

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

First Appeal No.24 of 2017

Appellant : National Bank of Pakistan
through Mr. Aijaz Hussain Shirazi,
Advocate

Respondent : Afzal Azeem S/o Azeemuddin
Nemo.

Date of Hearing : 17.08.2026

Date of Order : 17.08.2026

J U D G M E N T

Amjad Ali Sahito, J.- The appellant, by way of the instant First Appeal preferred under Section 22(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as “**the Ordinance**”), has called in question the Order dated 11.03.2017 passed by the learned Judge, Banking Court No.II, Karachi, in Suit No.351 of 2010 and Execution No.66 of 2012, whereby the decree-holder/present appellant was directed to produce the original title documents of the mortgaged property before the learned Banking Court within seven days and to withdraw the amount deposited by the judgment-debtor/present respondent, treating such amount as full and final satisfaction of the decree.

2. Briefly stated, the facts giving rise to the instant appeal are that the appellant/National Bank of Pakistan instituted a banking suit against the respondent/judgment-debtor for recovery of the amount outstanding under a Saiban Housing Finance Facility. Upon appraisal of the material available on record, the learned Banking Court decreed the suit to the extent of Rs.11,062,980/-, vide judgment dated 23.07.2011 and decree dated 10.08.2011, together with future cost of funds from the date of institution of the suit until realization, besides costs and

the sale of the mortgaged property. Consequently, the judgment-debtor became liable to satisfy the decretal amount strictly in accordance with the terms of the decree. During the course of execution proceedings, the judgment-debtor moved an application under Order XX Rule 11, C.P.C., seeking permission to discharge the decretal liability by payment within a period of twelve months, whereupon notice of the said application was issued to the decree-holder Bank.

3. In response thereto, learned counsel appearing for the appellant Bank submitted a statement dated 21.04.2016, accompanied by a letter dated 06.04.2016 issued by the AVP/Incharge, SAMD of the Bank. The contents of the said communication manifested that the Bank was willing to settle the outstanding liability subject to payment of the settled amount in three equal instalments of Rs.3,698,780/- each within a period of three months. Pursuant to the aforesaid offer and communication, the judgment-debtor, vide statement dated 19.05.2016, produced before the learned Banking Court twelve pay orders, comprising nine pay orders of Rs.900,000/- each and three pay orders of Rs.998,780/- each, thereby depositing the entire amount communicated by the Bank as the settlement figure. The said pay orders remained deposited with the learned Banking Court for safe custody. The record, therefore, prima facie demonstrates that the judgment-debtor acted upon the terms communicated by the appellant Bank and deposited the entire settlement amount within a short period following the Bank's communication dated 06.04.2016.

4. Subsequently, on 11.01.2017, the appellant Bank filed another statement before the learned Banking Court asserting that it had never agreed to the proposed settlement. The learned Banking Court, while considering the changed stance of the parties, examined the earlier statement submitted on behalf of the decree-holder Bank, the accompanying letter dated 06.04.2016, as well as the twelve pay orders deposited by the judgment-debtor. After hearing learned counsel for the parties, the learned Banking Court concluded that the judgment-debtor had deposited the entire amount offered by the decree-holder

Bank pursuant to its communication dated 06.04.2016. The learned Banking Court further observed that a subsequent statement by learned counsel for the Bank that the Bank was no longer agreeable to the settlement could not be accepted, particularly when the judgment-debtor had acted upon the terms communicated by the Bank and had already deposited the entire settlement amount before the Court. Consequently, the learned Banking Court held that the decree stood fully satisfied and directed the decree-holder Bank to produce the original title documents of the property before the Court within seven days and to withdraw the amount deposited by the judgment-debtor in full and final satisfaction of the decree. Aggrieved of the said order dated 11.03.2017, passed in the proceedings arising out of the application under Order XX Rule 11, C.P.C., the Bank has preferred the instant appeal.

5. Learned counsel for the appellant/National Bank of Pakistan assailed the impugned order principally on the ground that the learned Banking Court erred in treating the amount deposited by the judgment-debtor as constituting full and final satisfaction of the decree. It was contended that the appellant Bank had never unequivocally or finally consented to the proposed settlement and, therefore, the learned Banking Court could not have compelled the appellant to accept the amount deposited by the judgment-debtor in purported settlement of the decretal liability. Learned counsel further submitted that the original decree continued to remain operative in terms thereof and that the appellant was legally entitled to recover the decretal amount together with the applicable cost of funds until realization. According to learned counsel, by directing the appellant to release the original title documents and treating the amount deposited by the judgment-debtor as complete satisfaction of the decree, the learned Banking Court had unlawfully curtailed the appellant's right to recover the amount allegedly remaining outstanding under the decree. On these grounds, learned counsel sought setting aside of the impugned order and a consequential direction to the respondent to pay the decretal amount together with the applicable cost of funds in accordance with the decree.

6. Despite repeated service through all prescribed modes, including on the last date of hearing, none appeared on behalf of the respondent, nor was any intimation received on his behalf. The record, however, reveals that Mr. Owais Jamal, learned Advocate, had filed his Vakalatnama on behalf of the respondent and had appeared before the Court on several dates of hearing. In view of his continued non-appearance despite due service and notice, it appears that the respondent is no longer interested in contesting or pursuing the matter.

7. We have heard learned counsel for the appellant Bank and have carefully examined the record and the material available before us.

8. The controversy requiring determination in the instant appeal essentially revolves around the legal effect of the amount deposited by the judgment-debtor pursuant to the terms communicated by the decree-holder Bank during the execution proceedings. It is an admitted position on record that the appellant Bank itself placed before the learned Banking Court the letter dated 06.04.2016 whereby the terms upon which the liability could be settled were communicated. It is equally evident that, pursuant thereto, the judgment-debtor deposited the entire amount corresponding to the settlement figure through twelve pay orders. The record further establishes that the said amount was deposited before the learned Banking Court and remained in its custody. Thus, the judgment-debtor did not merely express an intention to settle the outstanding liability; rather, it acted upon the terms communicated by the appellant Bank and deposited the entire amount before the Court. At this juncture, it would be appropriate to reproduce the relevant contents of the letter dated 06.04.2016 addressed to Ms. Seema Waseem, learned counsel appearing on behalf of the plaintiff by Muhammad Majeed Awan, AVP/Incharge SAMD:

“With reference to your letter No.NIL dated 29.03.2016 on the above subject. In this regard the 12 month installment offer of the judgment debtor is not acceptable to the Bank.

Keeping in view your association / services Bank can allow settlement of 3 months equal installment of Rs.3,698,780/-.”

9. In the aforesaid circumstances, the subsequent assertion of the appellant Bank that it had not agreed to the settlement cannot, by itself, be regarded as sufficient to efface or nullify the effect of its earlier communication and the conduct of the parties pursuant thereto. The learned Banking Court was justified in examining the matter in the light of the settlement terms communicated by the Bank, the subsequent conduct of the judgment-debtor and the fact that the entire amount stipulated in the Bank's communication had been deposited before the Court. Having itself communicated the terms upon which the liability could be settled, and the judgment-debtor having acted upon such representation by depositing the entire settlement amount, the appellant Bank cannot, in the absence of any legally sustainable justification, subsequently resile from the position so communicated and seek to disregard the consequences arising from its own representation and the judgment-debtor's consequent conduct.

10. We are also mindful of the fact that, at the relevant stage, the proceedings before the learned Banking Court were execution proceedings arising from a decree that had already attained finality. The fundamental object of execution proceedings is to secure enforcement and satisfaction of the decree in accordance with law. In the present case, upon consideration of the material placed before it, the learned Banking Court recorded a categorical finding that the judgment-debtor had deposited the entire settlement amount and, consequently, that the decree stood satisfied. Such finding is founded upon the documentary material available on record, particularly the Bank's own communication dated 06.04.2016 and the twelve pay orders deposited by the judgment-debtor. Nothing has been brought on record before us to establish that the said finding is perverse, arbitrary, unsupported by evidence, or contrary to the material available on record.

11. It is further significant that the appellant has failed to identify any illegality, material irregularity or jurisdictional defect in the exercise of jurisdiction by the learned Banking Court. The impugned order was passed after due notice to the decree-holder

Bank, consideration of the statements submitted by the respective parties, examination of the relevant documentary material and hearing of learned counsel. The learned Banking Court was, therefore, competent to determine, in the course of execution proceedings, whether the decretal liability stood satisfied in the circumstances placed before it. Once the learned Banking Court reached the conclusion that the decretal amount had been fully satisfied pursuant to the settlement terms communicated by the decree-holder Bank and acted upon by the judgment-debtor, the direction for production of the original title documents and withdrawal of the deposited amount followed as a necessary and consequential order.

12. In view of the foregoing discussion, we are of the considered view that the learned Banking Court committed neither any illegality nor material irregularity in passing the impugned order. The judgment-debtor had deposited before the Court the entire amount communicated by the appellant Bank as the settlement amount and had thereby acted upon the representation made by the Bank. In such circumstances, the subsequent change of position on the part of the appellant Bank, without any cogent or legally sustainable justification, does not constitute sufficient ground for interference with the impugned order. The appellant has, moreover, failed to demonstrate that any amount, over and above the amount so deposited, remained legally recoverable from the judgment-debtor after giving effect to the settlement terms pursuant to which the deposit was made.

13. For the foregoing reasons, we find no merit in the instant appeal. The impugned Order dated 11.03.2017 passed by the learned Judge, Banking Court No.II, Karachi, in Suit No.351 of 2010 and Execution No.66 of 2012, is found to be in accordance with law and does not warrant any interference by this Court in exercise of its appellate jurisdiction. Consequently, the instant appeal is **dismissed**, and the impugned order is hereby **maintained**.

JUDGE

JUDGE