

**ORDER SHEET**  
IN THE HIGH COURT OF SINDH, AT KARACHI

**First Appeal No.59 of 2024**

( *Standard Chartered Bank Limited v. Syed Ahmed Zubair and Another* )

Date	Order with Signature(s) of Judge(s)
	<p style="margin-left: 40px;">1. For Order on Office Objection / Reply 'A' 2. For hearing of main case 3. <u>For hearing of CMA No.1067/2024</u></p>

**28.01.2026**

Mr. Ghulam Rasool Korai, Advocate for Appellant  
Mr. Muhammad Iqbal, Advocate for Respondent No.2

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Has challenged the Order dated 25.01.2024 whereby the mortgaged property—Apartment No.101 entire 1<sup>st</sup> Floor, measuring 3150 square feet, building known as MIR House at Plot No.179, Block-B, (Survey Sheet No.468, situated at Sindhi Muslim Cooperative Housing Society, Karachi), was discharged as mortgaged property in the execution proceedings after passing of Judgment dated 03.12.2014 and Decree dated 11.12.2014 in favour of the Appellant Bank.

Mr. Ghulam Rasool Korai, learned Counsel for Appellant has referred to the documentary evidence that when the finance facility was extended to Respondent No.1 (Syed Ahmed Zubair)/Judgment Debtor ("JD"), a Letter dated 05.10.2006 (Page-139) was sent to the concerned Sub-Registrar to mark lien. Referred to the Sub-Lease (Page-147) dated 05.10.2006 in favour of above JD executed by the Builder viz. Syed Ahmed Obaid (real brother of JD), who purchased the Plot and raised a Multi-Storey Building with different Units therein, including the mortgaged property. States that Suit was filed on 26.11.2011 and since the Respondent No.2/Intervener has entered into an unregistered Sale Deed on 21.12.2015 with one Saifuddin, therefore, it is void ab-initio. Further contends that the said Sale Deed was registered on 26.02.2024 (Annexure R-2 with Counter Affidavit), which clearly shows that the transaction in question as claimed by the Respondent No.2, is fraudulent. Has referred to Section 23 of the Financial Institution (Recovery of Finances) Ordinance, 2001, so also, relied upon the following case laws:-

- i. Judgment dated 15.5.2024 passed in First Appeal No.24 of 2024;
- ii. Azra Saeed v. Raees Khan through General Attorney and 5 Others (2009 CLD 779);

- iii. Muhammad Hussain and Another v. Judge Banking Court No.1, Multan and 3 Others (2014 CLD 1364);
- iv. Askari Bank Limited v. A.H. International (Pvt.) Limited and Others (2016 CLD 1028)

Mr. Muhammad Iqbal, learned Counsel appearing for Respondent No.2/Intervener has rebutted the arguments and states that his transaction was genuine; the transaction between the said Intervener and his predecessor-in-interest–Saifuddin is of 21.12.2015 (Annexure R-1 with his Counter Affidavit), but the said apartment/mortgaged property, leased in favour of said Saifuddin (predecessor-in-interest of Intervener), by the above named Builder on 03.08.2005 (Annexure R-4 with Counter Affidavit), which fact confirms that the property already transferred before the alleged finance facility given by the Appellant Bank to JD. With regard to the registration of Sale Deed between the Intervener and Saifuddin on 26.02.2024, the Counsel states that after the passing of the impugned Order, since there was no legal impediment, therefore, Sale Deed in respect of subject Apartment has now been registered in favour of the Intervener. Referred to a Correspondence of 13.11.2015 issued by the United Bank Limited (“UBL”) (R-5, Page-145 of Counter Affidavit), confirming the fact that said Saifuddin cleared the dues of UBL. Has supported the impugned Order on the basis of the Report submitted by the Anti-Corruption Establishment (“ACE”) in which statements of parties, including the above named Builder, JD and Attorney of the Intervener, were recorded.

Arguments heard and record perused.

The Inquiry Report submitted by ACE (Page-115 of the Court File) is perused. Interestingly, the said Builder (Syed Ahmed Obaid) has stated that by ‘mistake’ he has Sub-Leased the same Apartment No.101 to Saifuddin as well as to his brother, viz. the JD, whereas, latter (JD) has confirmed that he has purchased the said Apartment from his brother and paid him the amount, which he borrowed from the Appellant Bank (Decree Holder). The second fact which we must mentioned is that the Intervener purchased the property after passing of the Judgment and Decree and it was registered on 26.02.2024, after passing of the impugned Order.

The learned Banking Court in its Order has overlooked the aforementioned facts, in particular that the Intervener’s claim has accrued after the passing of the Judgment and Decree and *prima facie* fraud played by the above JD and his brother i.e. the Builder upon the Appellant Bank.

Further inquiry and if required evidence should have been recorded in this regard to reach a conclusion, which was not done. A Decree Holder cannot be deprived of the mortgaged property in such a manner as is done in the impugned Order. The two sets of facts and claims have to be put in juxtaposition to reach a conclusive decision. The jurisdiction is not exercised lawfully while passing the impugned Order.

Consequently, in view of the above discussion, we set aside the impugned Order and remand the case to the Banking Court for decision afresh on the Application of Intervener. The proceedings will proceed in light of the above observation, which it is clarified are not final, but tentative in nature, subject to further investigation and evidence, if required, to be led. The decision should be given within two (2) months from today. If it is proven that JD and his above brother played fraud in collusion with other person, including the Intervener, strict action should be followed against them, including the criminal prosecution. However, till the decision of the learned Banking Court within the above timeframe, Intervener is restrained from creating any third party interest.

In above terms, the Appeal stands disposed of along with pending application(s).

**JUDGE**

**JUDGE**

*FAIZAN/\**