

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
First Appeal No.68 of 2021

Date	Order with Signature of Judge(s)
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1. For Orders on CMA No.2460/2023 (u/O 47 R 1 CPC)
2. For Orders on Office Objection / reply A
3. For Hearing of Main Case

30.10.2023

Mr. Khaleeq Ahmed, Advocate for Appellant
Ms. Afsheen Aman & Mr. Faraz Mahar Advocates for Respondent

1. CMA No.2460/2023: Through this instant application (filed under Order 47 rule 1 read with sections 114 & 151 CPC), the Appellant seeks review/recall of order dated 18.05.2023 (**Impugned Order**), whereby this Court had ordered that:

18-5-2023

*“ Counsel for the appellant called absent. Ms. Afsheen Aman, counsel representing the bank states that the decretal amount in the instant matter has not been deposited. Seven days’ time is granted to the appellant to deposit the decretal amount, otherwise the matter would be dismissed on account of non-prosecution.
Adjourned to a date in office.”*

Learned Counsel for Appellant submits that this Court’s record would affirm that he had been present on every single date of hearing barring one viz. the day the Impugned Order was passed and that too for the reason he was busy before another bench. He states that on learning about the Impugned Order, he promptly on 23.5.2023 filed the instant application for review/recall of the Impugned Order.

He avers that the Impugned Order (for deposit of decretal amount) has been passed in violation of section 22(3) of FIO and could not have been passed since the essential pre-requisites for its passing laid down in section 22(3) were not met and/or did not exist on 18.5.2023 (i.e. the day the Impugned Order was passed) viz. such an order could only be passed by the High Court at the stage of admission of the appeal, through a reasoned order and as to the security to be furnished by Appellant. As per Counsel, to begin with, this Court vide order dated 29.11.2021 had only issued pre-admission notice and, this Appeal has not been admitted to-date.

He further states that the Impugned Order could not have been passed even under the proviso of section 22(3) of FIO since it stipulated that no stay shall

be granted unless the Appellant deposits in cash the decretal amount inclusive of costs or furnishes equivalent security at the discretion of the High Court. Counsel contends that the Appellant had not sought any stay order from this Court at any point of time and in fact the Appellant to-date has not even filed any stay application in the instant Appeal. Counsel argues that due to his absence proper assistance was not provided to this Court by the Respondent and the Impugned Order merits to be reviewed/recalled.

In reply, the learned Counsel for the Respondent Bank (HBL) contended that section 27 read with section 22(6) of FIO specifically barred appeal, review or revision against an order of the Banking Court. She states that as the Impugned Order was an order passed by this Court in its capacity as Banking Court, hence, this Court cannot review its own order (i.e. the Impugned Order).

We have examined the relevant provisions of the FIO relied upon by both Counsel. A perusal of section 22(3) of FIO indeed suggests that under this provision, the Court can consider an order for submitting security at the stage of admitting the Appeal. Likewise, under the proviso of section 22(3), a direction for deposit of decretal amount is typically issued in the event a stay order is granted. And even assuming the case fell under section 22(3), this Court nonetheless had to pass a reasoned order. None of these aforesaid circumstances/pre-conditions exist in the present case to attract the consequences as prescribed therein – either on the day of the Impugned Order or even today for that matter. Reliance is placed on **M. A. Kareem Iqbal v. Presiding Officer, Banking Court** (2003 CLD 1447), a Division Bench judgment of this Court which holds:

“ Section 22 of the Ordinance of 2001 deals with the appeal against the judgment, decree, sentence or final order passed by a Banking Court, which lies to this Court. Subsection (3) of section 22 thereof requires this Court to pass a reasoned order at the stage of admission of the appeal as to whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case and as to the security to be furnished by the appellant. The language of section 22(3) of the Ordinance of 2001 is altogether different from language of section 12 of the repealed Ordinance of 1979 and section 9 of the repealed Ordinance of 1984, wherein specific condition for deposit of the amount claimed or due/decretal amount was provided for admission of the appeal. Thus, it is to be observed that the pre-condition provided in section 22(3) of the Ordinance of 2001 for admission of the appeal is much easier and softer than the provisions contained in section 12 of the repealed Ordinance of 1979 and section 9 of repealed Ordinance of 1984.”

Turning to the arguments of learned Counsel for Respondent, her submissions are clearly misconceived. On a plain reading, it is apparent that the bar contained, if any, in section 27 of FIO (which is subject to the provision of

section 22) shall apply to Courts and authorities other than the Banking Courts. Reference in this regard is made to **Askari Bank Limited v. DCD Services Limited** (2016 CLD 449). In the context of FIO, the “Banking Court” is defined in section 2(b) of FIO and means in respect of a case (i) in which the claim does not exceed Rs.100 million (as in the present case), and for the trial of offences under the FIO the court established under section 5 of the FIO and (ii) in respect of any other case, the High Court. Whereas, this is an Appellate Court exercising jurisdiction when seized of an appeal under section 22 of FIO and not of a suit under section 9. Merely because this Court i.e. High Court on the Original Side also exercises jurisdiction of a Banking Court, it does not mean that the Appellate Court when seized of an appeal becomes a Banking Court.

Under Order 47 read with section 114 CPC, power of review can be exercised for any sufficient reason which is wide enough to include a misconception of fact or law. A court is in fact obliged to correct itself and undo the wrong done to a party by the act of court through a review/recall of its own order which suffers from an obvious error and is also causing miscarriage of justice.

The fact that neither the instant Appeal has been admitted nor any stay order had been sought nor passed, passing of the Impugned Order due to an incorrect exposition of law (viz. section 22(3) of FIO) is untenable and unsustainable. We, therefore allow this review application (CMA No.2460/2023) and recall the impugned Order dated 18.05.2023.

2 &3. Adjourned.

JUDGE

ACTING CHIEF JUSTICE

Karachi
Dated: 30th October, 2023