

## JUDGMENT SHEET

### **IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr. Muhammad Shafi Siddiqui, C.J.

Mr. Jawad Akbar Sarwana, J.

### **Special High Court Appeal Nos.320 and 462 of 2024**

#### **Mst. Zahida Ashraf & Two Others v. The Bank of Punjab Limited**

Appellant Nos.1, 2 & 3: (1) Mst. Zahida Ashraf, (2) Syed Atif Salman Hashmi and (3) M/s Fariya Enterprise (Pvt.) Limited, through M/s Anwar Mansoor Khan, Asim Mansoor Khan and AbdulQayyum Khan Abbasi, Advocates.

Respondent : The Bank of Punjab Limited, through M/s Ijaz Ahmed and Waqar Ahmed Advocates.

Date of hearing: 31.10.2024

Date of Judgment: 06.11.2023

### **COMMON JUDGMENT**

**JAWAD AKBAR SARWANA, J.:** On 09.08.2024, Mst. Zahida Ashraf and her son, Syed Atif Salman Hashmi, and Fariya Enterprise (Pvt.) Ltd. (hereinafter referred to as “customer/borrower”) filed Banking Suit No.B-421/2024 against the Bank of Punjab Limited (“BOPL”) under section 9 of the Financial Institutions (Recovery of Finances), Ordinance (“FIO”), 2001.<sup>1</sup> While the leave to defend application under section 10 of the FIO, 2001, is yet to be heard/decided in the said banking suit, during the course of such proceedings, the customer/borrower filed two interlocutory stay applications on different dates,<sup>2</sup> attempting to obtain stay orders against the ongoing auction proceedings concerning the sale of mortgaged properties

---

<sup>1</sup> Copy of the Complaint filed by the customer/borrower in Suit No.B-21/2024 is available on pages 279- 315 of the Spl HCA No.320/2024.

<sup>2</sup> Copy of CMA No.10906/2025 filed on 09.08.2024 under O39 R1&R2 r/w S.151 CPC is available on pages 317-319 of Spl HCA No.320/2024 and CMA No.13169/2024 filed on 16.09.2024 under O39 R1&R2 r/w S151 CPC is available on page 319-325 of Spl HCA No.462/2024.

without the intervention of the Court after passing of a decree under Section 19 of FIO, 2001. The learned Single Judge, exercising banking jurisdiction under the FIO, 2001, dismissed both interlocutory applications vide two separate interlocutory orders dated 09.08.2024<sup>3</sup> and 18.09.2024,<sup>4</sup> respectively. The customer/borrower's objections regarding the mode, conduct and method of the auction proceedings of the mortgaged properties (currently at the cusp of the second round of auction proceedings), which are the subject-matter of the two appeals (no bid was received in the first public auction held on 30.09.2024), has its genesis based on Suit No.B-08/2013, which was filed by BOPL against the customer/borrower on 24.12.2012<sup>5</sup> in the banking jurisdiction of the High Court of Sindh and culminated in the Compromise Banking Decree dated 15.04.2023.<sup>6</sup> The customer/borrower, now aggrieved by the aforesaid interlocutory Orders, has preferred two appeals, i.e., Special HCA No.320/2024 against the interlocutory Order dated 09.08.2024 and Special HCA No.462/2024 against the interlocutory Order dated 18.09.2024. Both these appeals are decided by this common judgment.

2. We have heard Counsels, recorded their contentions herein, and our response which follows. The learned Counsel for the customer/borrower has argued that BOPL intends to purchase the mortgaged properties and has managed the auction process to enrich itself. He further contended that the three (3) valuations obtained by BOPL are full of errors, resulting in the reserve price being too low to the customer/borrower's detriment. In support of his contention, he argued that first, the valuation certification is incomplete as the valuation of the mortgaged properties was based "as per outside observation."<sup>7</sup> The valuer did not bother to submit a valuation of the mortgaged properties from the inside, which Counsel contended

---

<sup>3</sup> Impugned Order dated 09.08.2024 is available on pages 35-41 in Spl HCA No.320/2024

<sup>4</sup> Impugned Order dated 18.09.2024 is available on pages 43-45 in Spl HCA No.462/2024.

<sup>5</sup> Copy of Plaintiff filed in Suit No.B-08/2013 is available on pages 141-161 in Spl HCA No.320/2024.

<sup>6</sup> Copy of Compromise Decree passed in Suit No.B-08/2013 is available on page 275-277 of Spl. HCA No.320/2024

<sup>7</sup> As per page 4 of the Engineering Pakistan International (Pvt.) Ltd. available on page 327 of Spl HCA No.320/2024.

would have enhanced the value. We cannot agree with Counsel. The burden was on the customer/borrower to prove his claim(s), and, to this end, he failed to identify in his pleadings and to bring on record, even at a prima facie level, that if the mortgaged/auction property had been observed from the inside by the valuer, then it would have revealed that the construction material was of remarkable strength, or the plaster, walls and ceiling were very special or that the flooring was quite unique in its design and patterns or bespoke or novel or that the wood used for the windows and doors were most expensive, etc. Counsel raised no such claims. The customer/borrower filed no drawings, layouts, or other materials prepared by the architect or the engineer, if any, to put up a case that missing out on certain features inside of the mortgaged properties led to the mortgaged/auctioned properties being undervalued. In the facts and circumstances, we are inclined to assume that the valuer was an expert who, based on its experience, generated a fair and reasonable market value and an estimated forced sale price. In this case, all three surveyors visited the site and submitted their valuation reports. All three of them adopted a similar methodology for their valuation. We cannot discard the valuation report with the highest valuation on mere unsubstantiated and oral submissions of the customer/borrower's Counsel.

3. Secondly, Counsel for the customer/borrower argued that the BPRD Circular No.9 dated 27.04.2000 on the subject of "Prudential Regulation -VIII /NBFIs Rule 14 for Classification and Provisioning"<sup>8</sup>, Paragraph 4(iii) mandated that the Pakistan Banks Association ("PBA") shall lay down the minimum eligibility criteria with the prior approval of the State Bank of Pakistan for placement of valuers on the panel to be maintained by it. He referred to PBA's "Guidelines for Enlistment of Valuers and Monitoring of PBA Panels of Professional Valuers,"<sup>9</sup> and its Section 10.0, titled "Minimum Valuation Standards" prescribing such standards in "Annexure-V" of the Guidelines. He

---

<sup>8</sup> Available on pages 543-559 in Spl HCA No.462/2024

<sup>9</sup> Available on pages 561-615 in Spl HCA No.462/2024

argued that the valuation submitted by the valuer was contrary to Sections “C” and “D” of the “Minimum Valuation Standards” set out in Annexure-V. Further, the protocol prescribed in the second paragraph of Section 10.0 was not fair and equitable as it advised valuers to “follow the course of action that most protects the interest of the lending Financial Institutions” as opposed to following a protocol which “protects the interest of all the parties (underlining added).” Once again, we are constrained to accept Counsel’s submissions, resulting in a never-ending search for the “perfect” valuation reports in the auction proceedings acceptable to all. Suffice it to say that the “Minimum Valuation Standards” are guidelines, and Counsel is unable to point out from the record specific flaws or shortcomings in the Valuation Report, viz. the Guidelines. Additionally, we also agree with the observations made by the learned Single Judge concerning the Minimum Valuation Standards.

4. Counsel for the customer/borrower’s contention that its rights are not fully safeguarded within the ongoing auction process and that the lower reserve price is allegedly “legal jugglery” is not supported by either fact or law. The learned Single Judge has explained at length in the two impugned interlocutory orders the legal procedure provided for the sale of mortgaged properties without the intervention of the Court as provided in Section 19(3) read with Section 19(5) and Section 15 subsections (5), (6), (8), (9), (10) and (12) read with the Financial Institutions (Recovery of Finances) Rules, 2018. Further, the auction process is still underway and yet to be completed. Three (3) valuations of each of the mortgaged properties intended to be sold under Section 19(3) of the FIO, 2001, have been obtained from the valuers from the list of valuers maintained by PBA. The three valuers have submitted their report concerning the properties under auction, and the highest valuation received from the aforesaid valuations was fixed as market value and forced sale/reserved price of each mortgaged property under auction. Interestingly, in the first round of the auction, not a single participant showed up to participate in the bidding process for any of the mortgaged properties. We do not find

fault with respect to the mode, conduct or method of sale of the mortgaged properties so far that calls for any interference of the impugned interlocutory orders.

5. As already discussed by the learned Single Judge, the rights of the customer/borrower are regulated under the legal framework as:

- (i) there is no restriction on the mortgagor/appellants to bring in their own buyer(s) who may be willing to buy the properties at a higher price (and still make a profit out of it), and,
- (ii) if BOPL decides to purchase any of the mortgaged properties, then, it is required to pay a ten percent (10%) higher price than the highest bid received or ten percent (10%) higher price than the reserved price, provided no bids are received in three (3) public auctions.
- (iii) Notwithstanding the above, the mortgagor/appellants have the legal right to match the price offered by BOPL and buy the mortgaged properties.

Given the exposition of the legislative safeguards built into the sale of mortgaged properties without the intervention of the Court after passing a decree as discussed herein above, we do not find that BOPL has managed the auction process to enrich itself. The rights of the customer/borrower are adequately safeguarded. The impugned interlocutory orders require no interference on this score, either.

6. Given the reasons set out in this common judgment, we are inclined to dismiss the two special banking appeals on merits.

7. Before parting with the lis, we would like to identify an issue in this appeal concerning which Counsels did not render any assistance. These appeals challenge interlocutory orders relating to the mode, conduct or method of the sale of mortgaged property without the

intervention of the Court after passing of a decree, which decree has emerged not from the banking suit filed by the customer/borrower but from the compromise decree of the banking suit filed by BOPL. A question also arises concerning the two impugned Orders, that is, whether each impugned Order, which involved the Court's determination, concerning objections to (i) the mode, (ii) conduct, (iii) method, etc. of the auction proceedings, may be considered as a final order to the extent of that particular stage within the auction proceedings under Sections 22(1) and (6) of the FIO, 2001, or otherwise? For the moment, as the two appeals are being dismissed on merits, we are not inclined to take up this issue in this common judgment and leave it for some other lis in future.

8. In view of the above, the present appeals, along with all listed applications, are hereby dismissed on merits.

9. The parties are left to bear their own costs.

JUDGE

CHIEF JUSTICE