

IN THE HIGH COURT OF SINDH AT KARACHI

**Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial**

Special High Court Appeal
Nos. 153 of 2022 & 158 of 2023

Fateh Textile Mills Ltd. & others
Versus
Allied Bank of Pakistan & another

Date of Hearing: 31.01.2024

Appellants: Through Mr. S. Ahsan Imam Rizvi along with M/s Bahadur Khosa and Assadullah Shar Advocates and Mr. Shahabuddin Kalwar holding brief for Mr. M. Saleem Mangrio Advocate.

Respondent: Through Mr. Raashid Anwar along with Syed Mustafa Ali Advocates along with Syed Ahsan Rahman, Law Officer Allied Bank Limited.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These two appeals filed by the borrowers are arising out of interlinked orders dated 28.02.2022 and 16.03.2023 passed in Execution Application No.69 of 2004, which is pending for execution/satisfaction of a decree of banking Court passed in a banking suit.

2. In brief the facts are that an execution application was filed for the attachment and recovery of decretal amount in Suit No.B-32 of 2002. In the earlier appeal i.e. High Court Appeal No.153 of 2022, in pursuance of the Nazir report dated 24.02.2016 a bid of Rs.431.5 Million, as offered by the bank itself, was accepted as being the sole bid for the purchase of three properties, referred in the Nazir report, towards partial satisfaction of the decretal amount vide order dated 28.02.2022, impugned in earlier HCA No.153 of 2022. Nazir's above report dated 24.02.2016 was filed in pursuance of order of learned Single Judge dated

24.11.2015, which report disclose evaluation of three properties, as disclosed in paragraph 2(i) to 2(iii) of the report. As the luck would have it, the report remained pending for consideration for a number of years. The report seeks acceptance of the offer/bid of the bank itself, which was accepted, as referred above, after six years.

3. It appears that the three properties were somewhere evaluated in the year 2015/2016 and the evaluation with reference to the bid remained pending for consideration and eventually was accepted on 28.02.2022 in the shape of impugned order after six years. The said impugned order is only a short order for the reasons to be recorded later but somehow the reasons have not been assigned/recorded despite lapse of two years, as informed by counsel, while this order is being dictated.

4. While the earlier appeal, referred above, was pending, another order was passed in the same execution application on 16.03.2023, which is impugned in connected subsequent appeal i.e. High Court Appeal No.158 of 2023 passed on Nazir's Reference dated 22.04.2022. Through this impugned order permission was granted to the Nazir to proceed further and conclude the sale by issuing sale certificates and complete other formalities. Nazir's Reference was accordingly disposed of. Nazir fee was granted as per rules subject to the approval of Hon'ble Chief Justice. However, in this connected appeal an interim order was granted on 06.04.2023 before the sale certificate could have been issued.

5. We have heard the learned counsel appearing for the parties and perused material available on record.

6. Nazir's report of 24.02.2016 (presented on 01.03.2016), in compliance of order dated 24.11.2015, which evaluated three properties and the bid of the bank was perhaps placed before the Court for the first time on 28.04.2016 when the following order was passed:

“Nazir’s report shows that three properties have been auctioned but yet decree is to be satisfied.

Counsel for the J.Ds seeks time to file objection. Nazir shall proceed further as per sale proclamation already issued. Nazir would be at liberty to receive the claim without prejudice to right of any party.

To come up on 11.05.2016.”

7. In a High Court Appeal bearing No.14 of 2016 the Bench observed as under:

“16.11.2016

*Mr. Arshad M. Tayebaly, Advocate for the Appellants.
Syed Mustafa Ali, Advocate for the respondent.*

After hearing both the learned counsel for the parties at some length, and by consent of the learned counsel for the Parties, instant Spl-High Court Appeal is being disposed of with the clarification that vide order dated 28.04.2016, the learned Single Judge has not finally decided the fate of Nazir’s report in respect of three subject properties, whereas, the appellants have been given an opportunity to file objections on such Nazir’s report. the appellant may file objections, if any, within a period of one week from the date of this order, with advance copy to the learned counsel for the respondents, where after, the learned Single Judge may decide the fate of auction and the Nazir’s report in accordance with law, preferably, within a period of another two weeks, after hearing both the learned counsel for the parties.

It is further clarified that future course of execution of the decree shall be determined by the learned Single Judge, keeping in view of order, which may be passed on the Nazir’s report by also examining the objections that may be filed by the appellants, in accordance with the law.

Instant spl. High Court Appeal stands disposed of in the above terms alongwith listed application.”

8. Record reflects that the objections were heard on 01.02.2018, however, the matter could not be decided up until 31.01.2019 and was again fixed for re-hearing. The order dated 11.12.2021 shows that it was heard on 4th September, 2019 and orders not passed; and was again fixed on 13.12.2021. It was yet again re-heard on 20.01.2021 and was finally reserved. Finally on 28.02.2022 the following short order was passed: -

“For the reasons to be recorded later on, Nazir report dated 24.02.2016 is taken on record by accepting bid of Rs.431.5 million offered by the decree holder/bank for the purchase of three properties referred to in the Nazir report for the satisfaction of the decretal amount and CMA No.280/2019 is dismissed.”

9. The record of execution application is also perused which shows that despite the fact that the reasons of above short were yet to be delivered, the file was perhaps sent to the office and it was fixed for hearing on several dates before different single benches of this court and lastly it was fixed on 13.12.2023.

10. It seems that while the claim of the bank is being multiplied continuously with the passage of time, whereas, the value of the property as determined in the year 2016 was fixed to be set off against current exaggerated claim of Bank. This is no justification. No one should suffer on account of court’s error whether it is a borrower or the bank. If at all the claim is to be set off, it should be set off in terms of the present market value and not on the basis of value of 2016 against claim of bank, as exist now. Six years have been passed and the properties must have been multiplied manifolds, which was not accounted.”

11. Today Mr. Raashid Anwar has appeared along with Mr. S. Mustafa Ali Advocate and submitted that the bank has been pursuing their matter for recovery of outstanding since almost 21 years and now if value of the properties as of today is different than what was evaluated by the Nazir in the year 2015/2016, is of no consequence. The argument of Mr. Raashid Anwar is not at all convincing. It cannot be set as a precedent that Nazir Reference for the acceptance of bid based on the value of the property/properties could be confirmed after a delay of more than six years or so against the current claim of bank, which is being multiplied under a contract.

12. Mr. S. Ahsan Imam Rizvi and Mr. Raashid Anwar both however have not objected to the disposal of these appeals in consideration of above facts and circumstances, notwithstanding the fact that the reasons of short order have not been assigned/recorded as yet.

13. Needless to mention that against the acceptance of an offer, subject to reasons likely to be provided, the objections could have been filed within 30 days of such acceptance however the time has not yet matured as the reasons have not been assigned/recorded and despite this the learned Single Judge while passing the impugned order in the subsequent appeal has also not cared to see it carefully if such time of filing objections between the acceptance and confirmation of the bid was provided in terms of order 21 rule 89 and 90 CPC, which has frustrated the entire proceeding of auction. We have held on numerous occasions that this period of 30 days, as provided in terms of Rules 347 to 351 of Sindh Chief Court Rules and Order XXI Rule 84 to 92 CPC could not be taken away without there being justification in that regard.

14. In the case of MFMY Industries¹ 1550 relevant pages 1566 and 1567 as follows:-

“If the Judges cannot compose and deliver the judgments within the above (reasonable) time, then they for sufficient reasons, to be recorded (by them) should set out the case for re-hearing. However, because of the high status of the judges of the High Courts, it is not expected that the learned Judges shall fix the matters for rehearing in routine just to cover up the lapse in composing the judgment within 90 days, rather I am sure that it shall definitely be for genuine reasons, reflected in the order of rehearing as to why the judgment could not be written and pronounced. However, pronouncement of judgment by the High Court after a lapse of time period of 90 days if the matter for any reason is not put for any rehearing per se shall not be invalid, though it may be frowned upon. But again it does not mean that learned High Court has indefinite time to pronounce the judgment after hearing of the matter. In my opinion, the maximum time within

¹ 2015 SCMR 1550 (relevant pages 1566 & 1567) (MFMY Industries v. Federation of Pakistan)

which the judgment should come is 120 days. Otherwise the judgment shall stand weakened in quality and efficiency, if not invalid altogether and therefore when challenged before this Court, the Court shall decide whether it should sustain or set aside on the simple and short ground of inordinate delay.

....

9. *Furthermore, in the context of the judgments in general and in particular to be delivered by the superior courts, it is my firm and well thought-out view that if there is an inordinate delay in pronouncement of judgment after hearing of the matter, especially on account of lapse of considerable and reasonable time, such as six months and beyond, the Judges shall not be in a position to exactly recall and record with precision and exactitude as to what propositions of law and facts were argued before them. This shall have reflection upon the rule of audi alteram partem, which is a fundamental and salutary rule of justice and postulates that if someone has been denied appropriate opportunity of hearing in a case, any verdict/decision given against such person/party shall not be laudable. This rule is quite known and established in our jurisprudence (note: I do not find it expedient to unnecessarily reiterate the importance of this rule here) and the legal consequences qua the violation thereof by a Court are also well established.”*

15. In the case of Commissioner Inland Revenue² the Bench of Supreme Court reiterated and explained the above principle in paragraph 14, 15 and 16.

16. In the instant case however though a short order was announced but till date the reasons have not been assigned/recorded and both the appellants and respondents, notwithstanding above, are inclined to have a decision on these appeals based on their own arguments, one way or the other on merit.

17. Similarly, departure from waiting for reasons is summarized in the case of Saif-ur-Rehman³.

18. We in view of above therefore are of the view that the procedure, as undertaken by learned Single Judge while accepting the bid on

² PLD 2023 SC 241 (Commissioner Inland Revenue v. Sui Northern Gas Pipeline Ltd.)

³ 2022 CLD 413.

28.02.2022, based on the evaluation report of the properties of 2015/2016, is unlawful and inequitable as value of the properties at which the auction held in 2022 was of 2015/2016 whereas the claim of the bank is being multiplied regularly. Additionally the order of acceptance dated 28.02.2022, which in fact is a short order, does not provide time for raising the objections in terms of Order XXI Rule 89 and 90 CPC and Rules 347 to 351 of Sindh Chief Court Rules, as the case may be, as before such reasons could have been provided, the learned Single Judge via order impugned in subsequent appeal, on a fresh Reference of the Nazir ordered issuance of sale certificate; permission was granted to the Nazir to further conclude sale by issuing sale certificate etc.

19. Upshot of above discussion is that the impugned orders in both the appeals are set aside and in such a situation we further deem it appropriate to issue directions that the property/properties, as mortgaged/attached, be put to auction afresh in terms of Order XXI CPC and after complying the requisite legal formalities of issuance of sale proclamation in terms of order XXI Rule 66. The auction proceedings be concluded at the earliest, preferably in a period of two months from the date of this order.

20. Appeals stands allowed in the above terms.

Dated:

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