

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-2081 of 2026

[Mst. Shahida vs. National Bank of Pakistan and another]

Before:

JUSTICE ADNAN-UL-KARIM MEMON

JUSTICE MUHAMMAD JAFFER RAZA

Petitioner: Through Mr. Hameed Rahimoon, Advocate

Respondents Through Mr. Rafique Ahmed Dahri,
Additional A.G

Date of hearing 20.10.2026

Date of Decision 20.10.2026

O R D E R

ADNAN-UL-KARIM MEMON J:- The petitioner seeks setting aside of handwritten endorsement dated 06.10.2026, passed by the Banking Court-II, Hyderabad, in Execution No.81/2014 arising out of Suit No.129/2009, directing issuance of an arrest warrant for execution of money decree. She seeks a declaration that her arrest or detention in civil prison is prohibited under Section 56 CPC, suspension of the impugned warrant, restraint against coercive action, and direction for execution proceedings to be conducted strictly in accordance with law.

2. Learned counsel for the petitioner submits that her late husband, Ahmed Cheepa, was the sole proprietor of M/s Dawood Rice Mills and had availed banking finance of Rs.36,963,681/- from respondent No.1. Suit No.129/2009 was disposed of by the Banking Court-II, Hyderabad, through a compromise decree fixing liability at Rs.32,330,102/-, payable in 12 installments along with stipulated markup and charges. An amount of Rs.15,129,000/- has already been paid towards satisfaction of the decree, which requires due adjustment in the execution account.

3. The counsel for the petitioner contends that, following the death of her husband, she and other legal heirs were brought into Execution No.81/2014 through an amended title dated 03.08.2023. The business has remained non-functional, causing financial hardship to the family. Nevertheless, she is willing to reconcile the outstanding account and pursue a mutually acceptable settlement with respondent No.1, including concession in markup and other charges. Counsel further submits that respondent No.1 moved an application dated 06.10.2026 under Order XXI Rule 38 CPC seeking warrants of arrest against her and her daughters for recovery of decretal amount. On the same date, the Banking Court-II, Hyderabad, made a handwritten endorsement, "Issue Warrant of Arrest," without recording reasons or demonstrating compliance with the prescribed procedural safeguards. It is

contended that the impugned direction is unlawful, particularly as Section 56 CPC expressly prohibits the arrest or detention of a woman in civil prison in execution of a decree for payment of money. Counsel further asserts that no prior notice under Order XXI Rule 37 CPC was served upon her, nor was she afforded an opportunity to show cause as contemplated under Order XXI Rule 40 CPC. The impugned endorsement also fails to disclose any judicial determination under Section 51 CPC or consideration of the limitations governing execution against legal representatives under Sections 50 and 52 CPC. Counsel states that she had approached the Banking Court regarding the proposed auction of the mortgaged property, which constitutes the family's source of financial survival, and had also approached the bank for reconciliation and settlement. However, instead of considering these efforts, respondent No.1 sought coercive process against her. He maintains that the outstanding liability, if any, must be determined after accounting for payments already made and legally recoverable charges, and that her status as a legal heir cannot, by itself, establish unlimited personal liability. Lastly, the petitioner's counsel contends that, in view of the bar contained in Section 22(6) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, against appeal, review or revision of interlocutory orders, she has no adequate and efficacious alternate remedy. Accordingly, she seeks setting aside of the handwritten endorsement dated 06.10.2026, suspension of the arrest warrant, and protection against her arrest or detention in execution of the money decree, with a direction that the execution proceedings be conducted strictly in accordance with law.

4. In view of the foregoing, the impugned handwritten endorsement dated 06.10.2026, directing issuance of an arrest warrant against the petitioner in execution of a money decree, cannot be sustained insofar as it seeks her arrest or detention in civil prison, in view of the express prohibition contained in Section 56 CPC. Moreover, the absence of notice under Order XXI Rule 37 CPC and a proper inquiry in accordance with Order XXI Rule 40 CPC raises serious questions regarding the legality of the impugned direction.

5. The executing Court is required to determine the outstanding decretal liability after adjustment of payments already made and to proceed against the legal representatives strictly within the limits prescribed by Sections 50 and 52 CPC, subject to the applicable provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001.

6. Accordingly, the petition merits acceptance to the limited extent of setting aside the impugned endorsement insofar as it authorizes the arrest or detention of the petitioner in civil prison, without prejudice to the decree-holder's right to pursue lawful modes of execution, including realization of the mortgaged property and recovery from the estate of the deceased, in accordance with law.

JUDGE

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