

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

C. P. No. D – 1126 of 2018: M/s A.S Communications & others v. National Bank of Pakistan & another

C. P. No. D – 1127 of 2018: M/s Al-Aman Pharmaceutical Distributors & others v. National Bank of Pakistan & another

C. P. No. D – 1128 of 2018: M/s Al-Hassan & others v. National Bank of Pakistan & another

Date of hearing: **02-11-2021**

Date of Order: **02-11-2021**

Mr. Ashok Kumar K. Jamba, Advocate for the Petitioners.
Mr. Faheem Majeed Memon, Advocate for Respondent No.1

ORDER

Muhammad Junaid Ghaffar, J. – In all these three Petitions, the Petitioners have impugned notices dated 17-05-2018 (**In C. P. No. D-1126 of 2018**) and dated 24-05-2018 (**In C. Ps. No. D-1127 and 1128 of 2018**) issued by the learned Banking Court-II, Sukkur under Order XXI Rule 66, CPC.

2. Learned Counsel for the Petitioners has argued that in Execution proceedings, three separate orders were passed on 26-04-2018, whereby applications under Section 151, CPC, for accepting the mortgage property as surety, were though disposed of; but the judgment debtors were permitted to cite any case law, and thereafter, reliance was placed on the case of Messrs Hotel Kashmir Palace (Pvt.) Ltd. and others v. First Elite Capital Modarba (2002 SCMR 1559), and pursuant to that, their applications for accepting the same mortgaged property as surety were entertained, therefore, there was no occasion for the Banking Court to issue any notice for auction under Order XXI Rule 66, CPC. He has prayed for setting aside the said orders.

3. On the other hand, Respondent's Counsel has opposed these Petitions on the ground of maintainability and for the fact that the compromise decrees are yet to be satisfied.

4. We have heard both the learned Counsel and perused the record.

5. Insofar as the facts of the case are concerned, it appears to be an admitted position that some compromise decrees were passed between the parties and the same were not honoured and the Petitioners defaulted. Thereafter, in Execution proceedings, petitioners approached the Executing Court and showed intention to contest the same and filed applications under section 151 CPC, with a prayer to accept the mortgaged properties as security; however, the said request was turned down and such applications were disposed of. Thereafter, the Petitioners relied upon the case of *Hotel Kashmir Supra*, and the said applications were entertained and on the same date sale proclamation was also issued under Order XXI Rule 66, CPC. The said notice of auction has now been impugned in these petitions. We are at a loss to understand as to the conduct of the Banking Court inasmuch as once after giving detailed reasons, the request of the petitioners was turned down and the applications were disposed of; and again some other applications have been entertained and endorsed with the words “Allowed” on 26-04-2018. On the same date, sale proclamation under Order XXI Rule 66, CPC, has also been issued. This conduct of learned Banking Court has given a cause of action to the Petitioners to come before this Court in these Petitions and have even obtained ad-interim orders. If the intention of the Banking Court was to give another chance to the Petitioners to cite any judgment or precedent, then it ought to have decided the same with a reasoned order; and if not, then should not have entertained further applications nor could have even accepted the same without application of mind.

6. As to reliance on the case of *Hotel Kashmir (Supra)*, it may be observed that the same is not applicable to the present facts, as it is neither a leave granting order (which even otherwise is not a precedent to follow), nor a final order. In fact, it is an ad-interim order, and while issuing notice the proceedings were stayed after recording the contention of the Appellant. This has no binding effect as such.

7. In our considered view, the Petitions are misconceived and is an attempt to delay the Execution proceedings, arising out of a compromise decree, whereas, unfortunately, after obtaining ad-interim orders, the same have not been finally decided. Accordingly, the same are **dismissed** with pending application(s), if any, whereas, the Executing Court shall proceed with the pending Execution application in accordance with law.

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