

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Ex. No.10 of 2011

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For orders on MA No.493/2016.

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08.02.2017

Mr. Behzad Haider, Advocate for Decree Holder.

Mr. Abid Hussain, Advocate for J.D.

Mr. Munir Khan, Advocate for Auction Purchaser.

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Through this application, the Decree Holder seeks order for attachment of Rs.160,000,000/- lying with the Nazir of this Court deposited pursuant to an Order dated 14.10.2016 passed in Special HCA No.23/2016. On 13.01.2017, the Counsel for Decree Holder was put to notice before issuance of any notice as to how the above application is maintainable in this Execution. Today, the learned Counsel contends that this being an executing Court is fully competent to attach the amount lying with the Nazir, notwithstanding the fact that the same was deposited pursuant to an Order passed in Special High Court Appeal.

I have heard the learned Counsel and perused the record. It appears that the present Execution Application arises out of Judgment and Decree for Rs.166.630 Million approximately in Suit No.B-89/2009 and the mode of which the assistance of the Court was required as stated by the Decree Holder in the Execution Application is by sale of mortgaged and hypothecated properties and assets. Pursuant to the decree, an order was passed for selling the mortgaged and hypothecated properties and assets, and the sale was confirmed vide Order dated 08.08.2014, whereafter the Judgment Debtor moved an application for setting aside of the confirmation of sale. Subsequently, vide Order dated 04.10.2016, the said application of Judgment Debtor was dismissed.

Thereafter the Judgment Debtor preferred a Special HCA No.23/2016, wherein, vide Order dated 14.10.2016, the operation of impugned Order dated 04.10.2016 was suspended, upon deposit by the Judgment Debtor an amount of Rs.160 Million with the Nazir of this Court, which now the Decree Holder seeks attachment of. Since the amount has been deposited by the Judgment Debtor in Special High Court Appeal and had volunteered to do so for seeking suspension of the impugned order dated 04.10.2016, I am of the view that this Executing Court cannot order for attachment of the said amount lying with the Nazir of this Court. The Decree Holder is a respondent in the said Appeal and can always make an application before the learned Division Bench in such appeal. Notwithstanding this, the Executing Court has in fact executed the decree by selling the mortgaged and hypothecated properties and has also dismissed the objections of Judgment Debtor in this regard. In the Execution Application, the only mode requested for was by sale of mortgaged and hypothecated properties and assets and the amount being subsequently deposited on the direction and or permission of the Appellate Court, the same cannot be attached by this Court.

The Counsel for Decree Holder was put to notice as to maintainability of this application, whereas, again today he was given a chance to withdraw the same, however, the learned Counsel insisted on proceeding with the same on merits. The application being frivolous and misconceived in nature is hereby dismissed with cost of Rs.10,000/- to be deposited in the account of Sindh High Court Clinic.

J U D G E