

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**First Appeal No.127 of 2011**

Mst. Khursheed Begum and others  
Versus  
NIB Bank Limited and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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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.2446/2011 (stay).

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**Dated 14.02.2024**

Mr. Khaleeq Ahmed, Advocate for Appellants.

Mr. Syed Daanish Ghazi, Advocate for Respondent No.1.

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**Muhammad Shafi Siddiqui, J.-** This appeal is arising out of a judgment passed in banking suit No.167/2010.

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

3. It is appellant's case that their liability is limited only to the extent of a cap provided by the registered mortgage deed as available at page-75 and nothing more could be recovered under the registered instrument. Learned counsel for the appellant submits that there is no document attached with the plaint to show that the deposit of title in fact is for creating equitable mortgage under Section-58 of the Contract Act.

4. It appears that the language of Section-58(f) was not understood properly by the learned counsel for the appellant. There was no requirement of any attached document apart from a fact that title was deposited for securing the loan extended to borrower. The deposit of title itself is sufficient to reveal the intent

of an applicant depositing title document with the mortgagee. There is but just one intention that it is to secure the outstanding loan of the borrower. Mortgage by deposit of title deed gives his/her intent that where a title document in relation to an immoveable property is deposited, the intent is to provide a security in relation to a transaction between main borrower and Bank/mortgagee.

5. We are not impressed by the arguments of learned counsel for the appellants that the amount to the extent of cap provided under registered deed could only be recovered and nothing more, as this deposit of title document is enough to create equitable mortgage to cover entire outstanding, as identified in the judgment impugned in this appeal. The registered mortgage is only a token mortgage to overcome any impediment that may come in the way.

6. We are fortified with the judgment of this Court in Zubeda Khanum's case<sup>1</sup>, which gives a defence to above understanding to an equitable mortgage as under:-

*.....Arguments had been raised that generally there is always a document evidencing the deposit of title deeds when title deeds are deposited with the Bank or other creditor as security, for loan granted to any other party but then learned counsel conceded that the law did not require that for creation of an equitable mortgage by way of deposit of title deeds, it is essential that the said deposit should be accompanied by some documents evidencing the creation of an equitable mortgage. In any case, as observed, if the petitioner was aggrieved by any order passed by the Special Court the provision of appeal was available, which was admittedly not availed of by the petitioner and the petitioner is now estopped from challenging the said orders including the preliminary and final decrees in the present Constitutional petition, in the facts and circumstances of the case.*

7. Additionally, in the case of National Bank of Pakistan<sup>2</sup> the Supreme Court dilated upon the actions of deposit of title deed

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<sup>1</sup> 1994 CLC 2150 [Mst. Zubeda Khanum v. Presiding Officer, Special Court (Banking), Karachi and others].

<sup>2</sup> 2015 SCMR 319 [National Bank of Pakistan through attorney and another v. Paradise Trading Company and others].

alone as an equitable mortgage and the requirements, as identified in the judgment for equitable mortgage is the existence of debt, delivery of title document and the intention that the document of title shall be the security for the debt, is sufficient to establish the intent. The additional mortgage deed cannot eclipse the fact of equitable mortgage under Section-58(f) of Contract Act.

8. With this understanding the appeal merits no consideration and is dismissed along with pending application(s).

JUDGE

JUDGE

Ayaz Gul