

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana**

First Appeal No.64 of 2023

Abdu Hameed through his legal heirs

Versus

Bank Islami Pakistan Limited & others

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

1. For orders on CMA 4416/23
2. For orders on CMA 4417/23
3. For orders on office objection/reply 'A'
4. For orders on CMA 3452/23
5. For hearing of main case
6. For orders on CMA 3453/23

Dated: 18.10.2023

Mr. M. Ashraf Ali Shah for appellants.

-.-.-

Muhammad Shafi Siddiqui, J. - Aggrieved of the judgment and decree of the Banking Court, an application under section 12(2) CPC was filed by the appellant/applicant on the count that the decree was obtained by misrepresentation and fraud which application was dismissed via impugned order hence this appeal is filed.

Heard the counsel.

In the Banking jurisdiction, respondent No.1 filed suit against one of the son Naveed Hameed and his wife Sana Naveed Hameed. The suit attempted to be contested by the above borrowers/defendants however the leave application was dismissed and consequently banking Court decreed the suit of respondent No.1 bearing No.200 of 2022.

It is claimed in the application under section 12(2) CPC that on receipt of notice of execution, they (appellants) have filed an

application under section 12(2) CPC disclosing that they were not made party to the proceedings though they were in possession of the property. Appellants and applicants were other sons and daughters of deceased Abdul Hameed. They however have not addressed anything about the title having been passed on to respondent No.2 and that the respondent No.2 created an equitable mortgage in respect of property i.e. House C-200, Block-6, KDA Scheme, Gulshan-e-Iqbal, Karachi, in terms of Section 58(f) of Transfer of Property Act by depositing title deed of the mortgaged property with respondent No.1. There is not an iota of evidence, either in shape of a statement/affidavit or otherwise disputing the title of respondent No.2 on the strength of some reason or logic, who availed finances from respondent No.1, as Muskan - Islamic Housing Finance Facility in the sum of Rs.25 Million.

The application under section 12(2) CPC, has summarily disclosed that the respondents No.2 and 3 have committed fraud, but without disclosing actual fraud allegedly committed. It is not disputed that the title at the time of availing finances was with the private respondents No.2 and 3 and in this regard a suit bearing No.1447 of 2023 is pending adjudication however they (appellants) are unable to reconcile and articulate the purported fraud with regard to the banking Court's jurisdiction availed by respondent No.1 for recovery of its claim against private respondents i.e. borrower/guarantor.

The property was originally in the name of appellant Late Abdul Hameed in 2011 and remained as such for last many years as per record of KDA whereas it was transferred in the names of judgment debtor by a registered transfer deed executed before the Sub-Registrar in the year 2016 whereafter it was mortgaged in favour of respondent No.1 and finances were extended to the private respondents after execution of necessary documents. The appellant's legal heirs have not disclosed

anywhere in the affidavit as to the title documents, which were mortgage with the bank/respondent No.1. It appears to be a futile and collusive attempt of the appellants to cause hindrance in recovery process/proceeding of the finances extended by respondent No.1 to respondents No.2 and 3 as otherwise no grounds are available to interfere with the impugned judgment in terms of Section 12(2) CPC.

In view of above this First Appeal against impugned order passed on application under section 12(2) CPC merits no consideration and is accordingly dismissed along with listed applications.

Judge

Judge