

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal

First Appeal No. 02 of 2020

Mst. Mehar-un-Nissa & others
Versus
Faysal Bank Ltd. & another

Date of Hearing: 22.01.2024

Appellant: Through Mr. Muhammad Shafiq Malik
Advocate.

Respondent: None present.

Auction purchaser: Through Mr. Badar Alam along with Mr.
Kashif Badar Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J. - This appeal though impugns an order of 18.12.2019 passed on application under section 12(2) CPC and judgment dated 07.10.2017 & decree dated 10.10.2017 but does not impugn an order which was passed under Order-XXI Rule 90 CPC, which was disposed off along with several other applications by order of the same date; hence in order to avoid confusion, it may be clarified that the impugned order of 18.12.2019, which is impugned in this appeal, was in fact an order passed under Section 12(2) CPC and not under Order-XXI Rule-90 CPC, which was separately disposed off and has attained finality as far as grounds raised therein are concerned.

We have heard the learned counsel and perused material available on record.

Primarily and the only grievance of the appellant in the application preferred under section 12(2) CPC, which was dismissed via impugned order, is that the appellants were not served through Bailiff.

Issuance of notices/process through bailiff is not denied but what was read before the Court is bailiff's report making an attempt to serve. Though an attempt was made to effect service upon to defendants, the bailiff initially has not given the report though in later report signatures of the defendants/judgment debtor/appellants were obtained. Notwithstanding such refusal, as claimed, service through other modes not denied.

Without prejudice to the above, the Financial Institutions (Recovery of Finances) Ordinance, 2001 requires the defendants to be served through any of the modes prescribed. It is not denied that defendants/appellants were otherwise served under the law by way of publication and thus the plea taken by the appellants that they were not served, does not constitute fraud. Even otherwise, learned counsel for appellants has not been able to agitate any argument that could be termed as fraud and misrepresentation to make the case of appellants within the frame of Section 12(2) CPC.

Instant appeal as such is misconceived and is accordingly dismissed along with listed applications.

Dated: 22.01.2024

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