

IN THE HIGH COURT OF SINDH AT KARACHI

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

First Appeal No.25 of 2016

Zafar Hasan Khan and others
Versus
M/s. Habib Bank Limited
.-.-.-.-.-.

Date of hearing: 12.03.2024

Mr. Khaleeq Ahmed, Advocates for the Appellants.

Mr. Zamir Ahmed Kalhoro, Advocate for the Respondent.

.-.-.-.-.-.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- By virtue of the impugned order dated 23.01.2016 passed on application for issuance of arrest warrants against the judgment-debtors, inadvertently the Banking Court Judge disclosed that *the instant application merits no consideration*, as in the later part of the order the court has allowed it as prayed, the appellant preferred this appeal. We would presume that the word “no” in the first part of the order was inadvertently typed, as the application for issuance of arrest warrant was allowed.

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

3. The record reflects that there were two suits filed before the Banking Court being suit No.104/2003 and 105/2003 against M/s Victor Electronic Appliances Industries and others. In suit No.105/2003 the Banking Court was pleased to pass a decree in the sum of Rs.6,896,937/- with future cost of funds at the rate prescribed by the State Bank of Pakistan from the date of filing of the suit till realization.

4. In the said application filed for the issuance of arrest warrants, the decree-holder/respondent bank disclosed that the property, which was mortgaged by the judgment-debtor No.3, was sold by the Banking Court in execution of a decree passed in suit No.104/2003, whereas, admittedly in the two suits disclosed above, the said property was provided as a mortgaged property for the finances availed. The impugned order does not disclose that for what amount the said property was auctioned or sold, as it was apparently mortgaged in respect of the two finances. Suit No.105/2003 was decreed for Rs.6,896,937/-, whereas, the other suit No.104/2003 was decreed in the sum of Rs.9,661,851/-. Execution No.145/2004 was filed in respect of a decree passed in suit No.104/2003, whereas, Execution No.166/2004 was filed in respect of a decree passed in suit No.105/2003.

5. The application that seeks issuance of arrest warrants only disclosed that a decree in suit No.105/2003 was not materialized and hence the warrants are inevitable. It does not disclose the facts as to what amount was recoverable by sale of the mortgaged property. The respondent bank presumably was satisfied to the extent of the value of the property and has accordingly extended two finances at the relevant time.

6. Be that as it may, the issuance of warrants in respect of decrees, which were allegedly unaccomplished, is not a routine matter. The case of Abdul Basit Zahid¹ and the case of Precision Engineering Ltd.² speaks volume. In the first case the Division Bench was of the view that Section-51 CPC provides for execution of a decree through arrest and detention of the judgment-debtor and the

¹ PLD 2000 Karachi 322 [Abdul Basit Zahid v. Modaraba Al-Tijarah through Chief Executive and 2 others].

² PLD 2000 Lahore 290 [Precision Engineering Ltd. and others v. The Grays Leasing Limited].

proviso thereof furnishes certain safeguards against the deprivation of liberty and contemplates that such power can only be exercised under certain given situations. In the instant case, such situations were not considered prior to the issuance of warrants.

7. We, therefore, by applying principle laid down in the aforesaid two judgments, set aside the impugned order and remand the case back to the Banking Court and observe that unless the requirement of Section-51 CPC and Order-XXI Rule-40 CPC are fulfilled, the ultimate recourse of arrest of the judgment-debtors may not be made.

8. The instant Appeal stands disposed off in the above terms along with pending application(s).

Dated: -15.03.2024

JUDGE

JUDGE

Ayaz Gul