

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE JAMAL KHAN MANDOKHAIL

**Civil Petition No.588 of 2021 and
Civil Petition No.917-K of 2021**

(On appeal against judgment dated
04.02.2021 passed by the High Court of
Sindh at Karachi in Special H.C.A.
No.23/2016.)

Liberty Mills Limited, Karachi : CP 588/2021
M/s. Muslim Cotton Mills (Pvt.) Ltd. & : CP 917-K/2021
others
... **Petitioners**

Versus

Muslim Cotton Mills (Pvt.) Limited, Karachi : CP 588/2021
and others
Allied Bank Limited & others : CP 917-K/2021
... **Respondents**

For the Petitioners : Mr. M. Makhdoom Ali Khan, Sr. ASC
(in CP 588/2021)

Kh. Shamsul Islam, ASC
(in CP 917-L/2021)

For the Respondents : Kh. Shamsul Islam, ASC
(in CP 588/2021)

Mr. M. Makhdoom Ali Khan, Sr. ASC
(in CP 917-L/2021)

Date of Hearing : 17.08.2021

ORDER

UMAR ATA BANDIAL, J. -

CMA No.1983/2021 in CP No.588/2021: Learned counsel for the
petitioner (who is the auction-purchaser in the execution proceedings out
of which this matter arises) has shown that the C.P. was filed within 30
days of the rendition of the impugned judgment dated 04.02.2021. That
judgment, by a learned Division Bench of the High Court, reversed an

order of a learned Single Judge in the execution proceedings, which had been in favor of the petitioner. Learned counsel accepts that in such circumstances a direct appeal ought to have been filed instead of the leave petition. The present CMA prays for conversion of the leave petition into an Appeal. The prayer made is fair and the same is allowed. Notice is issued on the Appeal to the respondents with respect to the alleged contradictions in the directions issued by the learned Division Bench in paragraph 15(a) to (d) of the operative part of the impugned judgment.

2. C.P. No.917-K/2021: This petition is filed by the judgment-debtor in the aforesaid execution proceedings, again challenging the alleged contradictions that appear in the directions given by the learned Division Bench in paragraph 15(a) to (d) of the impugned judgment dated 04.02.2021. However, there is one difference. After the impugned judgment was given, rather than challenging the same in this Court, the petitioner filed a review petition which was dismissed vide order dated 25.06.2021. Learned counsel submits that the petitioner is challenging both the original judgment dated 04.02.2021 as well as the review order dated 25.06.2021, and consequently a leave petition has been filed. Learned counsel for the respondent auction purchaser submits that a leave petition by the judgment debtor against the original judgment of the learned Division Bench was not maintainable and a direct appeal ought to have been filed, which would now be out of time. As regards the order in review, it is submitted that this Court cannot be petitioned against such a decision. It is further submitted (without prejudice) that in any case all that the judgment debtor can now challenge from the High Court is the correctness of the review order and nothing else. We shall examine these points, which go to the maintainability of the petition, on the next date. However, it is worthy of notice that these are cross-matters, which raise the question whether the learned Division

Bench has issued directions that conflict with each other. Therefore, notice in this petition is also issued to the respondents.

Learned counsel for the petitioner prays for *interim relief* on the ground that the decretal amount in the case stands deposited with the Nazir of the High Court in the year 2016. Thereafter the auction in favour of the respondent has been set aside by the impugned judgment, and in the sequence of steps ordained by the learned Division Bench two further bidding attempts have been directed. He prays that the possession of the mortgaged property may not be taken away from the petitioner in the pending execution proceedings. Learned counsel for the auction purchaser opposes the grant of interim relief and submits that (without prejudice), as permitted by the learned Division Bench, the requisite amount (being the difference between the reserve/forced sale value and the bid accepted by the learned Single Judge) has already been deposited, thus foreclosing the possibility of the further steps ordained on which reliance is placed by the judgment debtor. Be that as it may, since the original auction under which the respondent has acquired a right as auction purchaser has been set aside by the impugned judgment and further attempts have been directed to be made under an arrangement which is disputed by both the parties, it would be appropriate that no decisive step is taken in the auction proceedings which may prejudice either party. This arrangement shall be reviewed after the learned counsel for the parties make submissions on the respective cases that they have. *Adjourned.*

Sd/- Umar Ata Bandial, J
Sd/-Munib Akhtar, J
Sd/-Jamal Khan Mandokhail, J