

IN THE HIGH COURT OF SINDH, KARACHI
HCA No.160 of 2017
[*Asim Pervaiz Khan vs. Industrial Development Bank of Pakistan*]

PRESENT:

**Mr. Justice Arshad Hussain Khan
Mr. Amjad Ali Sahito.**

Appellant Through Obaid-ur-Rehman Khan Advocate

Respondent-1 Through M/s. Masood Anwar Ausaf and Munim
Masood Advocates

Date of Hearing: 02.04.2026
Date of Order: 14.04.2026

ORDER

ARSHAD HUSSAIN KHAN, J: This appeal has been filed under Section 3 of the Law Reforms Ordinance read with Section 15 of the Ordinance X of 1980 and sub-section (11) of Section 38 of the Industrial Development Bank of Pakistan Ordinance, 1961, against the order dated 10.02.2017, passed in J.M. No. 31 of 2000. By the impugned order, learned Single Judge partly dismissed the appellant's application bearing C.M.A. No. 68 of 2012, whereby the appellant had sought deletion of the properties bearing Nos. CA-22, CA-23, and CA-24, situated at Hasan Centre, FL No.1, Block-16, KDA Scheme No.24, Gulshan-e-Iqbal, Karachi, from the list of attached properties. The appellant assails the order with the following prayers:

- a. *Set aside the impugned order dated 10.02.2017, passed in J.M No.31/2000 to the extent where the application of the Appellant was dismissed in respect of Shops No. CA-22 and CA-23;*
- b. *Allow the application bearing CMA No.68/2012 filed by the appellant;*
- c. *Suspend the operation of the order dated 10.02.2017 and/or restrain the official assignee, his agents, representatives and officials from dispossessing the appellant from the shops bearing No.CA-22 and CA-23, till the final disposal of this appeal;*
- d. *Any other relief this Court may deem fit and proper in the circumstances of the case;*
- e. *Costs;*

2. Briefly, the facts of the case are that the Industrial Development Bank of Pakistan instituted the recovery petition on 19.06.2000 under Section 39 of the IDBP Ordinance, 1961, seeking recovery of

Rs.25,333,573/- as outstanding as on 31.05.2000. It transpires that, at the request of respondent No.1, the petitioner extended Local Currency Finance facilities, namely: (i) Rs.7.900 million (resale price Rs.14.160 million on markup basis) under the State Bank of Pakistan Scheme for purchase of locally manufactured machinery; and (ii) Rs.4.036 million (resale price Rs.6.097 million), vide sanction letter dated 14.01.1995. For securing repayment, the respondents mortgaged immovable property bearing No. B-107 and B-108, admeasuring 5000 square meters, situated at HITE Balochistan, along with construction thereon, including plant and machinery. Upon subsequent inquiry, the said mortgaged assets were found insufficient to satisfy the petitioner's claim, whereupon additional properties, including the subject properties i.e. three shops referred to hereinabove, were sought to be attached. In proceedings arising out of an application under Order XXI Rule 58 C.P.C., filed by the present appellant, Shop No. CA-24 was released from attachment; however, in respect of Shops No. CA-22 and CA-23, the application was dismissed. Hence, the present appeal.

3. The learned counsel for the appellant contended that the impugned order dated 10.02.2017, dismissing the appellant's application in respect of Shops Nos. CA-22 and CA-23, was passed without proper consideration of the relevant facts and law. It is further contended that the appellant had acquired the subject shops in good faith, through duly registered instruments of sale, following publication of public notices, and without any collusion with the respondents. The learned counsel argued that the attachment orders were mechanically issued without ascertaining the value of the properties vis-à-vis the claim of the Bank, contrary to the principles laid down by the Supreme Court in IDBP vs Allied Bank of Pakistan [PLD 1986 SC 74] and this Court in IDBP vs M/s Transmission Engineering Industries [2012 CLD 436], which require the Court to ensure that the properties attached are sufficient to meet the dues claimed. It is further argued that Shop No. CA-23 was never owned by any respondent, and its attachment was therefore wholly unjustified, being based merely on declarations of assets made by Respondent No.3, which did not constitute proof of ownership. Similarly, it is also argued that Shop No. CA-22 had been transferred to the appellant through a registered Irrevocable General Power of Attorney prior to the sale, and the appellant's ownership rights were never

properly considered. He further referred to the report of the Official Assignee, recommending deletion of Shops Nos. CA-22, CA-23, and CA-24 from the list of attached properties, which the learned Single Judge had not adequately weighed. Lastly, it is urged that the impugned order is legally unsustainable, obtained on flawed factual premises and misrepresentations, and therefore should be set aside in favor of the appellant as a bona fide purchaser.

4. The learned counsel for Respondent No.1 contended that the present appeal is not maintainable and had been filed on misleading and misconceived grounds. It is contended that the subject shops were purchased by the appellant after the attachment orders had been passed and confirmed by the Single Judge of this Court vide orders dated 26.06.2000, 15.02.2001, and 30.10.2001 in J.M. No.31 of 2000, and therefore, the learned Single Judge had rightly dismissed CMA No.68/2012. The counsel emphasized that the appellant had failed to produce any evidence to show that these properties had changed hands prior to the attachment and that the appellant's claims regarding ownership through registered Sale Deeds dated 12.12.2001 were irrelevant as the properties remained in the names of Respondent No.3 at the time of attachment. It is argued that Shop No. CA-23 had been initially allotted by the Builder to Respondent No.3, and the subsequent transfers occurred only after attachment; similarly, Shop No. CA-22 remained under Respondent No.3 despite execution of an Irrevocable General Power of Attorney, and ownership could not be claimed through an agent. The counsel further argued that the appellant could not claim to be a bona fide purchaser as he was aware of the ongoing attachment proceedings, and any attempt to assert ownership after such attachment was intended to deprive the respondents of the sale proceeds. It is also highlighted that the valuation of the properties before attachment was not a requirement under law, and any deficiency in the mortgaged assets had been properly addressed through the attachment orders. Lastly, it is urged that the appeal be dismissed with special costs, as the appellant had approached the Court with malafide intentions and without clean hands. In support of his stance, learned counsel has placed reliance upon the cases of *Industrial Development Bank Of Pakistan v. Messrs French Food Products Pvt. Ltd. and Others* [2009 CLD 93], *Citizen Investment Co. v. Askari Leasing Ltd and others* [2009 CLD 1392] and *Muhammad*

Khalid v. HBL Branch Muridkey District Sheikhupura [PLJ 2006 Lahore 1101(DB)].

5. Having carefully examined the record, the submissions of learned counsel for the parties, and the relevant legal provisions and precedents, this Court observes as follows:

Before advertng to the merits of the case, it may be observed that although the learned counsel for Respondent No.1 has questioned the maintainability of the instant appeal, no substantial legal infirmity has been pointed out to show that the appeal is barred under the relevant provisions of law. Since the impugned order affects the rights asserted by the appellant, this Court considers it appropriate to examine the matter on merits.

6. The undisputed facts of the case are that the Industrial Development Bank of Pakistan [hereinafter “the Bank”] instituted a recovery petition on 19.06.2000 under Section 39 of the IDBP Ordinance, 1961, seeking recovery of Rs.25,333,573/- from the respondents. The Bank had extended Local Currency Finance facilities for purchase of machinery, which were primarily secured against immovable property situated at HITE Balochistan, namely Plots/Units No. B-107 and B-108, along with other secured assets. As security for repayment, respondent No.3, namely Nadeem Baig, being one of the Directors, executed a personal guarantee and also filed a declaration of assets asserting himself to be the absolute owner of the subject shops. The record reflects that on 26.06.2000, an ad-interim order of attachment was passed, inter alia, in respect of the subject shops. Simultaneously, the Official Assignee of this Court was appointed as Commissioner to prepare an inventory of the plant, machinery, fixtures, fittings and other goods lying at the factory premises referred to in paragraph 10 of the recovery petition. The record further reveals that, upon notice in the J.M., respondent No.3 appeared before the Court and opposed the ad-interim attachment; however, there is nothing on record to show that at any stage he denied ownership of the subject shops or asserted that the same had already been sold or transferred prior to the attachment order. Subsequently, on 15.02.2001, the order of attachment was made absolute against the other respondents, and thereafter, vide order dated 30.10.2001, the attachment was also made absolute against respondent

No.3. Thereafter, on 31.10.2002, the Court passed the final order for sale of the attached properties and again appointed the Official Assignee as Commissioner to initiate sale proceedings. It is also an admitted position that none of the respondents, nor any alleged occupant of the subject shops, challenged the orders dated 26.06.2000, 15.02.2001, 30.10.2001, and 31.10.2002, passed in the J.M. It was only on 16.03.2012, for the first time, that the appellant surfaced and, claiming himself to be the owner of the subject shops, filed CMA No.68 of 2012, seeking deletion of the subject shops from the list of attached properties. The learned Single Judge, through the impugned order dated 10.02.2017, dismissed the said application insofar as it related to deletion of Shops No. CA-22 and CA-23 from the list of attached properties. The present appeal is directed only against that part of the impugned order.

7. Precisely, the case of the appellant is that he is a bona fide purchaser for value without notice of the attachment orders, relying upon registered Sale Deeds dated 12.12.2001, allegedly executed after due publication of public notices. It is further contended by the learned counsel that Shop No. CA-23 was never owned by any of the respondents, whereas Shop No. CA-22 had, prior to the impugned transaction, already been transferred through an irrevocable General Power of Attorney. In support of these contentions, learned counsel has placed reliance upon the judgments in *IDBP v. Allied Bank of Pakistan* (PLD 1986 SC 74) and *IDBP v. M/s Transmission Engineering Industries* (2012 CLD 436), to argue that attachment orders must be preceded by proper valuation of the secured assets commensurate with the Bank's claim, and that bona fide purchasers are entitled to protection where such proceedings suffer from legal infirmities. Reliance has also been placed upon the report of the Official Assignee, wherein it was recommended that the subject shops be deleted from the list of attached assets.

8. Insofar as the appellant's plea of being a bona fide purchaser for value without notice is concerned, the same is untenable in view of the admitted position that the subject shops had already been brought under attachment vide order dated 26.06.2000, which was subsequently made absolute through orders dated 15.02.2001 and 30.10.2001. Significantly, none of these orders were ever assailed by respondent No.3, who had himself acknowledged ownership of the subject shops through personal

guarantee and declaration of assets, nor by any person claiming through him at the relevant time. The said orders, having thus attained finality, cannot be permitted to be reopened indirectly at a belated stage. Consequently, any transfer effected thereafter would necessarily remain subject to the attachment and cannot defeat the rights accruing in favour of the respondent-bank under orders passed by a court of competent jurisdiction. In these circumstances, the appellant's claim of being a bona fide purchaser for value without notice, premised upon the Sale Deeds dated 12.12.2001, does not advance his case, as the attachment orders were already subsisting and had been made absolute prior to the alleged transaction.

9. Moreover, the plea that Shop No. CA-23 was never owned by any of the respondents, or that Shop No. CA-22 had earlier been transferred through an irrevocable General Power of Attorney, is not borne out by the record. On the contrary, the record establishes that both Shops No. CA-22 and CA-23 stood registered in the name of respondent No.3 at the time of the ad-interim attachment, which was subsequently made absolute. The Sale Deeds relied upon by the appellant were admittedly executed after the attachment orders and, therefore, cannot affect the secured rights of the Bank. In terms of Section 64 C.P.C., any private transfer of property after attachment is void as against all claims enforceable under such attachment. It further transpires that Shop No. CA-23 was originally allotted by the builder to respondent No.3, a fact which has never been disputed through any cogent or documentary evidence. The same also stands corroborated from the stance taken by respondent No.3 at the time of furnishing the personal guarantee as well as while contesting the attachment proceedings in J.M. In such circumstances, all subsequent transfers, including those relied upon by the appellant, having been effected post-attachment, are rendered ineffective and cannot prejudice the Bank's claim. The circumstances on record also do not support the appellant's plea of lack of knowledge of the pending proceedings. Similarly, the claim of ownership in respect of Shop No. CA-22 on the basis of an irrevocable General Power of Attorney is misconceived, as the property continued to remain registered in the name of respondent No.3 at the relevant time. In the circumstances, we are of the considered view that the attachment orders

were validly issued to safeguard the Bank's claim and were neither vitiated by misrepresentation nor founded upon any factual inaccuracy.

10. The case law relied upon by the learned counsel for the appellant have been carefully considered; however, the same are misconceived and clearly distinguishable on facts. The Honourable Supreme Court in *Allied Bank of Pakistan* (supra) emphasized that attachment orders ought not to be passed mechanically and that the adequacy of the available security must be kept in view. Similarly, in *M/s. Transmission Engineering Industries* (supra), this Court recognized that a bona fide purchaser without notice may, in appropriate circumstances, be entitled to protection where the attachment is shown to be unjustified or legally infirm. However, the facts of the present case stand on an entirely different footing. Here, subject shops had already been attached and such attachment had also been confirmed prior to the alleged transfers in favour of the appellant. In such circumstances, the legal protection contemplated in the aforesaid authorities is not available to the appellant. Consequently, the principles laid down in the cited judgments are inapplicable to the present case, as no defect, illegality, or insufficiency in the attachment proceedings has been established. Any private transfer effected after attachment could not, in terms of Section 64 C.P.C., prejudice or defeat the secured rights of the Bank.

11. Insofar as the report of the Official Assignee recommending deletion of the subject properties does not, by itself, confer any vested right upon the appellant, nor can it override or nullify binding judicial orders passed by the Court. Such report is merely recommendatory in nature and cannot supplant the legal consequences flowing from orders which have attained finality.

12. In view of the foregoing discussion, we are of the considered view that the appellant has failed to make out any legally sustainable ground warranting interference with the impugned order passed by the learned Single Judge. The instant appeal, being devoid of merit, is accordingly dismissed.

JUDGE

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