

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

1st Appeal No.08 of 2026

Appellant : Mr. Rehan Khan S/o Shabir Khan
through Ms. Chand Bibi Soomro, Advocate

Respondent No.1: House Building Finance Company Limited
through Mr. Muhammad Aslam, Advocate

Respondents 2&3: Mrs. Farhana Majeed & Ashfaq Ali Siddiqui
Nemo.

Date of Hearing : 27.04.2026

Date of Judgment: 27.04.2026

J U D G M E N T

Amjad Ali Sahito, J. This 1st Appeal, preferred under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance 2001, is directed against the order dated 17.01.2026 in Execution Application No.120 of 2019 and Suit No.130 of 2015; whereby Applications under Section 12(2) CPC and under Order XXI Rule 26 CPC filed by the appellant were dismissed being devoid of merits.

2. Succinctly stated, the relevant facts are that Respondent No.1, House Building Finance Company Limited (**HBFC**), instituted a suit for recovery against the defendants, now Respondents No.2 and 3, namely Mrs. Farhana Majeed and Mr. Ashfaq Ali Siddiqui, on account of their default in repayment of a housing finance facility extended under the “**Ghar Asan Flexi Housing Scheme.**” The said suit was decreed ex parte on 21.03.2016, followed by the formal decree dated 28.03.2016, whereby directions were issued for recovery of the decretal amount through sale of the mortgaged property.

3. Subsequently, during execution proceedings, the mortgaged property, namely Flat No. H-20, 4th Floor, measuring 100 square yards, situated at Iqbal Complex, North Karachi, was attached and thereafter put to auction. The auction sale was confirmed on 18.09.2025 upon deposit of the entire sale consideration by the highest bidder, and issuance of a sale certificate was directed accordingly.

4. Thereafter, the present appellant, asserting himself to be a necessary party, intervened and filed two applications, one under Section 12(2) CPC and the other under Order XXI Rule 26 CPC, contending that he had purchased the subject property from Defendant No.1 in the year 2012 through an agreement to sell coupled with a General Power of Attorney. He alleged that the decree and subsequent execution proceedings were procured through fraud and misrepresentation, and further claimed to be a bona fide purchaser willing to satisfy the decretal amount.

5. The learned Banking Court, after affording due hearing to the parties and examining the record, dismissed the aforesaid applications, inter alia, on the grounds that the appellant was a stranger to the proceedings, had failed to comply with the directions of this Court regarding deposit of the decretal amount, and had persistently filed frivolous applications. It was further held that the auction sale had already attained finality, thereby vesting valuable rights in favour of the auction purchaser.

6. Learned counsel for the appellant contended that the impugned order is the result of misreading and non-reading of material on record and is vitiated by legal infirmities. It was urged that the learned Banking Court failed to appreciate that the appellant is a bona fide purchaser for valuable consideration, having paid the entire sale consideration through banking instruments and being in lawful possession of the subject property. It was further contended that the decree was procured through fraud and concealment of material facts, inasmuch as the original defendants failed to disclose the subsisting mortgage

liability to the appellant, thereby rendering the entire proceedings liable to be set aside.

7. Learned counsel further argued that the appellant was neither impleaded nor afforded an opportunity of hearing in the suit or execution proceedings, despite having a direct and substantial interest in the property, which constitutes a violation of the settled principles of natural justice. It was additionally submitted that the decretal amount was comparatively meagre in contrast to the value of the property, which runs into millions, and although the appellant had always been ready and willing to deposit the decretal amount, he was deprived of such opportunity due to non-cooperation on the part of the Nazir. Lastly, it was contended that the confirmation of the auction and subsequent proceedings are liable to be set aside, as the same have occasioned grave miscarriage of justice and caused irreparable loss to the appellant.

8. Conversely, learned counsel appearing on behalf of Respondent No.1, House Building Finance Company Limited (HBFC), while supporting the impugned order, contended that the appellant is a complete stranger to the original transaction and lacks locus standi to challenge the decree or the execution proceedings. It was submitted that the property in question had been validly mortgaged in favour of the respondent prior to the alleged transaction set up by the appellant, and that all original title documents have at all material times remained in the custody of the bank. Learned counsel further submitted that the appellant was afforded an opportunity by this Court to deposit the decretal amount; however, he failed to comply with the conditional order within the stipulated period, and therefore, is not entitled to any equitable relief. It was lastly contended that the applications filed by the appellant were hopelessly barred by limitation and devoid of any legal substance, and that the learned Banking Court has rightly imposed costs on account of abuse of the process of law.

9. None has appeared on behalf of Respondents No.2 and 3. Despite service through all prescribed modes, including publication in terms of order dated 04.02.2026, no one has entered appearance on their behalf. Accordingly, service upon them is deemed to have been duly effected.

10. We have heard the learned counsel for the parties at length and have carefully examined the entire material available on record with their able assistance.

11. A perusal of the record reveals that the appellant was neither a party to the original proceedings nor has he been able to establish any legally cognizable right, title, or interest in the subject property. The appellant's claim is founded entirely upon an alleged agreement to sell coupled with a General Power of Attorney, which, by their very nature, do not confer title, particularly in the face of a prior registered mortgage subsisting in favour of the decree-holder. Consequently, any interest claimed by the appellant would, in any event, be subject to the pre-existing encumbrance and outstanding liability.

12. It is an admitted position that the property in question stood mortgaged with Respondent No.1 prior to the alleged transaction in favour of the appellant, and that the original title documents at all material times remained in the custody of the mortgagee. In such circumstances, the plea of bona fide purchaser is wholly misconceived and does not advance the appellant's case.

13. From the record, it further transpires that against the underlying judgment and decree passed in Suit No.130 of 2015, the appellant had earlier preferred First Appeal No.75 of 2025 on grounds other than fraud and misrepresentation, wherein an opportunity was afforded to him to deposit the decretal amount. For the sake of ready reference, the relevant portion of the order is reproduced hereunder:-

"We have asked learned Counsel to satisfy us on the issue of maintainability of this Appeal as the same appears to be barred by limitation, which he shall do on the next date of hearing. In the meantime, the Banking Court is directed to

accept the entire decretal amount as surety to be furnished by the Appellant in the form of Cash or Bank Guarantee within seven (7) days from the date of this Order. The Appellant shall also file an appropriate Application regarding his concerns / grievance before the Banking Court within seven (7) days, which shall be heard on its merits and decided in accordance with law. Until such time the said Application is not heard, the Banking Court shall not finalize any auction proceedings regarding the Property (in relation to Suit No. 130 of 2015 and Execution Application No. 120 of 2019 before Banking Court No. II at Karachi). It is hereby clarified that if the Appellant does not deposit the entire decretal amount and/or does not file an appropriate Application before the learned Banking Court No II within seven (7) days, this Order shall automatically stand recalled / vacated, and the Banking Court shall be at liberty to continue with auction proceedings regarding the Property.”

[Emphasis supplied]

14. The record further reveals that the appellant failed to comply with the aforesaid directions. Consequently, vide order dated 16.12.2025, the said First Appeal was dismissed for non-prosecution. Admittedly, neither any appeal was preferred against the said order, nor was any application for restoration filed. As a result, the underlying judgment and decree have attained finality, and the appellant is precluded, by his own conduct, from re-agitating the same through collateral proceedings.

15. Notwithstanding the above, the appellant, without disclosing the factum of filing and dismissal of First Appeal No.75 of 2025, sought to challenge the same judgment and decree by filing an application under Section 12(2) C.P.C., alleging fraud and misrepresentation. Such conduct, apart from suppression of material facts, amounts to an attempt to circumvent the finality attached to the judgment and decree, which is not permissible under the law.

16. Furthermore, the record demonstrates that the appellant remained absent on several dates before the learned Banking Court and failed to prosecute his remedy with due diligence. Such conduct clearly indicates that the appellant has been seeking to protract the execution proceedings by filing successive

applications on one pretext or another. The learned Banking Court has, therefore, rightly observed that such conduct amounts to an abuse of the process of law.

17. Moreover, the auction sale has already been confirmed in terms of Order XXI Rule 92 CPC, and the auction purchaser has thereby acquired vested rights in the property. It is a well-settled principle of law that once an auction sale stands confirmed, and no illegality or material irregularity is demonstrated, the same cannot be set aside lightly, particularly at the instance of a stranger to the decree.

18. With regard to the application under Section 12(2) CPC, it is by now trite that the said provision is attracted only where a judgment or decree has been procured through fraud or misrepresentation. In the present case, no such fraud or concealment of material facts has been established. Any alleged concealment, if at all, pertains to the inter se arrangement between the appellant and the original defendants and does not vitiate the decree passed in favour of Respondent No.1/HBFC. Likewise, no case for suspension of execution under Order XXI Rule 26 CPC was made out, particularly in view of the appellant's failure to comply with the conditional order passed by this Court and his lack of any enforceable legal right in the subject property.

19. In view of the foregoing discussion, we are of the considered opinion that the impugned order passed by the learned Banking Court is well-reasoned, suffers from no illegality or jurisdictional defect, and warrants no interference by this Court. Consequently, the instant appeal, being devoid of merit, is hereby **dismissed** along with all pending applications.

JUDGE

JUDGE