

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. D-4340 of 2016
(Mst. Mehrun-un-Nisa Versus Mohammad Saleem & 6 others)

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

Priority

1. For hearing of Misc. No. 7568/2023
2. For hearing of Misc. No. 29561/2021
3. For hearing of Misc. No. 29562/2021
4. For hearing of Main Case

Dated 30.01.2024

Ms. Saify Ali Khan, Advocate for the Petitioner
Mr. Muhammad Azhar Faridi along with Mr. Javed Ali, Advocate
for the Respondent No.1
Mr. Fahim Iqbal Advocate for the Respondent No.3
Syed Aijaz Hussain Shirazi Advocate for the Respondent No4
Barrister Sandeep Malani, Assistant Advocate General Sindh

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Muhammad Shafi Siddiqui, J.- A suit for Declaration, Injunction, and Cancellation was filed in respect of a mortgaged property. While suit was pending and proceeding some injunctive orders were passed by the trial Court, however, the Bank preferred a Revision Application wherein plaint was rejected under Order VII Rule 11 C.P.C. As against such rejection this petition was preferred and we heard counsel.

2. Notwithstanding the above facts, it seems that apparently property/plot was mortgaged with the bank. Petitioner claimed to be a sub-lessee of a unit/flat constructed on the property, mortgaged with bank, however, the fact that equitable and registered mortgaged documents are available on record on the strength of which the decree was passed by the Banking Court, was not denied. The Petitioner is one of the individual who

claims the property by virtue of a sub-lease of a unit in respect of a plot which was/is mortgaged against which loan amount is being recovered.

3. It seems that such nature of dispute as claimed by Petitioner is covered in terms of Section 15 (12) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“FIO 2001”). It is conceded that before the Banking Court an application is already pending under Order XXI Rule 58 C.P.C. These proceedings of civil court, could hardly take over the proceedings governed by the special law before the Banking Court and for this purpose subsection 12 of Section 15 of the FIO 2001 enabled the Petitioner to raise all disputes in relation to mortgaged property under one forum.

4. Since the proceedings triggered by filing a suit is ended up in the Revisional Court which passed order rejecting the plaint, the Petitioner may pursue application pending before Banking Court on the strength of pleadings.

5. Petition along with listed applications stands disposed of in above terms.

JUDGE

JUDGE

Amjad PS