

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Ist Appeal No. 120 of 2016
(Faysal Bank Limited Versus Masood Asghar & another)

Dated	Order with signature of Judge
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Hearing Case (Priority)

1. For hearing of Main Case
2. For hearing of CMA No. 4334/2016 (stay)

Dated 30.01.2024

Mr. Shahan Karimi, Advocate for the Appellant
Ms. Maryam Riaz Advocate for the Respondents

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Muhammad Shafi Siddiqui, J.- This appeal was filed against an order dated 04.11.2016 whereby an execution application preferred by the successor bank was dismissed as being barred by time.

2. Brief facts of the case are that a banking suit was filed by M/s. Prime Commercial Bank Limited, predecessor of the Appellant, as Suit No. 9 of 2005 against the Respondents/Judgment-Debtors/Defendants on 26.02.2005. The suit was decreed on 15.04.2006 in favour of the predecessor of the Appellant. Thereafter the successor of the Decree Holder i.e. M/s. Faysal Bank Limited filed an execution application against the Judgment-Debtors on 09.11.2015, after lapse of more than 9 years while appeal was pending. The Banking Court considered the execution application as barred by time by applying the provisions of Section 24 of the Financial Institutions (Recovery of Finances) Ordinance, 2001.

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

4. Financial Institutions (Recovery of Finances) Ordinance, 2001 (“FIO 2001”) is a special law and covers all proceedings upto execution. In the previous law that is Act of 1997, it enabled the Court to convert the proceedings into execution application on preferring an application whereas the frame of instant law is different as can be seen in terms of Section 19 of the FIO 2001. It provides that upon announcement of Judgment and decree the suit shall automatically convert into execution application. Thus no sooner the Judgment and Decree is passed the proceedings stand converted into execution application and the act does not provide a way to file a fresh execution application, as inadvertently did by the appellant. At the most, since an appeal was pending before this Court and the machinery of execution was not triggered, the application that was inadvertently moved as an execution application could at the most be considered for triggering machinery of the Banking Court where the suit was decreed and converted into execution application.

5. Surprisingly, the Banking Court did not discuss Section 19 of the FIO 2001, which is described above. Section 24 of the FIO 2001 thus cannot be conceived to have its application on the execution proceedings as the suit proceedings automatically stands converted into execution leaving no room for limitation. Since the FIO 2001 does not recognize the scheme of filing fresh execution application, thus we deem it appropriate to allow this appeal and refer the matter to the Banking Court to club the execution application with suit which is deemed to be converted into execution. The appeal is allowed in the above terms.

JUDGE

JUDGE