Banking Court 1,
Karachi.

Subject: Civil Review Petition No. 42 - K of 2017.
IN
Civil Appeal No. 149 - K of 2017
(Mirza Sarfaraz Ahmed v/s. Muhammad Moizuddin)

AND

Civil Review Petition No. 43 - K of 2017
IN
Civil Appeal No. 150 - K of 2017.
(Mansoor Khalil v/s. Modarba-Al-Mali)

On appeal from the Judgment/Order of the
High Court of Sindh at Karachi, dated
29.05.2015 in I.A. No. 29/2010.

AND

On Review from the Judgment/Order of the Supreme
Court of Pakistan, dated: 25.07.2017, in C.A. No. 149
& 150-K/2015.

-----XXXXX-----

I am directed to forward herewith a photocopy of certified
copy of Order dated: **16.03.2018**, passed by the Hon'ble Supreme
Court of Pakistan, Registry, Karachi in the above matter for
information and necessary compliance in **Misc. Appl. No. 01 of
2005.**

The Receipt of this letter alongwith its enclosure may kindly be
acknowledged.



[Signature]
16/4/18
I/C Assistant Registrar
Civil Appellate Branch

Encl: As above



Phone: 9212310.

NO: C.R.P. 42 & 43-K OF 2017
IN

NO: C.P 149 & 150-K OF 2017
SUPREME COURT OF PAKISTAN

Karachi, the 03rd April, 2018

From:

The Sr. Court Associate,
Supreme Court of Pakistan,
M.R. Kayani Road,
Karachi.

To,

The Registrar,
High Court of Sindh,
Karachi.

3193
INWARD TO: S.B. CIVIL
BRANCH
DATE 05/4/18
HIGH COURT OF SINDH AT KARACHI

SUBJECT:- CIVIL REVIEW PETITION NO: 42 - K/2017

IN

CIVIL APPEAL NO: 149 - K OF 2017
(Mirza Sarfaraz Ahmed Vs.
Muhammad Moizuddin)

AND

CIVIL REVIEW PETITION NO: 43 - K/2017

IN

CIVIL APPEAL NO: 150 - K OF 2017
(Mansoor Khalil Vs. Modarba Al-Mali)

On appeal from the Judgment/Order of
the High Court of Sindh, Karachi.
Dated: 29-05-2015, in 1st Appeal No. 29/
2010.

AND

On Review from the Judgment/Order of
the Supreme Court of Pakistan, dated:
25-07-2017, in C.A No. 149 & 150-K/
2015.

In Continuation of this Courts letter of even number dated:
25-07-2017, I am directed to enclose herewith for information and necessary
action a certified copy of the Order of this Court dated: 16-03-2018, Dismissing
the above-cited Civil Review Petitions & CMAs for permission to change of
Counsel.

2. The receipt of this letter along-with its enclosure may kindly be
acknowledged.


(SYED ZAFAR ALI)
Sr. Court Associate

Encl:- Certified copy of Order.

IN THE SUPREME COURT OF PAKISTAN
(REVIEW JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE SAJJAD ALI SHAH

CIVIL REVIEW PETITIONS NO. 42-K AND 43-K OF 2017 IN
CIVIL PETITIONS NO. 149-K AND 150-K OF 2015

(review of the order/judgment of this Court dated 25.07.2017)

AND

C.M.As.575-K and 576-K/2017 IN C.R.Ps.0-K/2017

(Application u/o XXVI Rule 6 of SC Rules 1980 for change of ASC)

Mirza Sarfaraz Ahmed
Mansoor Khalil

(CRP 42-K/17)
(CRP 43-K/17)
...Petitioner(s)

VERSUS

Muhammad Moizuddin
Modarba Al-Mali

(CRP 42-K/17)
(CRP 43-K/17)
...Respondent(s)

For the Petitioner(s):

(CRPs 42-K & 43-K/17)
(CMAs 575-K & 57-K/17)

In Person

Mr. Izhar Alam Farooqui, AOR

For the Respondent(s): N.R.

Date of Hearing: 16.03.2018

ORDER

CRPs 42-K & 43-K/17

MIAN SAQIB NISAR, CJ.— Having heard the petitioner in-person, no case for review has been made out. Both the review petitions are accordingly dismissed.

CMAs 575-K & 57-K/17

No case for grant of permission to change the counsel has been made out. Accordingly, both the applications are dismissed.



Sd/= Mian Saqib Nisar, HCJ
Sd/= Faisal Arab, J
Sd/= Sajjad Ali Shah, J

CERTIFIED TO BE TRUE COPY


31418
Senior Court Associate
Supreme Court of Pakistan
Karachi.

KARACHI
16th March, 2018.
Not approved for reporting
Mudassar/

IN THE HIGH COURT OF SINDH AT KARACHI

I.A. No. 29/2010.

Dated: 29.07.2017.

From,

Assistant Registrar
Civil Appellate Branch

To,

The Banking Court 1,
Karachi.

Subject: Civil Appeal No. 149 - K of 2015.
(Muhammad Moizuddin v/s. Mansoor Khalil & another)

AND

Civil Appeal No. 150 - K of 2015.
(Modarba Al-Mali v/s. Mansoor Khalil & another)

On appeal from the Judgment/Order of the
High Court of Sindh at Karachi, dated
29.05.2015 in I.A. No. 29/2010.

-----XXXXX-----

I am directed to forward herewith a certified copy of detailed Order dated: **25.07.2017**, passed by the Hon'ble Supreme Court of Pakistan, Registry, Karachi in the above matter for information and necessary compliance in **Misc. Appl. No. 01 of 2005**.

I am also invite your attention to the direction of Hon'ble Supreme Court contained in the enclosed Order, for necessary action.

The Receipt of this letter alongwith its enclosure may kindly be acknowledged.



[Signature] 29/7/17
I/C Assistant Registrar
Civil Appellate Branch

Encl: As above

1442
317
[Signature]

Phone: 9212310.

NO:C.A 149 & 150-K OF 2015
SUPREME COURT OF PAKISTAN

Karachi, the 25th July, 2017

From:

The Senior Court Associate,
Supreme Court of Pakistan,
M.R. Kayani Road,
Karachi.

658
INWARD TO Civil
BRANCH
DATE 28/07/17
HIGH COURT OF SINDH AT KARACHI

To,

The Registrar,
High Court of Sindh,
Karachi.

SUBJECT:- CIVIL APPEAL NO: 149 - K OF 2015
(Muhammad Moizuddin Vs. Mansoor
Khalil and another)
AND
CIVIL APPEAL NO: 150 - K OF 2015
(Modarba Al-Mali Vs. Mansoor Khalil
and another)

On appeal from the Judgment/Order of
the High Court of Sindh, Karachi.
Dated:29-05-2015, in 1st Appeal No.29/
2010.

In continuation of this Courts letter of even number dated:
08-08-2015, I am directed to enclose herewith for information and necessary
action a certified copy of the detailed Order of this Court dated: ²⁵~~04~~-07-2017,
Allowing the above-cited Civil Appeals.

2. I am further directed to return herewith the original record of the
High Court of Sindh Karachi, received in this Court under cover of your letter
No: 1st Appeal-29/2010, Dated:17-08-2015.

3. The receipt of this letter along-with its enclosure may kindly be
acknowledged.


(**SYED ZAFAR ALI**)
Sr. Court Associate

Encl:- 1. Certified copy of Order.
2. Original R & P. of No.1st Appeal-29/2010.

1066

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE SAJJAD ALI SHAH

Civil Appeals Nos.149-K and 150-K of 2015.

(Against the judgment dated 29.5.2015 passed by the
High Court of Sindh in appeal No.29/2010)

Muhammad Moizuddin.

...Appellant (s)
(In 149-K/15)

Modarba Al-Mali.

...Appellant (s)
(In 150-K)

VERSUS

Mansoor Khalil & another.

...Respondent(s)
(In both)

For the Appellant (s)
(In CA 149-K/15)

Mr. Adnan Iqbal Chaudhry, ASC
Mr. K. A. Wahab, AOR

For the Appellant (s)
(In CA 150-K/15)

Mr. Khalil Ahmed Siddique, ASC

For the Respondent-1:

Mr. Mirza Sarfraz Ahmed, ASC
Mr. A. A. Khan, AOR (Absent)

Date of hearing

04.07.2017

ORDER

Sajjad Ali Shah, J. Through these two independent appeals, the auction purchaser and the mortgagee Modarba have impugned a common judgment of the Sindh High Court dated 29.5.2015 in 1st appeal No. 29 of 2010 whereby the learned Bench while setting aside the auction proceedings held by the mortgagee Modarba under section 15 of the Financial Institutions (Recovery of

ACCEPTED
[Signature]
Senior Court Associate
Supreme Court of Pakistan
Karachi

Finances) Ordinance, 2001 (hereinafter referred to as 'the Ordinance 2001') directed cancellation of registered sale deed dated 29th July, 2005 duly executed by the mortgagee Modarba (as attorney of the mortgagor) in favour of auction purchaser with further observation that if so advised the mortgagee Modarba may

initiate recovery proceedings against its customer/borrower as well as the mortgagor respondent No.1.

2. Briefly, the appellant/Modarba had advanced certain financial facilities to its customers which were secured by the mother/predecessor in interest of respondent No.1 through creation of equitable mortgage by depositing the original title documents of her property bearing No. R-772, Block 17, KDA Scheme No.16, Federal B. Area, Karachi measuring 120 Sq. Yd., (hereinafter referred to as 'the mortgaged property'). The predecessor in interest of respondent No.1 also on 21.6.2003 executed a registered power of attorney in favour of the mortgagee Modarba containing *inter alia*, power to sell the mortgaged property. It appears to be an admitted position that the customer defaulted in payment of his liability triggering the initiation of proceedings under section 15 of the Ordinance 2001 by the mortgagee/Modarba through private sale of the mortgage property. As per record the property was advertised for sale by the mortgagee Modarba in daily 'Jang' and 'The News' on 11.5.2005. The appellant-auction purchaser participated in the auction proceedings which were held on 11.6.2005 and ultimately sale in his favour was confirmed on 18.6.2005. It appears that the mortgagor/predecessor in interest of respondent No.1 on 1st July, 2005 filed a suit bearing No. 13/2005 before the Banking Court seeking *inter alia*, a declaration that the mortgagee Modarba was not entitled to exercise power under section 15 of the Ordinance, 2001 and an order restraining the mortgagee Modarba from accepting or finalizing the bid. However, since no interim orders were passed, therefore, the mortgagee Modarba not only adjusted the sale proceeds towards the outstanding liability but also on the strength of registered power of attorney on 29th July, 2005 executed a registered conveyance deed in favour of the auction purchaser. The auction purchaser thereafter on 30th August, 2005 moved an application under section 15(6) of the Ordinance, 2001 seeking an order against mortgagee i.e. predecessor in interest of respondent No.1 to deliver peaceful

ATTESTED

Senior Court Assistant
Supreme Court of Pakistan
Karachi

possession of the auctioned property. The application was objected to by the respondent No.1 and ultimately the Banking Court after hearing the parties while rejecting the objections on 8.2.2010 issued writ of possession. The order directing issuance of writ of possession was impugned by respondent No.1 (successor in interest of mortgagor) before the High Court in 1st Appeal No. 29 of 2010 which after hearing the parties was accepted through the impugned judgment.

3. Mr. Adnan Iqbal Chaudhry, ASC for the appellant contended that the High Court had followed the judgment of the Lahore High Court in the case of Muhammad Umer Rathore vs. Federation of Pakistan (2009 CLD 257) wherein a larger Bench of the Lahore High Court while declaring the provisions of section 15 of the Ordinance, 2001 as *ultra vires* held that "*cases where the possession of the mortgaged properties have already been delivered, sale proceed stood adjusted outstanding amount and sale deed have been registered under the impugned provisions of section 15 of the Ordinance, 2001 were saved as being past and closed transactions*" and since in the instant case the possession was not delivered to the auction purchaser, therefore, the learned Bench of the Sindh High Court held that the transaction could not be held as past and closed and, therefore, while directing the cancellation of registered sale deed the auction proceedings were set-aside. Per counsel, though the judgment of the Lahore High Court in Muhammad Umar Rathore's case *supra* was challenged in this Court but at that point of time Article 10-A was introduced in the Constitution of the Islamic Republic of Pakistan and, therefore, this Court in the case of NBP and 117 others vs. Saif Textile Mills Ltd., and another (PLD 2014 SC 283) though maintained that section 15 of the Ordinance, 2001 was *ultra vires* but for totally independent

reasons and that the finding of the Lahore High Court to the extent of past and closed transaction were never approved. The counsel while referring to section 15(8) of the Ordinance, 2001 contended that upon execution and registration of sale deed of the mortgaged property in favour of the purchaser all rights in such

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Senior Court Associate
Supreme Court of Pakistan
Karachi.

mortgaged property vest in the purchaser free from all encumbrance and the mortgagor is divested from all rights, title and interest in the mortgaged property and, therefore, once the sale deed was executed, the mortgagor was divested of all rights, title and interest in the mortgaged property and, therefore, the transaction upon execution of the conveyance deed in favour of the auction purchaser notwithstanding the non-delivery of possession had become past and closed transaction and, therefore, could not have been upset.

4. On the other hand, Mirza Sarfraz Ahmed, ASC appearing for the respondent contended that the mortgage itself was created after the death of the mortgagor i.e. predecessor in interest of respondent No.1 and denied execution of registered power of attorney as well as filing of the suit No. 13/2005 before the Banking Court challenging the auction proceedings by referring to a photo copy of death certificate issued on 8.5.2006 recording burial of mortgagor Haseen Fatima on 12.2.2003. However, the submissions do not inspire confidence and further are not only against the record but were given up before the High Court as the impugned order only determine as to whether the transaction fall within the ambit of past and closed or not. The submission further appears to be totally immature for the reason that the mortgagor had not only after depositing the original title documents with the Modarba had executed memorandum of deposit of title deeds but also on 21.6.2002 (when even according to the death certificate she was alive) registered an irrevocable general power of attorney in favour of mortgagee Modarba on which the photograph of the mortgagor is affixed which has not been denied. Additionally we have compared the admitted signature of mortgagor Haseen Fatima available on the indenture of lease executed in her favour by

Karachi Development Authority on 13.3.1984 (admitted title document of the mortgagor) with her signature available on memorandum of deposit of title deeds, registered power of attorney, plaint in suit No. 13/2005 as well as objection to the application of the auction purchaser i.e. 1/2005 seeking delivery of possession and

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 Senior Court Judge
 Supreme Court of Pakistan
 Karachi

find no dissimilarity in any of these signatures. Such defence of the mortgagor was not only rejected by the Banking Court but was given up before the High Court. It is very upsetting and sad that even such defence was pleaded before us which speaks volumes about the credibility of the counsel. Additionally when we asked the counsel as to how the original title documents reached the hands of Modarba, he had no answer. In response, Mr. Chaudhry states that a death certificate has been manipulated to create such defence per counsel despite several directions of the Banking Court respondent No.1 was not able to produce the original of such death certificate.

5. Mr. Khalil Ahmed Siddique, ASC for the appellant Modarba adopts the submissions of Mr. Adnan Iqbal Chaudhry ASC for the auction purchaser.

6. We have heard the learned counsel for the respective parties and have perused the record. In fact, the vires of the provisions of section 15 of the Ordinance, 2001, which conferred upon financial institutions extensive power of selling the properties of the mortgagors without intervention of the Court and without determination of the amount due, came into consideration before the Balochistan High Court in the case of Sheikh Abdul Sattar Lasi vs. Federation of Pakistan (2006 CLD 18) and were held *intra vires*. However, in the case of Muhammad Umer Rathorse *supra*, the vires of the same provisions were considered by a larger Bench of the Lahore High Court, which, after examining these provisions on the touchstone of Article 2-A, 3, 4, 9, 23, 24, 25 and 175 of the Constitution of Islamic Republic of Pakistan, reached the following conclusion:-

"For what has been discussed above, we find that the provisions of section 15 of the Ordinance are repugnant to the provisions of the Constitution and is in conflict with the fundamental rights. We, therefore, have no hesitation to hold that such provision cannot survive on the touchstone of Articles 2-A, 3, 4, 9, 23, 24, 25 and 175 of the Constitution. The impugned provision is declared ultra vires the Constitution and is of no legal effect.

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Senior Court Associate
 Supreme Court of Pakistan
 Karachi.

7. In order to provide legal cover and to save the transactions/proceedings already taken place and finally concluded under the provisions of section 15 of the Ordinance, 2001, the judgment in the case of Muhammad Umer Rathore (*supra*) provided:-

The cases, which have attained finality i.e. where the possession of the mortgage properties have already been delivered, sale proceeds stood adjusted towards outstanding amounts and sale deeds have been registered, under the impugned provision, are past and closed transactions and this judgment will not affect such sales. The other sales under the impugned provision, which have not attached finality are declared illegal and are set aside. The auction price received by the Financial Institutions in respect of the sales, which have not attained finality shall be refunded to the auction purchasers within a period of one month from the date when he approaches the Financial Institution. In view of the above, all such petitions, which fall within the parameters discussed above, are accepted. However, in view of intricacies involved, parties will bear their own costs".

8. The judgment of the Lahore High Court in Rathore's case (*supra*) alongwith other similar petitions on appeal came up before this Court somewhere in the year 2013 in the case of National Bank of Pakistan (*supra*) and by that time new Article 10A had come in the field by way of Eighteenth Amendment Act, 10 of 2010 and this Court, after hearing the parties and examining all relevant provisions including the effect of Article 10A of the Constitution, came to the conclusion that:-

"the real intent and purpose of the aforementioned provisions of section 15 of the Ordinance of 2001 is to deprive the mortgagor/debtor of his right to object to the mode, the conduct of the mode and method of the conduct of the sale by barring all remedies theiragainst. In the instant case, such extinguishment of right occurs without any progress let alone after due process and fair trial, as envisaged by Article 10A of the Constitution.

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 Senior Court Associate
 Supreme Court of Pakistan
 Karachi.

The right in property in terms of Article 24 of the Constitution also stands bruised and offended against ... In the light of aforesaid discussion and in terms thereof, the provisions of section 15 of the Financial Institutions (Recovery of Finance) Ordinance, 2001 are held to be ultra vires to the Constitution of the Islamic Republic of Pakistan, 1973."

9. Perusal of both the above referred judgments would reflect that, though the Lahore High Court provided safety valve for the transactions which were already finalized before recording its verdict and declaring section 15 of the Ordinance, 2001 as *ultra vires* the Constitution, however, while defining past and closed transaction, it was held that only those transactions where; (i) possession of the mortgaged property has been delivered, (ii) sale proceeds stood adjusted towards outstanding amount, and (iii) sale deeds have been registered, would stand saved under the principles of past and closed transactions, whereas the judgment of this Court is totally silent on this aspect. In the facts and circumstances, the questions which require our consideration appear to be the effect of such declaration on the transactions which had already attained finality and secondly, whether the transactions which could be termed to have attained finality would beside adjustment of sale proceed against outstanding liability, execution of sale deed would also include delivery of possession as held in the impugned judgment following Rathore's case as decided by the larger Bench of the Lahore High Court.

10. The concept of past and closed transaction was evolved to protect and safeguard the accrued and vested rights of the parties under a statute which subsequently is found and declared *ultra vires* for the simple reason that such declaration is always prospective unless the Court specifically gives to such declaration, a retrospective effect, by declaring the statute as *non est* i.e. never existed in the eyes of law. Reference can readily be made to the judgments of this Court in the cases titled Al-Samrez Enterprise vs. Federation of Pakistan (1986

TESTED
 Senior Court Associate
 Supreme Court of Pakistan
 Karachi.

SCMR 1917), Molasses Trading and Export (Pvt.) Ltd. Vs. Federation of Pakistan (1993 SCMR 1905), Mehram Ali vs. Federation of Pakistan (PLD 1998 SC 1445), Muhammad Mubeen-us-Salam vs. Federation of Pakistan (PLD 2006 SC 602), Hussain Badshah vs. Akhtar Zaman (2007 PLC (CS) 157), Mobashir Hassan vs. Federation of Pakistan (PLD 2010 SC 265) and Al-Tech Engineers and Manufacturers vs. Federation of Pakistan (2017 SCMR 673). Beside the effect of past and closed transaction in cases where the statute is found to be *ultra vires* the Constitution, was examined by a five member Bench of this Court in the case of Shahid Pervaiz vs. Ejaz Ahmed (2017 SCMR 206) and held as follows:-

“119. However, when a statute (whether existing or repealed) is found to be ultra vires the Constitution, the Court is empowered – indeed, mandated – to examine whether any person continues to enjoy the benefits of the ultra vires statute, or whether any state of affairs continues to exist as a result, and if it is found so, the Court is mandated to undo the same, provided that the benefit or state of affairs in question is not a past and closed transaction. For instance, the case of an employee who had enjoyed an out of turn promotion pursuant to a law found to be ultra vires the Fundamental Rights, who now stands retired and or died, it would constitute a past and closed transaction inasmuch as it would be a futile exercise to re-open the case of such an employee. On the other hand, employees who were so promoted under such a statute and who continue to remain in service, would be liable to be restored to the position that existed prior to the benefit conferred under the statute found inconsistent with Fundamental Rights. Indeed, once a statute has been declared as being unconstitutional for any reason, all direct benefits continuing to flow from the same are to be stopped”.

(underlined to lay emphasis)

11. In the circumstances, there is no doubt in our minds that the principle of past and closed transaction is fully attracted to the subject declaration and all transactions which had taken place and finalized before such declaration

ATTACHED

Senior Court Associate
Supreme Court of Pakistan
Karachi

are to be protected under the principles of past and closed transactions as declared in Rathore's case by the larger Bench of Lahore High Court. However, the question is as to whether in cases where the sale itself is not challenged or after having been challenged is finally set at knot in favour of auction purchaser, mere non delivery of possession would be fatal and would exclude such sale/auction from the ambit of past and closed transaction and/or in other words the delivery of possession of an immovable property is a part of sale and that the sale would not be conclusive without delivery of possession. In order to see as to whether handing over of possession of the property is a part of sale, we have to refer to Section 54 of the Transfer of Property Act which defines sale and reads as under:-

"54. Sale defined. 'Sale' is a transfer of ownership in exchange for a price paid or promised or part paid part promised.

'Sale how made. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

..."

12. A bare perusal of the above reproduced provision makes it abundantly clear that in cases where the value of the immovable property is one hundred rupees or more, the delivery of possession to finalize sale is not necessary

and the only requirement is execution of a registered instrument for a price paid or promised or part paid part promised. A four member Bench of this Court in the case of Ali Muhammad vs. Chief Settlement and Rehabilitation Commissioner (1984 SCMR 94) while defining sale, laid down the essential elements of sale as (i) the parties, (ii) the subject matter, (iii) the transfer or conveyance and (iv) price

ATTESTED


Senior Court Officer
 Supreme Court of Pakistan
 Karachi.

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or consideration. Besides; sub-section (8) of declared section 15 of the Ordinance, 2001 which provided for the rights and liabilities of the parties after sale of the mortgaged property read as follows:-

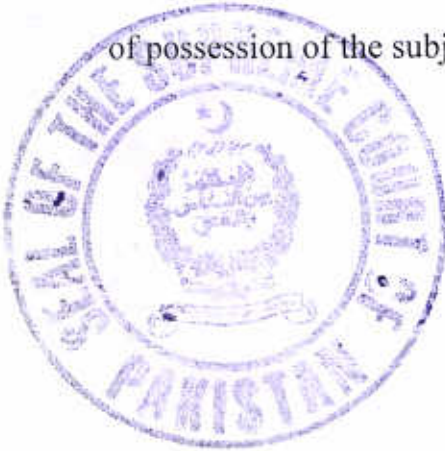
"15(8). Upon execution and registration of the sale deed of the mortgaged property in favour of the purchaser all rights in such mortgaged property shall vest in the purchaser free from all encumbrances and the mortgagor shall be divested of any right, title and interest in the mortgaged property" .

13. Bare reading of the above provision which appears to be in line with Section 54 of the Transfer of the Property Act and was declared *ultra vires* as being incapable and in effective on account of the declaration in respect of material provisions of section 15 of Ordinance, 2001 as *ultra vires* to the Constitution, also makes it abundantly clear that upon execution and registration of the sale deed, all rights in the property vest in the auction purchaser and the owner of the property *viz.* the mortgagor is divested of all rights, title and interest in the mortgaged property. This section of the declared Ordinance also did not provide for handing over or transferring of the possession of the immovable property. In the circumstances, we are of the view that the cases where sale itself has not been challenged, or such challenge has remained unsuccessful, and the sale proceeds stood adjusted towards outstanding liability of the principal debtor, and sale deed in favour of the auction purchaser stood registered under the provisions declared *ultra vires* the Constitution, would be saved from the effect of such declaration being past and closed transactions.

14. In the instant case, it appears to be an admitted position that the subject property was advertised for sale on 11.5.2005 and consequent to such advertisement, the sale in favour of the appellant-auction purchaser was confirmed on 18.6.2005 whereas a registered sale deed was executed on 29.7.2005. The respondent-mortgagor though challenged such sale by filing a suit questioning the power of mortgagee-Modarba of selling the subject property by

exercising power under section 15 of the Ordinance, 2001 but such suit was abundant and was ultimately dismissed on account of non-prosecution and thereafter no further challenge to the sale was made and thus the transaction stood finalized. It was only when the appellant-auction purchaser on 30.8.2005 moved an application under section 15(6) of the Ordinance, 2001 seeking possession of the subject property that the respondent-mortgagor filed objection on 27.1.2006 resisting the handing over of possession of the sold property which of course was of no consequence without challenging the sale itself.

15. In view of what has been discussed above, the subject transaction is found within the defined parameters of past and closed transactions and, therefore, these appeals are allowed as a consequence whereof the impugned order of the High Court is set-aside and the order of the Banking Court directing handing over of possession of the subject property is restored.



*Sd/- Gulzar Ahmed, J.
Sd/- Maqbool Bazar, J.
Sd/- Sajjad Ali Shah, J.*

CERTIFIED TO BE TRUE COPY
[Signature]
Senior Counsel Associate
Supreme Court of Pakistan
Karachi.

Karachi.
A. Rehman

Announced on 25/7/2017.

[Signature]
approved for reporting.

[Signature]

IN THE HIGH COURT OF SINDH KARACHI

I.A. No. 29/2010

Dated: 17.08.2015

All
Communications
should be address
to the REGISTRAR
HIGH COURT OF
SINDH KARACHI
and not to any
Official by name.

From,

THE REGISTRAR,
High Court of Sindh
KARACHI.

To,

THE OFFICE INCHARGE
Supreme Court of Pakistan,
KARACHI.

RECEIVED
19.08.2015
Dispatch Clerk
Supreme Court of Pakistan
Karachi

SUBJECT:- CIVIL APPEAL NOS. 149 & 150-K OF 2015.
(Muhammad Moizuddin etc. Vs.
Mansoor Khalil and another)

(On appeal from the Judgment and order
of the High Court of Sindh at Karachi,
dated 29.05.2015 in I.A. No. 29 of 2010).

-----XXXXX-----

I am directed to refer your letter No:
D.C.A. 149-150-K/2015-SCJ Supreme Court of Pakistan,
Karachi, dated 08th Aug, 2015 and to forward herewith
Original file of I.A. No. 29/2010 as desired.

The Receipt of this letter alongwith its enclosures
may kindly be acknowledged.



Encl:

Original File of I.A. No. 29/2010.

for
Assistant Registrar
(Civil Appellate Branch)
For REGISTRAR

o/c.

ajk

Phone:99212310.

NO.D.C.A.149-150-K/2015-SCJ
SUPREME COURT OF PAKISTAN
KARACHI, the 08th Aug, 2015.

FROM:

The Officer Incharge,
Supreme Court of Pakistan,
M.R. Kiyani Road, Karachi.

WARD NO. 8570
BRANCH: Registrar
DATE: 08/8/15
High Court of Sindh
Karachi

To,

The Registrar,
High Court of Sindh,
Karachi.

SUBJECT:- **CIVIL APPEAL NOS.149 & 150-K OF 2015.**
(Muhammad Moizuddin etc. Vs. Mansoor Khalil
and another)

(On appeal from the judgement and order of the
High Court of Sindh, Karachi dated 29-05-2015
in 1st Appeal No:29/2010.

I am directed to state that the subject appeals had been
filed by Mr.A.S.K.Ghori, Advocate-on-Record, in this Court under article
185(2) of the Constitution of Islamic Republic of Pakistan, against the
judgment of the High Court of Sindh at Karachi, dated: 29-05-2015
passed in 1st Appeal No:29/2010.

2. I am therefore, directed to request you to transmit the
original record of the High Court of Sindh, Karachi, (if not required in
any proceeding), to this Court for purpose of hearing of the above
appeals.

3. The receipt of this letter may kindly be acknowledged.

Registrar
ji
Sh. Akbar

(Signature)
(MOHAMMAD AMIN KHAN)
OFFICER INCHARGE