

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Ist Appeal No. D – 04 of 2023

(Babar Hussain versus M/s ZTBL & others)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **12.12.2023**

Date of decision : **12.12.2023**

Mr. Ashok Kumar K. Jamba, Advocate for appellant.

Mr. Fareed Ahmed Soomro, Advocate for respondent-Bank, who has filed a statement along with a document.

Mr. Dareshani Ali Haider 'Ada', Deputy Attorney General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – Appellant, against whom the judgment and decree in the sum of Rs.8,56,055/- (*Rupees eight lac fifty six thousand and fifty five*) were passed by the Banking Court-II, Sukkur in Suit No.457 of 2019, has filed this appeal against the order dated 11.11.2022, whereby in execution, warrant of arrest has been issued against him for effecting recovery of the decretal amount. His grievance is that this warrant of arrest was issued directly without serving upon him a show-cause notice in terms of Section 51 read with Order XXI Rule 37 CPC.

2. His Counsel submits that he has already filed an application U/S 12(2) CPC before the Banking Court on the ground that the judgment and decree were passed *ex parte* against him without ensuring valid service upon him, and if this warrant of arrest is set aside and the Executing Court is directed to proceed with the matter in accordance with law, he would be satisfied, and this appeal can be disposed of in the said terms. He has relied upon the case reported as *Messrs Azhar & Co. and others versus national Bank of Pakistan (2018 CLD 830)*.

3. Learned Counsel appearing for respondent-Bank and learned Deputy Attorney General have recorded no objection.

4. Accordingly, in view of ratio laid down in the case of Messrs Azhar (supra), this appeal is **allowed** in the terms whereby the warrant of arrest

issued against the appellant is set aside. The Executing Court, however, is directed to issue first a show-cause notice against the appellant and then pass orders, if appellant fails to comply with the judgment and decree and subject to a decision on application U/S 12(2) CPC, in accordance with law.

The appeal is accordingly **disposed of** along with pending application(s), if any, in above terms.

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Abdul Basit