

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Ex. No. 11 of 2025

Date	Order with Signature of Judge
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For hearing of execution application

19.01.2026

Syed Aijaz Hussain Sheerazi and Mr. Imdad Ali Channa, advocate for DH
Mr. Muhammad Saleem Thapdewala, advocate for JD

Learned counsel for Interim Decree Holder (“Interim-DH”)/plaintiff-financial institution (“Pak Oman Investment Company Ltd.”) has filed this execution application in the banking jurisdiction of the High Court under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“**FIO, 2001**”), seeking the enforcement of the Interim Decree dated 11.01.2025 passed by the banking court. He submits that on 17.12.2024, the Interim-DH/plaintiff and Judgment Debtors of the Interim Decree (“JD”)/defendants in Banking Suit No.B-09/2024, “agreed that an interim decree be passed in the sum of Rs.260,214,407/- as admitted in the leave to defend[ant] application. Order accordingly.” He contends that the Interim-DH/plaintiff’s claim alleged against the JD/defendants was in the sum of Rs.300 million approximately, and the respondent/JD settled the said claim to the extent of the amount stated in the interim decree dated 11.01.2025, i.e. Rs.260,214,407/-. Hence, the banking court may grant this execution to the extent of the Interim Decree passed in the banking suit, whereas the suit will continue to the extent of the left-over balance amount plus costs of funds against the defendants impleaded therein.

2. Learned counsel for the JD/defendants vehemently opposes the Interim-DH/plaintiff Counsel’s contentions. He submits that the interim decree is not executable on the following grounds:

- i) Section 11 of the FIO, 2001 is to be read keeping in view the provision of Section 16 of the FIO, 2001, which concerns attachment before judgment, injunction, or appointment of a receiver. The reference to a “sale” finds no mention in this section 16; therefore, as per observations made by the Supreme Court in Gulistan Textile Mills Ltd. and Another v. Soneri Bank Ltd., PLD 2018 Supreme Court 322, the sale of mortgaged property cannot be effected until the final decree is passed by the banking court. Counsel relies on the following observations made in the Gulistan Textile Mills case:

“ . . .the relevant provision for the purposes of the instant case is Section 16(1) of the Ordinance, a plain reading of which makes clear that the Banking Court does not have any power to sell goods which are pledged, hypothecated etc. prior to passing of the judgment in a suit for recovery through sale filed by the financial institution. . . .”

“ . . .The use of the word sell in this Section (and the failure to use it in section 16 ibid) is indicative of the fact that the legislature used such word only where it intended that sale be permitted. . . .”

“ . . .when Section 16 of the Ordinance has provided a comprehensive list of the specific types of orders (which do not include sale of property) that a Banking Court is empowered to pass with respect to property that is pledged, hypothecated etc. prior to the final judgment of a suit for recovery by sale, there is no doubt that such provision was entailed to be all-inclusive, leaving no room to read in the power to sell by means of applying the general provisions of the CPC i.e. Order XXXIX Rule 6 or the inherent powers under section 151 of the CPC. . . .”

- ii) Based on the Supreme Court's above observations in the *Gulistan Textile Mills* case, counsel contended that as the word “sell” was expressly omitted by the legislature in respect of attachment before judgment, and, this principle was applicable to the entirety of FIO, 2001, including the stage of passing of “interim decree”; meaning thereby, “no sale” can be affected even after the passing of an interim decree until the announcement of judgment, i.e. when the final decree is passed in the banking suit.
- iii) Counsel for JD/defendant further submitted that, in the case at hand, at the time of passing of the Consent Order dated 17.12.2024, Counsel were at idem that the mortgaged property cannot be sold as the mortgaged property comprises amalgamated shops, and the same cannot be bifurcated. He contended that this was an express condition of the Consent Order dated 17.12.2024. Therefore, the interim decree is not executable either.

- iv) JD/defendant Counsel further argued that the scheme of the FIO, 2001, cannot be interpreted in a manner so as to adversely impact the business operations of the customer. He submitted that if the execution is allowed before the passing of the final decree, the financial and commercial operations of JD/defendant's business would be jeopardised.
- iv) Finally, counsel submitted that the market value of the mortgaged property would far exceed the forced sale value of the potential auction of the mortgaged property. Therefore, the sale of the property through the Court for recovery of the amount of the interim decree would fetch a considerably low price, much to the detriment of the JD/defendant, who would suffer irreparable loss.

Therefore, for all the above reasons, the JD/defendant counsel contended that, in the facts and circumstances, the execution of the interim decree should be dismissed or stayed until the banking suit is finally decided.

3. In rebuttal, counsel for Interim-DH/plaintiff vehemently opposed the submissions made by the JD/defendant counsel. He relied on the reported judgments passed by the full bench of the Lahore High Court in Khawaja Muhammad Daud Salaimani v. Election Tribunal and Others, PLD 2003 Lahore 106, and another Lahore High Court division bench case reported as Messrs. Madina Rice Mills through Managing Partner and 6 Others v. National Bank of Pakistan and 6 Others, 2004 CLD Karachi 1371. Counsel argued that these reported cases were also relied upon by a Single Bench of this Court in Saudi Pak Industrial & Agricultural Investment Co. Pvt. Ltd. v. A.H. International (Pvt.). Ltd. and 11 Others, 2008 CLD 1294, and based on these case laws, the execution may be allowed.

4. Heard learned counsel and considered the material available on record.

5. It is evident from the perusal of the FIO, 2001, that the Legislature, inter alia, introduced individual stand-alone sections pertaining to the recovery of finances of claims filed by financial institutions with the intervention of the banking court. A selection of these sections empowers the banking court, inter alia, to pass:

- (i) an interim decree in respect of the part of the claim which appears to be payable by the defendant to the plaintiff (Section 11).

- (ii) interim orders, during the pendency of the banking suit, to restrain the customer, attach property, transfer possession of such property to the financial institution, appoint receivers, etc. (Section 16).
- (iii) final decree for the payment of the amount found payable on account of default in fulfilment of the obligation, and for costs, including the cost of funds, etc., as well as a final order contemplated by section 16(1) to the extent of the decretal amount (Section 17).

6. Sections 11, 16 and 17 of FIO, 2001, each address a different and distinguishable situation during the trial of a banking suit. There is no express cross-reference in the three sections to the other. Each of these sections functions independently. Accordingly, each must be given effect without impeding the exercise or engagement of the other sections. Indeed, for example, section 11 refers to an interim decree, rather than a preliminary decree;¹ whereas section 16 deals with interlocutory matters that may arise during the course of proceedings before the banking Court. The two sections are mutually exclusive. If the interim decree is allowed, and a sale is effected, the same does not come in the way of the remedies available and/or powers of the banking court under section 16 of FIO, 2001. Similarly, section 16 does not disturb section 11, although section 17(2) enables interim orders passed under section 16 to merge into the final decree under section 17. The key difference between the two sections, section 11 and section 16, on one hand and section 16 and section 17, on the other hand, is the reference to the word “sale”. While both sections 11 and 17 do not expressly refer to “sale”, both sections differ from section 16 to the extent that they empower the banking court to pass a decree. In the case of an interim decree, section 11(2) describes such a decree for all purposes be deemed to be a decree passed under the FIO, 2001 and any amount covered may be recovered in execution thereof. Thus, when an interlocutory order is passed by the banking court under section 16, it cannot order the sale of the mortgaged property during the trial proceedings before the banking court, unless and until the banking court passes an interim decree under section 11, which triggers the provisions of section 19 pertaining to execution of the decree and sale of the mortgaged property with the intervention of banking court.

7. The aforesaid interpretation is consistent with the Gulistan Textile Mills case (supra); however, the JD/defendant’s reliance on selective

¹ The Legislature could have described the interim decree as a preliminary decree under the Civil Procedure Code, but it chose not to. The FIO, 2001, refers to an “interim decree” and not “a preliminary decree”.

observations in the said judgment to attempt to reduce the Interim Decree dated 11.01.2025, to a cipher (zero), is misconceived. First, the apex Court in the Gulistan Textile Mills case was dealing with matters under section 16 of the FIO, 2001. As such, the Supreme Court's observations are limited to the discussion of the powers of the banking court under section 16 alone. The apex Court did not review the entire FIO law concerning the power of sale extended to the banking Court in several sections of FIO, 2001. There is no discussion by the Supreme Court in the Gulistan Textile Mills case concerning the power of sale within the context of the banking court passing an interim decree under section 11 or a final decree under section 17 and/or the inter-medly between sections 11 and 17 on section 19. The entire focus of the Supreme Court is on section 16, FIO, 2001. The facts and circumstances of the case before the Supreme Court were entirely different from those of the present case. The present case is founded on the executability of an interim decree. Therefore, while this bench remains bound by the Supreme Court's judgment in the Gulistan Textile Mills case, yet at the same time, the bench finds that the said case is not applicable to the present execution, which arises under section 11 of the FIO, 2001, and not under section 16.

8. As mentioned above, while the word "sale" does not find specific mention in the aforesaid summarised sections 11, 16 and 17 of FIO, 2001; however, sections 11 and 17 of FIO, 2001 both refer to "decree", and the relevant section which regulates the execution of "decree" is section 19. The title of Section 19, "Execution of decree and sale with or without intervention of banking court", sets out the modes of the execution of a decree, and one of such modes of execution is by way of sale of the mortgaged property. Both the words "decree" and "sale" appear in section 19 of the FIO, 2001, whereas sections 11 and 16 refer to a decree alone. The word "decree" is neither defined in the FIO, 2001, nor does the word "decree", which is mentioned in section 19, expressly cross-reference itself to sections 11 and 17, nor does section 19 even refer to "an interim decree (section 11)" and "final decree (section 17)". There is no provision in the FIO, 2001, that an interim decree is not executable, and none is mentioned in section 19 of the FIO, 2001.² Thus, for all purposes, an interim decree is deemed a decree under section 11(2) and is executable as such under section 19 of the FIO, 2001.

9. There is another aspect of the matter which merits consideration as well. Counsel for JD argued that the reference to a "judgment and decree" in

² The concept of "an interim decree" introduced by the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997, was preserved in FIO, 2001. Thus, its execution and enforcement continue to be regulated by the special law, i.e., FIO, 2001, through its express provisions, rather than by general law.

the opening of section 19 meant that only “a final decree” could be executed under Section 19 and not “an interim decree”. This bench does not find favor with Counsel’s submissions. No doubt, section 19(1) of FIO, 2001, opens with that “upon pronouncement of judgment and decree by the banking Court, the suit shall automatically stand converted into execution proceedings without the need to file a separate application. . .”, yet this opening does not mean that Section 19’s applicability is limited to a final decree only. All that the opening line of section 19(1), as partially reproduced herein above, suggests is that when a final decree is passed, the suit shall automatically stand converted into execution proceedings without the need to file a separate application, etc. Section 19 suggests that this is not the case for an “interim decree”. In the case of an “interim decree”, upon passing of orders for an interim-decree, the amount of the suit which forms part of the interim decree does not stand converted into execution proceedings of the interim decree without the need to file a separate application, etc. Therefore, in the case of an interim decree, the interim decree holder/plaintiff must file a separate application for execution of the interim decree, etc. In other words, under section 19(1), FIO 2001, the procedural treatment of an interim decree differs from that of a final decree; however, from a substantive law perspective, the options for execution of a decree and sale as set out in section 19 of FIO, 2001, continue to remain available for enforcement of both an interim decree under section 11, and a final decree under section 17. There is no reason to find that an interim decree cannot be enforced in execution proceedings by way of sale of the mortgaged property.

10. Counsel for the JD/defendant's assertion that the interim decree dated 11.01.2025 was passed with the express understanding between the parties that it would not be enforced does not carry weight. There is no articulation in the banking court's Order dated 17.12.2024 that suggests the interim decree was based on any agreement. No conditions are expressed in the said order. Indeed, if there was any grievance concerning the said order, the JD/defendants had the right to appeal under section 22 of the FIO, 2001. Section 11, FIO, 2001, provides that the interim decree shall be executable and appealable as a decree passed under the Ordinance. Specifically, section 11(2) states that the interim decree is not only executable as a decree but also appealable, meaning thereby that an appeal to an interim decree, for all intents and purposes, is treated at par with an appeal to a final decree. Therefore, the interim decree, much like the final decree, is executable. Yet, the JD/defendants have not challenged the banking court's Order dated 17.12.2024, granting the interim decree. In the circumstances, the order has attained finality and is a past and closed matter. This Court

can neither interfere with nor offer any alternative interpretation of the interim decree dated 11.01.2025 other than what it plainly states, that is, that it arises out of the consent order dated 17.02.2024 and is in the nature of a consent decree that cannot be disturbed in execution proceedings. Therefore, on this score as well, this bench finds that the interim decree is ripe for enforcement and no defence has been made out by the JD/defendants for this (High) Court exercising special jurisdiction under the FIO, 2001, not to enforce a consent interim decree against the JD/defendants.

11. Finally, JD/defendant Counsel's assertion that a sale by way of auction through a court will lead to a forced sale price which will be lower than the market value of the mortgaged property, and that the shops cannot be bifurcated, is premature (defence) at this stage. At this point, the court must decide whether or not the interim decree can be executed. The case for how it may be enforced and impediments, if any, may be taken up after the execution is allowed. The arguments raised by the JD/defendants are devoid of merit and do not warrant any interference.

12. Given the above, the interim decree is executable in terms of section 19 of FIO, 2001, and consequently, this execution application is allowed. The Nazir is directed to sell the mortgaged properties of the JD/defendants mentioned in the application by public auction at the cost of the Interim-DH/plaintiff. Notices of such public auction shall be published in the daily "Jung" and daily "Dawn" newspapers and in at least one Sindhi language newspaper of wide circulation. Any matter which may arise in relation to and/or in connection with the enforceability of the execution may be taken up at the appropriate stage.

Application allowed.

J U D G E

Ashraf