

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Execution No. 37 of 2015

---

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

---

For hearing of CMA No.80/2016 and objections filed by Judgment Debtor.

10.3.2016.

Mr. Munir Ahmed Malik Advocate for decree holder  
Ms. Naheed A. Shahid Advocate for judgment debtor

---

Through this application under Section 47 CPC as well as through independent objections under Order 21 Rule 66 CPC, the judgment debtor has prayed for suspension of the auction proceedings which have commenced pursuant to order dated 30.10.2015, which reads as under:

30.10.2015.

Mr. Asif Ali Advocate for decree holder.

Notice has been served on the District Registrar. As far as judgment debtor is concerned, notice has been affixed on the office where judgment debtor is carrying on his business. Despite service judgment debtor has failed to appear and / or otherwise, file objections to the execution application.

Under circumstances, Official Assignee of this Court is appointed as Commissioner to sell the mortgaged properties / assets mentioned in the statement of particulars filed by decree holder in the aforesaid execution, which appears at page No. 11 of the execution application, through public auction in accordance with law and rules. Learned Counsel for the decree holder is directed to file 'original documents' pertaining to the aforesaid properties with the learned Official Assignee before the auction. This exercise be completed within 3 months.

Counsel for judgment debtor ("JD") submits that though a compromise decree was passed in the instant matter, but due to several issues and problems within the family, the J.D. could not satisfy the decree, however, the decree holder was approached and a payment of Rs.2 million has been directly made to the decree holder. Counsel further submits that it was not in the knowledge of J.D. that any Execution Application has been filed, and further submits that the

auction proceedings have been initiated without properly settling the terms of Sale by the Official Assignee which is in violation of Order 21 Rule 66 CPC. She further submits that insofar as the mortgaged property is concerned, it consists of different units and some of them are not owned by the J.D. and therefore, in the given facts the auction proceedings be suspended, whereas, the J.D is making an attempt to privately Sell the property and to satisfy the decree in question. She has also referred to letter dated 16.10.2015 issued by the decree holder whereby NOC has been granted for selling part property in question.

On the other hand, Counsel for decree holder vehemently opposes such application and submits that even after a compromise decree; the JD has not made payment of the agreed / settled amount and has now filed a frivolous application to delay the proceedings.

I have heard both the learned Counsel and perused the record. It is an admitted position as reflected from the order dated 30.10.2015 as reproduced above, that despite service the JD had failed to file any objections in time and upon such failure the Court has appointed the Official Assignee as Commissioner to conduct auction of the mortgaged property in accordance with Rules. Thereafter the JD has filed objections on 19.1.2016 without leave of the Court and subsequently an application under Section 47 CPC on 24.2.2016 and through this order the application as well as objections filed by the JD are being decided.

It is not in dispute that the judgment debtor had obtained loan from the decree holder by mortgaging the property owned by him on the basis of Sale deed dated 24<sup>th</sup> July, 1999 which is in respect of Commercial cum Residential Building known as Muhammad Hussain Qureshi Building consisting on Ground Floor commercial and First, Second and Third Floors residential on Plot bearing No. 4/5 Survey Sheet No. 8, measuring 371 square yards, situated at Hassan Ali Effendi Road within the territorial jurisdiction of Arambagh Police Station, Karachi South. Though the Counsel for the J.D. has made an attempt to clarify that the property in question consists of independent different units and the entire property in question was not mortgaged, however, when confronted as to whether any such objection was raised in the Suit proceedings or thereafter, the Counsel has frankly conceded in the negative. Therefore, any such objection in respect of mortgage of the property cannot be entertained by this Court as it is settled law that the Executing Court cannot go beyond the decree. It is also a matter of record that neither obtaining of loan has

been denied, nor the return of the same, whereas, even otherwise J.D. has entered into a compromise with the Bank and thereafter a judgment and decree has been passed on the basis of such compromise. However, the J.D. has failed to fulfill the conditionalities incorporated in the compromise and has defaulted once again. In the circumstances, it does not lie with the J.D. to come before this Court and raise frivolous objections in the Execution proceedings wherein even otherwise the J.D. has failed to file its objections within time and on 30.10.2015 the Court after proper service on judgment debtor and his failure to file objections had directed the Official Assignee to act as Commissioner to sell the mortgaged property. It may also be noted that instant proceedings arise out of Banking Suit, whereas, the decree in question is a money decree, and therefore, before entertaining any objection(s) on behalf of the JD, it is required that the JD shall deposit the decretal amount or furnish surety / security of such amount as provided in Order 21 Rule 23A CPC. [**See Happy Family Associate Vs. Pakistan International Trading Company (PLD 2006 SC 226) Allied Bank of Pakistan Ltd., Vs. Fateh Textile Mills Limited (PLD 2007 Karachi 397) and National Bank of Pakistan Vs. Sultan Ali Lakhani (2015 CLC 1278)**].

Further it is not the case of the JD that decree in question is a nullity in the eyes of law or it has been passed by a Court having no jurisdiction or for that matter the decree has been passed in violation of any of the provisions of law. In fact these are the limited questions on which an executing Court can assume jurisdiction under Section 47 CPC. [**See Habib Bank Limited Vs. Mst. Parveen Qasim Jan (2014 SCMR 322)**]. In the instant matter the merits of the decree in question is not being disputed but the manner in which it is being executed is perhaps the cause of concern for the JD. By raising objection in respect of mortgage of property and its independent status of units as against the entire property as a whole, what the JD is trying is to re-open the matter in which the JD has himself obtained a consent decree. Such decree is in fact also beneficial to the JD including the benefit in respect of waiver in cost of funds and mark up etc., therefore, even otherwise the JD is precluded from challenging the same in this manner. However, it is unfortunate that at the same time the JD intends to thwart the Execution proceedings by resisting the sale of the mortgage property. It may further be observed that though the learned Counsel for JD has contended that subsequent to passing of decree, the Bank has issued

NOC for selling part of the mortgage property privately, however, such permission by the DH would not ipso facto bar this Court from proceeding further with the auction of the property already ordered by the Court on 30.10.2015 when the JD had failed to file objections and contest this Execution application despite service, as the Executing Court is always competent to look into events subsequent to passing of decree and can also give effect to any such arrangement / agreement reached between the parties as well adjustment of any payments made thereto in view of Order 21 Rule 2 CPC, but that could only be done at the final execution stage and subject to admission on the part of the decree holder or if the JD is able to bring on record such evidence and arrangement. Unfortunately such stage has not yet reached and the JD has made an effort to stop the auction proceedings. However, at the cost of repetition I may say that this does not entitle the JD to seek suspension of Execution proceedings. Moreover, in terms of Section 47 CPC, the Court is only empowered to decide the objections in the light of the terms and conditions of decree and not otherwise, i.e. that the Court must not deviate from real controversy between the parties while keeping in view the decree in question as the Executing Court can only determine questions relating to execution, discharge and satisfaction of decree. In this matter the plea so raised at this moment of time is beyond the scope of Section 47 CPC, hence cannot be entertained.

In view of hereinabove facts and circumstances of the case, I am of the view that listed applications as well as objections raised separately are misconceived and appear to be an attempt to disturb the auction proceedings and cause delay in the timely execution of decree. Accordingly, the application is dismissed, whereas, the objections are overruled.

J U D G E