

ORDER SHEET

HIGH COURT OF SINDH AT KARACHI

HCA No.78 of 2007

Date Order with signature of Judge

1. For orders on CMA No.1417/2020 (U/A)
 2. For orders on C.M.A No.1418/2020
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07.8.2020.

Mr. Muhammad Saleem Mangrio, advocate for the appellants.
Mr. Zakir Hussain, attorney of respondent-bank is present.

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1. Urgency granted.
2. Counsel for the appellants states that while passing the order dated 05.8.2020 on the second page of the order the averments of compromise application were to be reproduced, however by mistake the terms of the letter of the Respondent Bank have been reproduced rather than the terms as settled between the appellant and the Respondent Bank mentioned in application bearing CMA No.1414/2020, dated 05.8.2020. Attorney of the Respondent Bank present waives notice and has endorsed the submissions made by Mr. Muhammad Saleem Mangrio, learned counsel for the appellants. We, therefore, while exercising the powers under Section 152 CPC, modify/replace the 'Terms of Settlement' as approved by the Respondent Bank, mentioned on page 2 of the order dated 05.08.2020 with the following passage:

"13. That the Respondent Bank filed Suit No.B-54 of 2002 against the Appellant No.1 and it's the then Directors for recovery of Rs.88,333,249/- under Section 9 of the Financial Institutions (Recovery of Finance) Ordinance, 2001 in the Honourable High Court of Sindh at Karachi. By way of Order dated 22.02.2007 and Decree dated 22.02.2007 signed on 14.03.2007, the said suit was decreed in favour of the Respondent Bank for Rs.86,333,249/- along with cost of suit of Rs.15,653/-. However, the said decree was further modified vide Order dated 28.03.2007 thereby allowing mortgage decree with regard to immovable property of the Appellant Nos.1 and 7 with agreed mark-up and cost of fund. Being aggrieved of and dis-satisfied with the said Orders and Decree as amended, the Appellant No.1 and its the then Directors have preferred the above appeal.

2. That during pendency of the above appeal, the Appellant No.1 paid a sum of Rs.23,021,956/- (Rupees Twenty Three Million Twenty One Thousand Nine Hundred Fifty Six only) to the Respondent Bank in compliance of the Order dated 19.05.2016 passed by the Appellate Court. Thereafter, the Appellant No.1 vide email dated June 17, 2020 through its Advocate approached the Respondent Bank for an out of Court settlement. In pursuance thereof, the Respondent Bank vide letter dated 24.06.2020 agreed to settle the disputes related to instant proceedings outside the court. In terms whereof, the Appellant No.1 has agreed to pay a total sum of Rs.47,429,265/- (Rupees Forty Seven Million Four Hundred Twenty Nine Thousand Two Hundred Sixty Five only) whereas the Respondent Bank shall waive off remaining liabilities after recovery of Rs.47,429,265/-. The financial relief / waiver allowed under this compromise / out of court settlement to the Appellants who are Judgment Debtors in Execution No.80 of 2007 shall be reported as per regulatory requirements. The Appellant No.1 has made the settlement amount of Rs.47,429,265/- through HBL Banker Cheque No.22772886 dated 25.06.2020 drawn at in favour of the Respondent Bank in full and final settlement of its all liabilities which shall be handed over to the Respondent Bank at the time of recording of this Compromise. The settlement letter of the Respondent Bank dated June 24, 2020 (Annexed as Annexure "A") shall form an integral part of the compromise.

3. That subject to above, the impugned Judgment dated 22.02.2007 and Decree dated 22.02.2007 signed on 14.03.2007 and further modified vide Order dated 28.03.2007 passed in Suit No.B-54 of 2002 stand discharged and satisfied. Accordingly, the Respondent Bank shall file an application under Order 21 Rules 1 & 2 CPC in Execution Application No.80 of 2007 for recording the instant compromise and for the purposes of satisfaction of the Decree simultaneously. Henceforth, the Appellant No.1 and its the then as well as present Directors are relieved and discharged of all and various liabilities in terms of Suit No.B-54 of 2002.

4. That within (15) working days from the date of recording of this compromise application, the Respondent Bank shall issue No Dues Certificate to the Appellant No.1 regarding clearance

of its all and various liabilities which were the subject matter of Suit No. B-54 of 2002. In addition thereto, all original documents as mentioned in Suit No.B-54 of 2002 as well as any other documents deposited with the Respondent Bank by the Appellant No.1 or on its behalf as securities shall be returned to the Appellant No. 1.

5. That the Respondent Bank shall issue a No Objection Certificate, on the basis of which, the Appellant No.1 shall get fresh entries in the record of rights maintained by the City Surveyor Hyderabad and Mukhtiarkar Hyderabad regarding withdrawal /removal of liens, mortgages etc., in respect of those properties.

6. That upon recording of this compromise, the Respondent Bank shall cancel all irrevocable General Power of Attorneys, personal and corporate guarantees of the Appellant No.1 and its all directors and individuals and shall return the same to the Appellant No.1. The Respondent Bank shall do all and various acts and deeds for proper cancellation of these documents before the concerned Sub-Registrar or any other authorities / department as and when so required.

7. That the Respondent Bank shall also issue NO Objection Certificate for vacation of all charges registered with Securities & Exchange Commission of Pakistan in favour of the Respondent bank including charges dated 30.07.1996, 14.01.1998, 04.06.1998 and 03.02.2000.

8. That the signatories to this Compromise Application are fully competent to settle the instant matter in the terms stated hereinabove, which are and shall always be binding upon them, their executors, administrators, legal representatives, successors and assigns.”

The order of 05.8.2020 is modified to the above extent and the instant application stands disposed of.

JUDGE

JUDGE

Gulzar/PA