

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**I.A No. 12 of 2020**

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DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

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Fresh case.

1. For order on CMA No. 311/2020
2. For order on office objection a/w reply as at A.
3. For order on CMA No. 312/2020
4. For hearing of main case.

**10.02.2020**

Mr. Imtiaz Mansoor Solangi, Advocate for the Petitioner.

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**YOUSUF ALI SAYEED, J** – This Appeal under Section 22 of Financial Institution (Recovery of Finances) Ordinance 2001 has been filed against the Order made on 19.12.2019 by the Banking Court No. II at Karachi, dismissing the Appellant’s Application under Section 12 (2) CPC in Execution No. 113 of 2000, impugning the earlier Order made by the executing Court on 20.02.2006 whereby the auction of an immovable property mortgaged by the Appellant was confirmed, with the direction to the Nazir to issue the Sale Certificate in favour of the auction purchaser as well as hand over physical possession of the property accordingly.

2. As it is transpires, the Application under Section 12(2) CPC was apparently filed on 03.03.2018, prior to which the Appellant had already filed an Appeal before this Court against the very order of 20.02.2006, being 1st Appeal No. 11 of 2006, which was dismissed for non-prosecution on 29.08.2014, following which an Application for restoration was filed, but was dismissed on 20.03.2015, with the Civil Petition for Leave to Appeal then preferred before the Hon’ble Supreme Court also in turn being dismissed on 27.08.2015 and the subsequent Review Petition before the Apex Court meeting the same fate.

3. It is in this backdrop that the impugned Order has been made by the executing Court, dismissing the Application under section 12 (2) CPC on the ground that the same is infructuous in view of the aforementioned proceedings.
4. On query posed as to the maintainability of this Appeal and what possible scope could even otherwise exist for the executing Court to have entertained the Application under section 12(2) CPC, learned counsel for the Appellant was not in a position to advance any cogent argument and merely contended that Appeal No. 11 of 2006, as earlier filed, had not been decided on merit.
5. Needless to say, it is that very plea that apparently underpinned the Appellant's case for restoration of the earlier Appeal as well as the subsequent representation made to the Honourable Supreme Court vide the Civil Petition for Leave to Appeal, which evidently did not hold sway for purpose of those proceedings and cannot be agitated at this stage as a ground for maintaining the instant Appeal. Even otherwise, such a plea does not of itself serve to make out any case of misrepresentation or fraud for the purpose of Section 12(2) CPC. Accordingly, we are of the view that the Appeal is misconceived and that no case for interference is made out.
6. These are the reasons for the short Order dictated in open Court on 06.02.2020, whereby the Appeal was dismissed in limine.

**JUDGE**

**JUDGE**