

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

IST APPEAL NO.41 OF 2015

Date	Order with signature of Judge
------	-------------------------------

1. For order on office objection.
2. For Katcha peshi
3. For hearing of CMA No.1800/2015

10.08.2015

Mr. Kahleeq Ahmed, Advocate for appellant
Mr. M Saleem Iqbal, Advocate for the respondent

Through instant appeal, the appellant has impugned order dated 01.06.2015 passed in Execution No. Nil of 2008 by the Banking Court No.V, at Karachi, whereby, the second execution application filed by the Bank has been admitted and the application of appellant for execution of redemption deed has been ordered to be kept pending.

Counsel for the appellant submits that after passing of judgment and decree in the instant matter, the judgment debtor had filed an application on 10.12.2013 showing intention to pay the decretal amount to the Decree Holder Bank, and statement dated 2.4.2014, whereby in compliance of judgment and decree a sum of Rs 14,470,371/- had been deposited before the Banking Court, on which the Banking Court had passed order dated 2.4.2014, and on release of the amount to the Bank, and on the consent of the Counsel for the Bank, Execution application had been dismissed as withdrawn. Counsel further submits that when the appellant approached the Banking Court for release of the Mortgage documents of the property, the Respondent Bank has filed another Execution Application and has claimed Cost of funds, on which the impugned order has been passed, which according to the Counsel is not permitted in law as the decree stood satisfied, once the Counsel for the Bank had consented for release of the payment made by the appellant and had withdrawn the Execution Application.

Conversely, Counsel for the respondent Banks submits that since the appellant had played a fraud with the Court in connivance with the then Nazir of Banking Court, an enquiry was ordered in which the said Nazir has been held guilty, as the Decree Holder Bank was not paid the Cost of funds, whereas, the judgment and decree was never challenged or modified, and it still remained unsatisfied in respect of Cost of Funds which has not been paid till date.

After hearing both the Counsel at some length and on perusal of record, we do not find ourselves in agreement with the submissions made by the Counsel for the appellant, as apparently it is an admitted position that Cost of Fund has not

been paid by the appellant, whereas, perusal of Statement dated 2.4.2014, filed by the appellant, reflects that the appellant while making such statement had stated *“that judgment debtor in compliance of judgment and decree is ready to pay the decretal amount of Rs 14,436,931/- & cost of funds Rs. 33,410/- which comes to Rs 14,470,341/- (Fourteen Million four hundred and forty one only)”*. In this statement the appellant has stated that he is willing to pay the decretal amount including Cost of Funds, whereas, the amount of Rs 33,410/- is not Cost of Fund, but Costs of Suit. In this manner, the Banking Court as well as the Counsel for the Decree Holder Bank has been misled. Whereas, an enquiry has also been conducted by the Banking Court through its Registrar, and it has come on record, that the Nazir of the Banking Court as well as the Counsel then appearing for the Bank were apparently involved in the matter and there appears to be some malpractice involved in this regard.

In view of such circumstances, we are of the view that instant appeal is misconceived in law and facts as the appellant despite making a statement to pay the Cost of Funds has admittedly not paid the same and it cannot be said that the decree stood satisfied, whereas, the withdrawal of Execution Application by the Counsel for the Decree Holder Bank also appears to be without any lawful authority and or instructions. Accordingly, instant appeal is hereby dismissed in limine.

JUDGE

JUDGE