

IN THE HIGH COURT OF SINDH AT KARACHI

CP D-7618 OF 2018

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

Fateh Textile Mills Limited & Others
vs.
National Bank of Pakistan

For the Petitioner: Mr. Sarfaraz Ali Metlo, Advocate

Date of Hearing: 07.11.2018.

Date of Announcement: 07.11.2018

JUDGMENT

Agha Faisal, J: Through the present petition the order dated 12.10.2018 ("**Impugned Order**"), delivered by a learned Single Judge of this Court in Suit B-12 of 2011 ("**Suit**"), was assailed. The operative constituent of the Impugned Order is reproduced herein below:

"Since this application [C.M.A. No.17135 of 2017] does not prejudice the stance / pleadings of the Defendants, therefore, same is granted. Nazir will undertake the exercise of preparation of inventory and may also seek assistant of any other Expert or individual. Inventory will be prepared by adhering to the Rules, Fee / charges of the Nazir and of the Expert, if any, will be settled by the Nazir himself, which will be payable by the Plaintiff. Report should be submitted preferably within four weeks from today"

(Underline added for emphasis.)

2. Mr. Sarfaraz Ali Metlo, learned counsel for the petitioner, submitted that a banking suit had been filed against the present petitioner by the National Bank of Pakistan ("**NBP**"), being the Respondent herein, and in the said proceedings an application was filed seeking the following relief:

“For the facts and reasons disclosed in the accompanied affidavit, it is respectfully prayed that this Honourable Court may kindly restrain the Defendant No.1 and 5 to 7 from transferring, alienating, disposing off or creating third party interest on the Pledged as well as Hypothecated Goods till disposal of the instant suit.

In the meantime, Nazir may be appointed as commissioner to prepared inventory along with valuation of the Pledged Goods as well Hypothecated Goods”.

It was further submitted that the Impugned Order was rendered in respect of afore-cited application to the unmerited detriment of the petitioners, hence, the present petition was preferred.

3. We have heard the learned counsel and perused the record arrayed before us. The question for this Court to consider is whether any grounds has been made out to merit interference of this Court in the Impugned Order.

4. It is noted that application under consideration was supported by an affidavit and it was stipulated therein that NBP apprehended that the present petitioners are transferring, alienating and disposing of the hypothecated as well as pledged goods, hence the said application had been preferred. We have also considered the counter-affidavit filed by the present petitioners in the Suit, wherein it has been specifically stated that the letters creating the hypothecation and pledged were barred by time and even otherwise not enforceable and hence there is no reason for the rendering the Impugned Order.

5. Upon consideration of the factual plane it's apparent that the Impugned Order seeks to create a record with respect to the presence and quantum of the charged goods and does not infringe upon the

rights of either party. It is also gleaned from the record that the Impugned Order was rendered after providing an opportunity to the parties to present their case orally as well as expressly under oath. Learned counsel for the petitioners has been unable to demonstrate how the petitioners are aggrieved by the Impugned Order and has failed to identify any infirmity in the said order.

6. On the legal plane, it is within the contemplation of this Court that the Impugned Order is an interlocutory order delivered by a learned Single Judge of this Court in exercise of jurisdiction pursuant to the Financial Institution (Recovery of Finances) Ordinance, 2001 (“**Ordinance**”). Section 22(6) of the Ordinance specifically excludes the possibility of a assailing an interlocutory order and stipulates as follows:

“(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.”

(Underline added for emphasis.)

7. It is prima facie apparent that there is a statutory bar upon preferring any challenge against any interlocutory order passed by the Court. The reference to *interlocutory order* is qualified as being an order of the Court which does not dispose of the entire case, and the Impugned Order prima facie falls within the said definition. Reliance is placed in regard hereof upon the judgments of Division Benches of this Court in the cases of *Nadeem Athar and Another v. Messrs Dubai Islamic Bank (Pakistan) Ltd* reported as 2013 CLD 805 and *Bank Alfalah Limited v. Interglobe Commerce Pakistan (Pvt) Ltd and Others as reported 2017 CLD 1428 [Sindh]*.

8. In the present case we have carefully considered the Impugned Order, in the light of the record before us, and find it to be in due consonance with the law, hence, the same is hereby maintained and upheld. In view of the foregoing this Court arrived at the conclusion that the present petition was devoid of merit and hence was constrained to dispose of the same vide short order 07.11.2018. Above are the reasons for the aforesaid short order.

9. We do, however, observe, that at the time of passing any further orders, based upon the inventory prepared by the Nazir, the learned Single Judge may provide an opportunity to the petitioners to be heard.

JUDGE

JUDGE

Karachi.

Dated: 03 December 2018.