

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-648 of 2024

Date

Order with signature of Judge

FRESH CASE:

1. For order on CMA No.3127/2024 (Urgent).
 2. For order on CMA No.3128/2024 (Exemption).
 3. For order on CMA No.3129/2024 (Stay).
 4. For hearing of main case.
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Dated: 7th February 2024

Mr. Haider Waheed alongwith Mr. Muhammad Asad
Ashfaq Tola, Advocate for Petitioner.

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1. Urgency granted.
2. Exemption granted subject to all just exceptions.

3&4. Through instant Constitutional Petition, the petitioner has challenged the vires of Section 16(3)(a) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, whereby, according to learned counsel for the petitioner, respondent No.2/Bank has been authorized to directly recover the charged / pledged i.e. shares, by selling movable properties, without any notice or providing of any opportunity of being heard to the customer, which is violative of Articles 2A, 4, 10A, 24 and 25 of the Constitution of Pakistan, principles of natural justice as well as in violation of the judgment of the Hon'ble Supreme Court of Pakistan in the case of **NATIONAL BANK OF PAKISTAN and others v. SAF TEXTILE MILLS LTD. and another [PLD 2014 SUPREME COURT 283]**, whereby, similar provisions of Section 15 of Financial Institutions (Recovery of Finances) Ordinance, 2001, were declared to be ultra vires. According to learned counsel for the petitioner, under similar circumstances the vires of the provisions of reenacted Section 15 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 have been challenged in C.P. Nos.D-57 & 58 of 2024, wherein, while issuing notices to the respondents vide order dated 23.01.2024 respondents have been restrained from finalizing the proceedings pursuant to the impugned notice, including sale of mortgaged property, if any. Per learned counsel, in the instant case respondent No.2/Bank have already sold out some of pledged shares of the petitioner and intend to sell

remaining as well by resorting to the aforesaid provisions of section 16(3)(a) without notice, whereas, respondent No.2/bank also filed a suit for the purposes of recovery in terms of section 9, ibid. Per learned counsel, such recourse by the respondent is otherwise based on malafide, as according to learned counsel, once the respondent No.2/Bank have preferred to file a suit for the purposes of recovery after determination of the liability in accordance with law, resorting to sell pledged shares is otherwise arbitrary, illegal and without lawful authority. It has been prayed that respondent No.2/bank may be restrained from proceeding further to sell out the pledged share till further orders by this Court and the office may be directed to fix instant petition alongwith aforesaid petitions. In support of his contention, learned counsel for the petitioner has placed on record a copy of order dated 23.01.2024 passed by this Court in the aforesaid petitions.

Let pre-admission notice be issued to the respondents as well as to the Attorney General for Pakistan in terms of Order XXVII-A, C.P.C, to be served through first three modes, for **28.02.2024**, when instant petition may be taken up alongwith aforesaid petitions, whereas, comments/reply, if any, shall be filed with advance copy to the learned counsel for petitioner. In the meanwhile, respondent No.2/bank may not sell out the pledged shares / moveable properties of the petitioner while resorting to the aforesaid provisions of law.

CHIEF JUSTICE

JUDGE

Farhan/PS
