IN THE HIGH COURT OF SINDH, KARACHI

SPL. HCA. NO. 282 OF 2015

PRESENT:
MR. JUSTICE AQEEL AHMED ABBASI
MR. JUSTICE ARSHAD HUSSAIN KHAN

Bank Alfalah Limited.....Appellant

Versus

Interglobe Commerce Pakistan (Pvt) Ltd & others..... ..... Respondents

Appellant:	Through Mr. Arshad Tayyebaly, Advocate.
Respondents: No.1 & 2.	Through, Mr. Zeeshan Abdullah, Advocate
Intervener:	Shaheed Zulfiqar Ali Bhutto Institute of Science and Technology (SZABIST), through Mr. Ravi R.Pinjani , Advocate
Date of hearing	07.03.2017
Date of Judgment	07.03.2017

JUDGMENT

ARSHAD HUSSAIN KHAN, J. Through instant Special High Court Appeal the appellant has sought following relief:-

> *"I Recall / set-aside the impugned Order dated 24.08.2015 and pass order for attachment before judgment in respect of the Subject Property (Plot No.99-CF-1/5, Clifton, Karachi) belonging to the respondent No.1.*
>
> *II. Until disposal of this Appeal, suspend the operation of the Impugned Order dated 24.08.2015 and restrain the respondent No.1, along with its management, employees, agents from alienating, transferring, disposing of, the subject property, or creating any third party interests or rights in the subject property."*

2. Brief facts as stated in the present appeal are that the appellant being a banking company had provided various financial facilities to respondent No.2 (CALLMATE TELIPS TELECOM LIMITED). Against the aforesaid financial facilities extended to respondent No.2 by the appellant, various securities were furnished to the appellant by the respondents, including, inter alia, personal guarantees of the sponsors/directors of the Company i.e. respondents No.3 (Mr. Ahmed Jamil Ansari), respondent No. 4 (Mr. Hassan Jamil Ansari) and

respondent No. 5 (Muhammad Ajmal Ansari), a cross corporate guarantee of respondent No.1 (INTERGLOBE COMMERCE PAKISTAN (PVT.) LTD), a mortgage over the property of respondent No.6 (Mrs. Yuba Jamil Ansari), a hypothecation charge over goods, receivables, operating fixed assets etc. of respondent No.2. The aforesaid financial facilities were renewed/extended from time to time by the appellant to respondent No.2. The respondent No.2 availed and utilized the financial facilities but eventually defaulted in its repayment obligation and committed default in repayment of the dues despite various reminders by the appellant. Consequently, the appellant filed a recovery suit bearing No. B-01 of 2008 before this Court against the respondents for recovery of Rs.258,846,552/- along with cost of funds under Section 9 of Financial Institutions (Recovery of Finances) Ordinance, 2001. It has been stated by the appellant that the respondents not only committed willful default but respondents No. 3 to 5 also transferred their major shareholding in respondent No.2 without prior written consent/permission from the appellant contrary to the agreed terms and conditions of the financing extended by the appellant. The said suit was decreed in the sum of Rs.258,846,552/- with cost of funds against the principal borrower, that is, respondent No.2 on 10.03.2008 and the case was adjourned for hearing of application for leave to defend filed by respondents 1 and 3 to 6. It has been stated that respondent No.1, who has executed a Corporate Guarantee has filed a separate application for leave to defend whereas respondents 3 to 5 who have executed personal guarantees filed a joint application for leave to defend and respondent No.6, the mortgagor / guarantor also filed a separate leave to defend application. Respondent No.1 in its leave to defend application admitted having executed the Corporate Guarantee in favour of the appellant to secure the outstanding and of respondent No.2. The appellant filed the replication in reply to the application for leave to defend of respondent No.1 denying the allegations leveled therein. Subsequently, the leave to defend applications of respondents No.1, 3 to 5, (the guarantors), were allowed unconditionally vide order dated 20.04.2009. The parties thereafter filed their proposed issues. It has been further stated that apart from the financial facilities extended to respondent No.2, inter alia, against security of the corporate guarantee of respondent No.1, the

appellant had also extended financial facilities separately to respondent No.1, inter alia, against a security of mortgage in respect of Plot No.99-CF-1/5, Clifton, Karachi, (subject property) as well as personal guarantees of respondents 3 to 5 and another. Respondent No.1 had also defaulted in repayment of the financial facilities extended to it by the appellant. Consequently, the appellant filed another recovery suit before the Banking Court No.III at Karachi bearing Suit No.81 of 2009 for recovery of Rs.25,320,154.98/-along with cost of funds under Section 9 of Financial Institutions (Recovery of Finances) Ordinance, 2001 against respondent No.2 as principal borrower and mortgagor of the subject property and, inter alia, respondents 3 to 5 herein. Further averred that respondents 1 and 2 for all intents and purposes were associated companies within the meaning ascribed to that term in the Companies Ordinance, 1984, having common management, that is, respondents 3 to 5, at the time when the financial facilities were obtained from the appellant by respondents 1 and 2. Further averred that Suit No.81 of 2009 was decreed vide Order dated 25.08.2009 in favour of the appellant upon an admission on the part of respondent No.1 of its liabilities owed to the appellant. However, instead of passing a mortgage decree the Banking Court No.III issued a Decree for Redemption of the subject property on an application filed by respondent No.1. The aforesaid decree was thereafter assailed by the appellant before this Court in First Appeal No.45 of 2009 and the Division Bench of this Court allowed the appeal vide order dated 06.04.2010 upon respondent No.1's conceding to the extent that the direction for redemption of the mortgaged property, that is, the subject property was deleted from the Banking Court's order dated 25.08.2009. The said decree passed by the Banking Court III was modified by the Division Bench of this Court. Thereafter, the respondent No.1 filed a statement depositing a pay order for Rs.28,475,362.86 against the decree passed by the Banking Court No.III and moved a similar application, which was filed by the respondent on the basis of which the decree for redemption was passed by the Banking Court No.III for redemption of the mortgaged property, that is, subject property and return of the original title documents, under Section 60 of the Transfer of Property Act, 1882 read with Section 151 CPC praying therein, inter alia, to pass necessary orders so that the subject property stands

released and redeemed forthwith. A counter affidavit to the said application was filed by the appellant and a rejoinder thereon was also filed by the respondents. It is alleged that the aforesaid application was filed again with malafide intention to obtain the same order which was passed under the decree for redemption, earlier by the Banking Court No.III and modified by the Division Bench of this Court in First Appeal No.45 of 2009. SZABIST filed an intervener application in Suit No.81 of 2009, as disposed of, seeking to become a party on the ground that SZABIST and respondent No.1 had entered into an agreement to sell in respect of the subject property. The intervener application filed by SZABIST, was dismissed vide order dated 09.10.2010. Thereafter, SZABIST filed a suit bearing Suit No.142 of 2011 before this Court against respondent No.1 and the appellant, seeking specific performance of the agreement to sell in respect of the subject property. The appellant has also filed its written statement in the aforesaid SZABIST's suit. It is stated that not only a suit was filed by SZABIST but, an intervener application was also filed in Suit No.B-01 of 2008 which is still pending adjudication. It is also stated that the subject property was not only mortgaged with the appellant at the time of execution of the agreement to sell entered into between the respondent No.1 and SZABIST, and the mortgage as well as the corporate guarantee executed by respondent No.1, which is the subject matter of Suit No.B-01 of 2008, was well in the knowledge of SZABIST and that the subject property was the only valuable asset belonging to the respondent No.1 and would potentially realize the decrees in both suits, that is, Suit No.81 of 2009 and Suit No.B-01 of 2008. The aforesaid second application filed by respondent No.1 in suit No.81 of 2009, seeking redemption and release of the original title deeds of the subject property was thereafter allowed vide order dated 24.12.2012 by the Banking Court No.III, exercising its jurisdiction as an executing court for all intents and purposes, as Suit No.81 of 2009 had already been disposed of. The appellant was thereafter constrained to once again file another Appeal before this Court assailing the order dated 24.12.2012 passed by the Banking Court-III bearing First Appeal No.12 of 2013. The said appeal was allowed, vide short order dated 12.02.2013, by the Division Bench of this Court. It is also averred that upon knowledge that respondent No.1 was intending to dispose of the subject property

and the agreement to sell entered into between respondent No.1 and SZABIST, the appellant immediately filed an application under Order XXXVIII Rules 5 and 6 read with Section 151 CPC (bearing CMA No.8617 of 2009--attachment application) in Suit No.B-01of 2008 to protect its lawful rights and interests as a creditor. The respondent No.1 also filed a counter affidavit to the attachment application wherein a categorical statement was made that it has no intention to dispose of the subject property. It is also admitted that the security with the appellant was insufficient to satisfy the decree under Section 10(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 already passed against respondent No.2 in Suit No.B-01 of 2008. It is also alleged that the sole malafide intention of respondent No.1 in entering into an agreement to sell with SZABIST was to defeat and deprive the appellant from recovering the fruits of an eventual decree, which will be passed against respondent No.1 in Suit No.B-01 of 2008. For this very reason, the appellant filed the attachment application to prevent the sale/transfer of the subject property. Though the said attachment application was filed in the year 2009, it was not heard until 05.08.2015. Meanwhile, respondent No.2 was ordered to be wound up by this Court vide order dated 04.08.2008 passed in J.M. No.5 of 2008. It is pertinent to note that the Official Liquidator/Official Assignee of respondent No.2 has not been able to trace, collect or seize any valuable asset of respondent No.2, which would be able to satisfy the decree passed against the respondent No.2 in Suit No.B-01 of 2008. As such the only hope available for the appellant to recover its dues being a secured creditor of both respondents 1 and 2 would be through realization of sale proceedings of the subject property, which the respondent No.1 is trying to alienate and dispose of with the sole malafide intention of defeating any eventual decree that may be passed against it in Suit No.B01 of 2008. The attachment application was heard by the learned Single Judge of this Court and subsequently rejected vide impugned order.

3. Upon notice of the present appeal, the respondents filed their respective counter affidavits wherein while denying the allegations of the memo of appeal have also raised preliminary legal objections regarding maintainability of the appeal, as according to respondent(s)

appeal is not maintainable against an interlocutory order in terms of sub-section (6) of Section 22 of the Financial Institution (Recovery of Finance) Ordinance, 2001 which provides for a specific bar for filing appeal against an interlocutory order. According to respondent(s), the impugned order, for the purpose and within the meaning of sub-section (6) of Section 22 of FIO 2001 is an interlocutory order, as the same has been passed on an interlocutory application, i.e. application under Order XXXVIII Rules 5 and 6 (bearing CMA No.8617/2009), which undeniably, does not dispose of the entire case before the original banking jurisdiction of this Court, hence the appeal is not entertainable and liable to be dismissed on this score alone. It is also averred that even otherwise in general law i.e. CPC (Code of Civil Procedure, 1908), an appeal does not lie against an order of dismissing the application for attachment before judgment, whereas, appeal only lies against an order allowing the attachment before judgment. Therefore, according to respondent(s), on this score also, the appeal is not maintainable and liable to be out rightly dismissal. It is also averred that the appeal is also barred under sub-section (1) of section 22 of FIO, 2001 as the impugned order does not fall within the category of judgment and decree, sentence, and/or final order. It is also averred that the impugned order cannot be termed as “final order” as the same has not terminated the litigation between the parties which, admittedly, is still pending in the main suit, in which issues are yet to be framed, evidence of the parties is yet to be recorded and judgment is yet to be passed. Besides above objections, it is also stated that in order to show respondent No.1 as guarantor in the instant suit, the appellant Bank filed forged/fabricated document/agreement, which has been discussed in detail in un-conditional leave granting order dated 20.04.2009 in Suit No.B01/2008. It is also stated that the alleged corporate guarantee of respondent No.1 is void for being not backed by any resolution by the Board of Directors of the company, in respect of alleged default, therefore, no liability can be attributed against respondent No.1. It is also stated that the subject property of respondent No.1 was only mortgaged in respect of finances, subject matter of Suit No.B-81/2009 filed in Banking Court No.2 at Karachi, which according to respondent(s), after payment of decretal amount, stands redeemed and the same is no longer a mortgaged property with the appellant Bank. It

is further stated that the subject property is not mortgaged in respect of finances, subject matter of Suit No.B-01/2008, therefore, the question, that Decrees in both the suits i.e. Suit No.81/2009 and Suit No.B-01/2008, will be realized from the subject property, does not arise. Respondent further submitted that since the decree of Suit No.81/2009 has already been satisfied, therefore, question of realizing the said decree from the subject property does not arise. It has been further stated by respondents that the application for attachment before judgment has now been decided/dismissed on merits by means of the impugned order, therefore, now there is no legal justification available with the appellant Bank to further keep the original title documents of the subject property as after redemption order by the learned Banking Court-III and upheld by the Division Bench of this Court vide above referred order, the property is no longer a mortgaged property and the present custody of the original documents by the appellant Bank is unlawful and an illegal act. Respondent has further stated that the dismissal order of the application for attachment before judgment has been passed with cogent reasons as the appellant bank failed to make out a case for the attachment before judgment on the basis of material on record.

4. The learned counsel for the appellant during the course of arguments, while reiterating the contents of the memo of appeal has contended that the learned Single Judge failed to consider the conditions of Order XXXVIII Rules 5 and 6 CPC, 1908 relating to attachment before judgment. Per learned counsel, the learned Single Judge has exceeded its jurisdiction while dismissing the attachment application. It has been further contended that the learned Single Judge failed to take into consideration that the Official Liquidator's Report in respect to the winding up proceedings against respondent No.2, which revealed that there are no valuable assets belonging to respondent No.2, and that the respondents misappropriated all assets of respondent No.2 and were now trying to dispose of the sole asset of respondent No.1, i.e. the subject property. It is also contended that the learned Single Judge also failed to consider that the balance of inconvenience is in favour of the appellant and the appellant would suffer irreparable losses if the subject property is not attached. Per

learned counsel, the learned Single Judge also failed to appreciate that the other movable securities were siphoned away by the respondents during the course of their business, which, in any case, was carried out in an illegal and fraudulent manner for which respondents 3, 4 and 5 faced criminal proceedings as well. All securities created by respondent No.2 were only available on the charge documents but were not tangible as the same had been misappropriated by management, that is respondents 3 to 6, who were its directors/sponsors. According to learned counsel the learned Single Judge seriously erred in finding that the appellant was to blame for taking inadequate securities at the time of allowing the finances to respondent No.2. Whereas, the appellant also obtained the personal guarantees as well as a corporate guarantee from the respondent(s) in addition to the same. It has been contended that the learned Single Judge has also erred in not taking into consideration the various facts on record which clearly disclosed that the appellant does not have adequate security to protect its rights and to satisfy the decree which has already been passed against respondent No.2 and which will most likely to be passed against the respondent No.1 also after recording of the evidence. Further contended that the learned Single Judge has also failed to exercise the inherent jurisdiction vested in it in as much as the learned Single Judge even abstained from passing an injunctive order alternatively restraining respondent No.1, from transferring, selling or alienating the subject property till the final decision of the suit against respondent No.1 although a cogent case was made out by the appellant on the basis of facts. It is also contended that the learned Single Judge has also failed to exercise the jurisdiction vested in it to issue restraining order under its inherent powers on fallacious and hyper-technical grounds against the sale or transfer of the subject property till the decision of the suit which on the other hand would not take much time as the issues are already proposed by the parties and the evidence could be completed in short period. Per learned counsel, the learned Single Judge not only failed to consider properly but even disregarded the facts on record and the law cited before it in support of case of the appellant. It is also contended that the facts and law have been misinterpreted and misconstrued by the learned Single Judge, as laid down in the rulings of the higher Court, which have issued

restraining orders for the completion of the sale in question before them to protect the legitimate interest of the creditors. It is also contended that the learned Single Judge while passing the impugned order has failed to apply his judicial mind on the clear decisions of the higher Court wherein the Courts have exercised inherent jurisdiction and have not hesitated to pass restraining order alternatively against the sale/ transfer of the properties for which attachment before judgment was sought in order to protect and safeguard the interest of the creditor / banks when it was found that the security of the appellant had become insufficient. Further contended that the impugned order is unjust, unreasonable, and erroneous in facts and law and has been passed in violation of the principles of law, justice and equity thereby causing serious prejudice/irreparable loss and damage to the appellant's interest as creditor. Learned counsel for the appellant on the point of maintainability has contended that the order impugned in the present appeal for all intents and purposes is a final order, hence, it can be assailed in the appeal and as such the present appeal is maintainable.

5. On the other hand, learned counsel for the respondents, during the course of arguments, while reiterating the contents of the counter affidavits to the appeal has mainly contended that the present appeal is not maintainable as according to the learned counsel there is no provision in Financial Institution (Recovery of Finance) Ordinance, 2001 [FIO 2001] whereby an interlocutory order can be challenged in the appeal under Section 22 of FIO 2001 and admittedly the present appeal has been preferred against the order passed by the learned Single Judge (banking jurisdiction) on the application under Order XXXVIII Rule 5 CPC filed by the appellant. Per learned counsel provisions of Section 22 of the FIO, 2001, which has provided the right of appeal only against a judgment, decree, sentence or final order and the impugned Order does not fall in any of these categories, therefore, the present Special HCA is not maintainable. Further contended that the impugned order has been passed on merits and does not require any interference of this Court being well reasoned and speaking order passed by the learned Single Judge keeping in view the of the facts and law. It is also contended that the appellant has failed to fulfill the

requirements / ingredients of Order XXXVIII Rule 5 CPC and the learned Single Judge in the impugned order discussed all the aspects of the matter. Learned counsel in support of his stance in the case on the point of maintainability of the appeal has relied upon the following case law:

(1) **2005 C L D 1571** *(NAZIR AHMED VAID Vs. HABIB BANK AG ZURICH)*

(2) **2014 C L D 1596** *(MUHAMMAD KHAN Vs. ZARAI TARAKIATI BANK LIMITED through President)*

(3) **1990 C L C 1473** *(Messrs AZIZ FLOUR MILLS Vs The INDUSTRIAL DEVELOPMENT BANK OF PAKISTAN)*

(4) **PLD 1983 Karachi 527** *(ALI MUHAMMAD BROHI Vs. Haji MUHAMMAD HASHIM)*

(5) **PLD 1993 SC 109** *(PAKISTAN FISHERIES LTD., KARACHI and others vs. UNITED BANK LTD)*

(6) **2013 CLD 2033** *(BANK OF PUNJAB Vs. Messrs AMZ VENTURES LIMITED and another)*

(7) **2013 CLD 805** *(NADEEM ATHAR Vs. Messrs DUBAI ISLAMIC BANK (PAKISTAN) LTD)*

(8) **PLD 1959 Dacca 330** *(S.N. GUPTA & CO. Vs. SANDANANDA GHOSE and others)*

(9) **AIR 1982 ANDHRA PRADESH 408** *(Union Bank of India, Visakapatnama Vs. M/s. Andhra Technocrat Industries and another)*

(10) **AIR (31) 1944 Nagpur 30** *(F.X. Rebello Vs. Firm Ladhasingh Bedi & Sons)*

(11) **AIR 1935 Patna 219** *(Kedarnath Himatsinghka and others Vs. Tejpal Marudi and others)*

(12) **AIR 1933 Allahabad 557** *(Om Prakash and others vs. Mohammad Ishaq and others) and*

(13) **Black's Law Dictionary** (Sixth Edition).

6. We have heard the learned counsel for the Appellant and the respondents and have also perused the impugned order and the relevant record as well as the law on the issue involved in the present case. Since, the question of the maintainability of the present Special High Court Appeal has been raised, therefore, without dilating upon the merits of the case, we would like to decide the issue regarding maintainability first.

7. Before proceeding further, it will be appropriate to examine the

provisions of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, which for the sake of ready reference is reproduced as under:-

> "22. Appeal. (1) Subject to subsection (2), any person aggrieved by any judgment, decree, sentence, or final order passed by a Banking Court may, within thirty days of such judgment, decree, sentence or final order prefer an appeal to the High Court.
>
> (2) The appellant shall give notice of the filing of the appeal in accordance with the provisions of Order XLIII, Rule 3 of the Code of Civil Procedure (Act V of 1908) to the respondent who may appear before the Banking Court to contest admission of the appeal on the date fixed for hearing.
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> (3) The High Court shall at the stage of admission of the appeal, or at any time thereafter either suo motu or on the application of the decree holder, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case, and as to the security to be furnished by the appellant:
>
> Provided that the admission of the appeal shall not per se operate as a stay, and nor shall any stay be granted therein unless the decree-holder has been given an opportunity of being heard and unless the appellant deposits in cash with the High Court an amount equivalent to the decretal amount inclusive of costs, or in the case of an appeal other than an appeal against an interim decree, at the discretion of the High Court furnishes security equal in value to such amount; and in the event of a stay being granted for a part of the decretal amount only, the requirement for a deposit in cash or furnishing of security shall stand reduced accordingly.
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> (4) An appeal under subsection (1) shall be heard by a bench of not less than two Judges of the High Court and, in case the appeal is admitted, it shall be decided within 90 days from the date of admission.
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> (5) An appeal may be preferred under this section from a decree passed ex parte.
>
> (6) No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Banking Court which does not dispose of the entire case before the Banking Court other than an order passed under subsection (11) of section 15 or subsection (7) of section 19.
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> (7) Any order of stay of execution of a decree passed under subsection (2) shall automatically lapse on the expiry of six months from the date of the order whereupon the amount deposited in Court shall be paid over to the decree-holder or the decree-holder may enforce the security furnished by the judgment-debtor.
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> **[Underlining is to add emphasis]**

8. Perusal of above provisions reveals, that in terms of subsection (1) of Section 22 of FIO 2001, an appeal can be filed by a person aggrieved by any ‘judgment, decree, sentence, or final order passed by a Banking Court’, within thirty days of such judgment, decree, sentence or final order, to the High Court. However, subsection (6) of Section 22 of FIO 2001, clearly bars filing of any ‘appeal, review or revision against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Banking Court, which does not dispose of the entire case before the Banking Court, other than an order passed under sub-section (11) of Section 15 or sub-section (7) of section 19.

9. The rationale behind above provisions seems to be expeditious disposal of cases under the F.I.O., 2001 and to avoid unnecessary delay, which is caused by filing frivolous interlocutory which are subjected to frivolous appeals as well. If the interlocutory orders are allowed to be challenged before the High Court by filing appeals, the very object for which the FIO 2001 was enacted would be frustrated. The appellate power conferred on the High Court under FIO 2001 in terms of Section 22 is therefore, restricted, only to the extent of entertaining an appeal against the final order and judgment of the special Court.

10. Black's Law Dictionary (Sixth Edition) defines final order as under:-

> "One which terminates the litigation between the parties and the merits of the case and leaves nothing to be done but to enforce by execution what has been determined."

The words ‘final order’ and ‘an interlocutory order’ have now been settled from various pronouncements of the apex Court viz. "A final order means an order which finally disposes of the rights of the parties. The real test for determining whether the order is final ought to be this: ‘Does the judgment or order, as made, finally disposes of the rights of the parties’? If it does, then it ought to be treated as a final order; but if it does not, it is then an interlocutory order. Similarly, in AIR 1933 P.C. 58, Sir George Lowndes observed:-

> “The finality must be finality in relation to the suit. If, after the order the suit is still alive in which rights of the parties have still to be determined, no appeal lies against it. The fact that the order decides

> an important and even a vital issue is by itself not material. If the decision on an issue puts an end to the suit, the order will undoubtedly be a final one."

Furthermore, in order to constitute a final order, it is necessary that the order should be one by which the suit or the proceeding in either way is finally disposed of. The decision of an important and vital issue which may ultimately affect the fate of the proceeding is by itself not enough. The test to be applied is, whether the proceeding is disposed of completely and the case is not kept alive for being dealt within the ordinary way. The final order must contain a final adjudication of the matter in contest between the parties to the action.

11. Though the word ‘interlocutory order' has not been defined anywhere either in the. C.P.C. or in the FIO 2001, but the appeals were made competent under C.P.C. against orders covered by Order XLIII but the legislature under sub-section 6 of section 22 of FIO 2001 clearly mentioned that no appeal shall lie against an interlocutory order which does not dispose of the entire case. It is thus clear that the word ‘interlocutory order' has been used in contradistinction to the term "order". The legislature, in order to achieve the object that appeal shall lie only against the final order, did not stop after legislating that no appeal shall lie against interlocutory order but further qualified the interlocutory order, which does not dispose of the entire case. The intention of the legislature is crystal clear from the language employed in the provision that appeal can only be maintained against last or final order.

12. Reverting back to the case in hand, from the perusal of the order impugned in the present Special High Court Appeal, it is manifestly clear that through the impugned order the learned Single Judge only disposed of the application under Order XXXVIII Rule 5 of CPC, relevant portion for the sake of ready reference is reproduced as under:

> “ 73. Before parting with this order, I must clarify that the observations made hereinabove are tentative in nature and shall not prejudice the case of any party to the instant suit which, of course, shall be decided on merits and in accordance with the law after framing of issues and recording of evidence of Plaintiff Bank and Defendants No.2, 3, 4 & 6.
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> 74. The nutshell of the above discussion is that the Plaintiff Bank has failed to make out a case for attachment before judgment of the

> immovable property bearing No.99, CF-1/5, Clifton, Karachi under prevailing facts and circumstances, of the instant case. In view of this position, consequently, CMA No. 8617 of 2009 stands dismissed, however, with no order as to cost."

Thus, the impugned order cannot, by any stretch of imagination, be regarded as a final order within the meaning of subsection (1) of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, therefore, could not be subjected to an appeal before this Court.

13. From the above facts, it is clear that the suit instituted by the appellant is still pending adjudication, and the controversy raised therein is yet to be finally decided by the Banking Court, which is still seized of the matter. As and when the said suit is finally disposed of, the appellant, if felt dissatisfied with the final outcome will be at liberty to bring it under challenge, by filing an appeal before this Court in terms of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. In that event, the appellant would be at liberty to challenge the legality of all intermediate/interim/interlocutory orders in the main appeal.

14. The upshot of the above discussion is that the present Special High Court Appeal was not maintainable in law and facts of the case, hence, the same was accordingly dismissed in limine vide our short order on 07.03.2017. These are the reasons for such short order.

JUDGE

JUDGE

*Jamil***