

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D 1913 of 2019 : Rao Bashir Ahmed vs.
Banking Court III at Karachi
& Others

For the Petitioner : Mr. Afaq Yousuf, Advocate

Date of Hearing : 02.05.2019

Date of Announcement : 02.05.2019

JUDGMENT

Agha Faisal, J: The present petition was filed assailing the order dated 16.02.2019 (“**Impugned Order**”) passed by the learned Banking Court III, at Karachi in Execution 54 of 2016 (“**Execution**”). The application under scrutiny before the learned Banking Court was filed by the judgment debtor seeking the orders of the Court for recovery of a vehicle, subject matter of the proceedings, from an alleged possessor thereof. The learned Banking Court was pleased to dismiss the application under scrutiny vide the Impugned Order and the operative constituent thereof is reproduced herein below:

“8. Thereafter this execution application has been filed on 14.05.2016 whereby execution of above said decree has been sought through sale of moveable property i.e. Suzuki Alto VXR, CNG, Model 2007 bearing registration number APB-176, chassis number 534334 and Engine number R230329 and by the arrest and detention of the judgment debtor.

9. Since the execution application was filed after one year of the date of decree therefore notice was issued to the judgment debtor. Subsequently writ of attachment was issued under Order XXI Rule 30 CPC for attachment of the movable property i.e. Suzuki Alto VXR, CNC, Model 2007 bearing registration number APB-176, Chassis number 534334 and Engine number R230329, upon which instant application has been filed by the judgment debtor on 22.07.2017.

10. According to the judgment debtor the hypothecated vehicle was snatched by Mohammad Ismail on 06.03.2008. It appears that neither FIR was got registered by the judgment debtor nor NC report has been got recorded by him with area Police Station. Furthermore had the alleged incident of snatching took place than the judgment debtor had opportunity to approach the District and Sessions Court for registration of FIR under Section 22(A) and 22(B) Cr.P.C. According to record the judgment debtor remained silent from the date of alleged incident of snatching i.e. 06.03.2008 till the date of service of show cause notice of execution and filing of this application.

11. It appears from the record that the judgment debtor is liable to satisfy the decree but, instead of satisfying the decree he has filed this application. According to Mohammad Ismail, he is available in the area and is running his business and had he committed the alleged snatching, he would have gone underground or escaped from the area. No reply to such contention of the Mohammad Ismail was put forth by learned advocate for the judgment debtor. It appears that Mohammad Ismail was available in the area, however, no attempt was made by the judgment debtor to approach the concerned police station or the Court in order to get the FIR registered against Mohammad Ismail.

12. In view of the above discussion and in the peculiar facts and circumstances of the case, instant application filed by the judgment debtor for recovery of the vehicle from the alleged illegal occupant Mohammad Ismail is dismissed. The judgment debtor is directed to satisfy the decree failing which matter shall be proceeded in accordance with law.

Order accordingly”

2. Mr. Afaq Yousuf, Advocate appeared on behalf of the petitioner and submitted that the Impugned Order was unwarranted and further that the learned Banking Court ought to have facilitated the recovery of the vehicle in question. It was argued that the vehicle had not been in the possession of the appellant for a significant amount of time and that the appellant had no objection if the said vehicle was recovered from whomsoever had the same in their possession. In conclusion it was submitted that the learned Banking Court had been unable to appreciate the facts and circumstances of

the matter and the Impugned Order was delivered otherwise than in consonance with the law.

3. We have heard the learned counsel for the petitioner at considerable length and specifically queried as to why no FIR and/or complaint was registered if the petitioner had been dispossessed of the vehicle in question. In response to our query it was submitted that the vehicle was snatched from the appellant in early 2008, however, the appellant had not initiated any proceedings in respect thereof as the person who had snatched the vehicle was influential, hence, the appellant was afraid to initiate any proceedings there against. It appears quite surprising that despite the vehicle having allegedly been snatched more than a year ago, the appellant had intentionally failed to register any complaint and/or FIR in such regard. The Impugned Order also records that the petitioner's allegations were controverted by the person against whom the said allegations were levelled. Learned counsel for the petitioner could not justify as to how the alleged snatcher could not be named in an FIR or a complaint to the police at the relevant time, yet could be named before the learned Banking Court.

4. While the petitioner remains at liberty to exercise any rights available thereto, the unsubstantiated allegation of theft does in no manner absolve the petitioner from his obligations in respect of financing availed from a financial institution. It is borne from the record that Suit 103 of 2011 ("**Suit**") was filed by the respondent bank against the present appellant and the same was decided in favour of the bank vide judgment dated 10.04.2014. The learned Banking Court proceeded to decree the said Suit thereafter and it is apparent that the aforementioned judgment and decree have not been appealed by the appellant till date.

The Execution proceedings were initiated subsequent to the judgment and decree and it is in such proceedings that the appellant filed the application, the dismissal whereof was articulated vide the Impugned Order. The liability of the appellant stands conclusively determined by the judgment and decree and the application,

dismissed vide the Impugned Order, could in no manner be employed to deflect the appellant's liability towards a third party.

5. It is apparent that the appellant has not availed any opportunity to challenge the findings there against rendered by the learned Banking Court. No appeal was filed in respect of the judgment and decree and no objections with respect to the Execution has been demonstrated before us. In such circumstances resort to the Constitutional jurisdiction of this Court has not been justified before us. It has been held in the case of *Asif Rafique vs. Mst. Quratullain & Others*, reported as 2016 MLD 425, that the exercise of constitutional jurisdiction in such matters was only warranted in rare circumstances if the findings recorded by the Courts below are arbitrary and suffering from the vice of misreading or non-reading of evidence. In this matter, it is the considered view of this Court that the findings of the learned Banking Court suffer from no such infirmity and that the petitioner has failed to plead any rare circumstance, which would attract the jurisdiction of this Court.

6. In view of the reasoning and rational contained hereinabove, we observe that no case has been made out by the petitioner and that no interference is merited in the Impugned Order, which is hereby maintained and upheld. This petition, along with pending applications, is hereby dismissed in limine.

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