

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
High Court Appeal No.89 of 2012

**Present:-**  
**Chief Justice &**  
**Mr. Justice Zafar Ahmed Rajput**

First Capital Equities Limited & others.     ...     ...     Appellant

Versus

JS Bank Limited.     ...     ...     Respondent

Mirza Mahmood Ahmed, Advocate for the Appellant.  
Mr. Ijaz Ahmed, Advocate for the Respondent.

Date of short order     :     12.03.2015

Date of reasons     :     16.04.2015

**ORDER**

**Faisal Arab, CJ.** This appeal arises from an order passed by the Banking Judge of this Court on an application under Order XXXIX Rules 1 & 2, CPC in Banking Suit No.13 of 2011 filed by the appellant. The appellant who obtained finance facility had sought restraint order against the respondent bank from selling the pledged securities till the disposal of the suit. This application was dismissed by the learned Single Judge vide order dated 18.05.2012.

2. Briefly stated, the facts of the case are that in the year 2007 the appellant, which is a brokerage house, obtained a finance facility of Rs.600 million against pledged of securities. Vide agreement dated 11.08.2008 the facility was renewed upto 31.07.2009. In paragraph 12 of the plaint it is stated that on account of downward plunge in the Karachi Stock market, the appellant was unable to pay off its

liabilities and instead sought renewal of the finance facility vide its letter dated 07.10.2009. The facility was renewed upto 31.07.2010. As the appellant could not pay the amount when it became due on 31.07.2010, the respondent bank, vide its letter dated 06.01.2011 warned the appellant that in case it does not immediately settles outstanding liabilities, it would sell the pledged securities. This letter was followed by a notice dated 12.01.2011 that was served under Section 176 of the Contract Act. In the said notice, the respondent bank again warned that it would sell the pledged securities in case the appellant fails to make payment of the outstanding dues. The respondent's notice dated 12.01.2011 was responded by the appellant vide letter dated 22.01.2011. On 26.01.2011 the respondent bank informed the appellant that it has sold certain pledged securities. Aggrieved by the sale of some of its pledges securities and to prevent further sale, the appellant filed suit in this Court under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 seeking declaration, permanent injunction, rendition of accounts, cancellation of documents, redemption of pledge securities and recovery of Rs.318,915,192/-. In the suit, it was the case of appellant that on account of downward plunge in the Stock Exchange, its securities would fetch lesser value that would cause enormous loss to the appellant and the respondent bank is liable to pay a sum of Rs.168,915,192/- as compensation. An additional claim of Rs.150,000,000/- was also made towards loss of opportunity and reputation.

3. The application under Order XXXIX Rules 1 & 2, CPC was heard and dismissed vide order dated 18.05.2012. The appellant preferred this High Court Appeal.

4. The counsel for appellant argued that the learned Single Judge ought to have granted injunctive order as the respondent bank has raised an arbitrary claim of about Rs.199,737,433/- though the liability of appellant was yet to be determined in any legal proceedings and the sale of its pledged stocks in the current stock market condition would cause huge financial loss. He also contended that the amount claimed by the respondent bank contains a huge component of markup upon markup which is not permissible in law. He next contended that respondent bank has not even filed recovery suit of its own against the appellant and unless the accounts are settled between the parties before a judicial forum, the respondent bank be restrained from selling the pledged securities.

5. The counsel for the respondent bank on the other hand argued that the appellant in its own letter dated 16.09.2010 addressed to the respondent bank has acknowledged that as of 30.06.2010 a sum of Rs.177,023,182/- is outstanding against it. In this letter the appellant also sought rescheduling of its liabilities and offered to pay the principal amount of Rs.177,023,182/- in sixteen semi-annual installments with 8% markup thereon. As the appellant did not adhere to its own commitment, the respondent bank on 06.01.2011 wrote another letter to appellant stating that as it has failed to fulfill its obligations, the pledged securities would be sold and proceeds adjusted towards outstanding liabilities. When this letter was not responded, the respondent bank, on 12.01.2011, served a notice under Section 176 of the Contract Act. In this notice, the respondent bank pointed out that inspite of several demands, the appellant has failed to liquidate its liabilities of Rs.199,737,433.96, which amount has legally and contractually become immediately payable, therefore,

the same be paid within five days from the date of service of the notice failing which the respondent would sell the pledged securities. This notice was responded by the appellant vide its letter dated 22.01.2011, wherein it stated that in case the respondent bank persists in selling the securities in the falling market conditions, the appellant would suffer a loss of Rs.49,000,000/- and it would be constrained to initiate legal proceedings for claiming damages. In its letter though the appellant very candidly acknowledged that it originally availed financial facility of Rs.600 million and after repayments, a sum of Rs.177,023,182/- still remains outstanding.

6. From the above facts, it is evident that appellant has atleast recognized in its letter dated 16.09.2010 that a sum of Rs.177,023,182/- is outstanding and the plea taken in the plaint that nothing is outstanding was without any substance. When the pawnor commits default in the payment of its debt, Section 176 of the Contract Act gives an option to the pawnee to either bring a suit against the pawnor and retain the pledge goods as security or sell the pledged goods on giving the pawnor reasonable notice of sale. From 12.11.2011 when notice under Section 176 of the Contract Act was given and uptill now, the appellant, at no stage, came forward to settle the outstanding amount so as to prevent its securities from being sold towards settlement of its financial liability. Thus, Section 176 of the Contract Act empowers the respondent bank to sell the pledged securities without seeking recourse to legal proceedings. In the process if at all the appellant suffers any loss for which the respondent bank is to be made responsible, this is to be established in the evidence which is yet to be recorded in the pending suit. Moreover, the appellant, apart from acknowledging the outstanding

liability to the extent of Rs.177,023,182/- in its letter dated 16.09.2010, has quantified its claim for damages in the suit. In the circumstances it is not entitled to seek injunctive order as has been sought in the suit. The learned Single Judge rightly dismissed the injunction application and this Court is not inclined to take any exception to the decision of the learned Single Judge. However, before selling the pledged securities, the respondent bank shall serve fresh notice on the appellant under Section 176 of the Contract Act, giving atleast two weeks time to liquidate its liability. It is, however, clarified that the pledged securities shall be sold to recover only the admitted amount of Rs.177,023,182/- though the respondent bank shall remain entitled to recover any amount over and above the admitted amount in case it is so determined once the accounts are settled in the pending suit.

7. Vide short order dated 12.03.2015, this appeal was dismissed and these are the reasons for the same.

**Chief Justice**

**Judge**

Naeem