

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.144 of 2024

Appellant : Parveen Akhter wife of Akhter Jamali
through Mr. Zia Ul Haq Makhdoom,
Advocate a/w Ms. Fatima Ashfaque,
Advocate

Respondents : Askari Bank Limited and others
through Ms. Lubna Aman, Advocate for
Respondent No.1
Mr. Ovais Ali Shah, Advocate appearing for
Respondent No.6

First Appeal No.05 of 2025

Appellant : M/s. Al-Riaz Agencies (Pvt.) Ltd.
through Mr. Zubair Ahmed, Advocate a/w
Ms. Humaira Junaid, Advocate

Respondents : Askari Bank Limited and others
through Ms. Asma Samad, Advocate
appearing for Respondent No.1
Mr. Ovais Ali Shah, Advocate for
Respondent No.7

Date of Hearing : 14.10.2026

Date of Judgment: _____.10.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through this common judgment, we intend to dispose of First Appeal No.144 of 2024, filed by Appellant/Parveen Akhter, and First Appeal No.05 of 2025, filed by Appellant/M/s. Al-Riaz Agencies (Pvt.) Ltd., **(hereinafter referred as M/s. Al-Riaz Agencies (Pvt.) Ltd)**, both directed against the order dated 11.11.2024 passed by the learned Banking Court No.II, Karachi, in Execution Application No.128 of 2017 arising out of Suit No.111 of 2013. By the impugned order, the learned Banking Court allowed the application filed by the auction purchaser under Order XXI, Rule 94, C.P.C., directing the Nazir to issue the sale certificate and take necessary steps for

transfer of possession of the mortgaged property and delivery of the original title documents. The application filed by Parveen Akhter under Section 47, C.P.C., challenging the auction sale, was dismissed, while the connected applications were disposed of in the terms specified in the order.

2. The relevant facts are that Respondent No.1, Askari Bank Limited, instituted Suit No.111 of 2013 against Bismillah Broker, a partnership firm, and its partners for recovery of the outstanding financial liability. The Bank also sought enforcement of its security against the property bearing Plot No.D-30, Block No.4, Scheme No.5, Clifton, Karachi, measuring 1,000 square yards, comprising a double-storey house owned by Defendant No.5, Parveen Akhter, who had mortgaged the property as security for the financial facility. The learned Banking Court, vide judgment dated 08.03.2017 and decree dated 13.03.2017, decreed the suit for Rs.28,406,353/-, together with costs of funds from November 2012 until realization, and allowed the prayer for sale of the mortgaged property. Consequently, execution proceedings commenced under Section 19 of the Financial Institutions (Recovery of Finances) Ordinance, 2001.

3. During execution proceedings, a valuation report dated 19.10.2017 determined the market value of the property at Rs.137,900,000/- and its forced-sale value at Rs.110,320,000/-. After settlement of the terms and conditions of sale under Order XXI, Rule 66, C.P.C., the property was put to public auction by the Nazir on 03.02.2020 at the premises of the learned Banking Court. Three bidders participated, and Mst. Masooma Shaikh emerged as the highest bidder with an offer of Rs.115,000,000/-, exceeding the assessed forced-sale value. The auction report was placed before the learned Banking Court, which recorded the direction, **“Deposit the Pay Order in Court bank account.”** The auction purchaser deposited the initial 25% of the bid amount, amounting to Rs.28,750,000/-, through pay orders. On 06.02.2020, the execution proceedings were adjourned to 17.02.2020 for payment of the remaining bid amount. The auction purchaser, however, deposited the balance 75%, amounting to Rs.86,250,000/-, on 10.02.2020. Thus, the **entire**

bid amount of Rs.115,000,000/- stood deposited within seven days of the auction and before the date fixed by the Court for payment of the balance consideration.

4. The subsequent proceedings are equally material. On 17.02.2020, the decree-holder Bank submitted its no-objection to the bid amount and filed the relevant statement and certificate. The diary sheet of the learned Banking Court records that the auction purchaser had already deposited the remaining 75% of the bid amount and that the matter was adjourned to 03.03.2020 for confirmation of sale or otherwise. On 19.03.2020, the auction purchaser applied under Order XXI, Rule 94, C.P.C., read with Section 151, C.P.C., for issuance of the sale certificate. Meanwhile, Appellant/Parveen Akhter challenged the auction proceedings through applications under Order XXI, Rules 89 and 90, C.P.C., read with the relevant provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001, and the applicable Rules of 2018. Her application was dismissed by the learned Banking Court on 01.09.2020 for non-compliance with the mandatory deposit requirements. The application for recall of that order was dismissed on 14.09.2020.

5. Appellant/Parveen Akhter challenged both orders in First Appeal No.50 of 2020, which was dismissed by a Division Bench of this Court through a short order dated 22.02.2022, followed by a detailed judgment dated 21.01.2023. The Division Bench specifically observed that the appellant had failed to deposit the requisite amount within the prescribed period to obtain setting aside of the sale and that her objection concerning the allegedly higher value of the property did not justify the relief sought. Liberty was, however, granted to approach the executing Court for such further remedy as might be available under the law and to press the pending applications, which were to be decided on their own merits. Thereafter, the auction purchaser's application seeking deposit of the sale proceeds in a profit-bearing scheme was allowed on 03.10.2023, with a direction to the Nazir to deposit the amount of Rs.115,000,000/- accordingly.

6. The second appellant, M/s. Al-Riaz Agencies (Pvt.) Ltd., claims an interest in the property under an agreement of sale dated

21.10.2019 and subsequent addenda dated 30.08.2022 and 20.12.2023, under which the total agreed consideration is stated to be Rs.180,000,000/-. The company asserts that it paid substantial amounts towards the consideration, incurred expenditure on improvements to the property, and was placed in possession thereof. It has also instituted Suit No.1253 of 2024 for specific performance of the agreement. On that basis, it challenges the impugned order on the ground that its asserted contractual and possessory rights were not adequately considered before the sale certificate and possession were directed to be transferred to the auction purchaser.

7. Learned counsel for Appellant/Parveen Akhter contended that the auction proceedings had not attained finality because no valid order confirming the sale had been passed in favour of the auction purchaser. It was argued that acceptance of a bid and deposit of the purchase money, without formal confirmation, did not confer an indefeasible right upon the purchaser. Learned counsel further relied upon the payment of Rs.60,000,000/- made during the execution proceedings, the alleged settlement or compromise with the Bank, and the appellant's willingness to satisfy the decretal liability. It was also contended that the property was worth substantially more than the price fetched at auction and that the learned Banking Court ought not to have ordered transfer of the property without properly considering the valuation dispute and the appellant's pending applications.

8. Learned counsel for M/s. Al-Riaz Agencies (Pvt.) Ltd. adopted the challenge to the auction proceedings and additionally submitted that the agreement of sale and its addenda, the payments made thereunder, and the improvements carried out by the company conferred upon it enforceable rights in the property. It was argued that the pendency of the specific-performance suit and the order for maintenance of the status quo required the learned Banking Court to refrain from directing transfer of possession to the auction purchaser. The company also disputed the validity and finality of the auction sale and maintained that its contractual interest ought to have been determined before the impugned directions were issued.

9. Conversely, learned counsel for the Bank supported the impugned order, submitting that the auction had been conducted pursuant to a valid and subsisting decree and in accordance with the procedure prescribed by law. It was contended that the highest bid had been accepted, the entire sale consideration deposited, and the Bank's no-objection placed on record. The appellants had failed to establish any lawful ground for setting aside the auction sale, and their subsequent arrangements could not defeat the rights acquired by a third-party purchaser in a judicial auction.

10. Learned counsel for the auction purchaser likewise supported the impugned order and emphasized that the purchaser's bid of Rs.115,000,000/- had been accepted by the learned Banking Court, the complete purchase money had been deposited within the time allowed, and the decree-holder Bank had expressly recorded its no-objection. He submitted that the judgment-debtor's statutory remedies for setting aside the sale had already been pursued unsuccessfully and that the subsequent settlement proposals, private agreement to sell, and connected applications could not be employed to reopen a concluded auction. Reliance was placed, *inter alia*, upon *Hudaybia Textile Mills Ltd. v. Allied Bank of Pakistan Ltd.* (PLD 1987 Supreme Court 512), *Muhammad Ikhlaz Memon v. Zakaria Ghani* (PLD 2005 Supreme Court 819), *Asif Munawar v. Bank Islami Pakistan Ltd.* (2024 CLD 126), *Mst. Anwar Sultana through LRs v. Bank Al-Falah Ltd.* (2014 SCMR 1222), *Mst. Manzoor Jahan Begum v. Haji Hussain Bakhsh* (PLD 1966 Supreme Court 375), *United Bank Limited v. A.Z. Hashmi (Pvt.) Limited* (2000 CLC 1438), and *Mst. Mehwish Kashif through Attorney/Husband v. Summit Bank Ltd.* (2014 CLD 1424).

11. We have heard learned counsel for the parties and carefully examined the material available on record with their assistance.

12. The principal question requiring determination is whether the learned Banking Court committed any illegality or material irregularity in directing issuance of the sale certificate and delivery of possession of the mortgaged property to the auction purchaser, notwithstanding the absence of an earlier formal

order confirming the auction sale, the judgment-debtor's subsequent reliance upon payment towards the decretal liability and the contractual claim advanced by Al-Riaz Agencies.

13. The record establishes that the auction was duly conducted on 03.02.2020 pursuant to a subsisting decree, whereafter the highest bidder deposited the entire consideration of Rs.115,000,000/- within the prescribed time and in compliance with the directions of the learned Banking Court. The decree-holder Bank also recorded its no-objection to the bid amount. These circumstances demonstrate that the auction had proceeded beyond the stage of merely inviting offers and that the auction purchaser had fulfilled the financial obligations arising from her participation in the judicial sale. No default in payment of the consideration has been attributed to her, nor has any order been identified whereby the learned Banking Court rejected her bid or directed forfeiture or refund of the deposited amount.

14. We are mindful, however, that acceptance of the highest bid, deposit of the purchase consideration and confirmation of a judicial sale are distinct stages carrying different legal consequences. The diary sheet dated 17.02.2020 expressly records that the matter was adjourned for confirmation of sale or otherwise. Consequently, the earlier directions concerning deposit of the consideration cannot, merely by themselves, be equated with formal confirmation of the sale. Nevertheless, the absence of such confirmation does not render the auction proceedings inconsequential or deprive the purchaser of every legally protectable interest. An auction purchaser who has complied with the conditions of sale and deposited the entire consideration pursuant to judicial directions acquires an interest which the executing Court is bound to recognize and protect in accordance with law, although such interest may not, before confirmation, amount to an indefeasible title to the property.

15. The principle finds support in the judgment of the Apex Court in *Hudaybia Textile Mills Ltd. v. Allied Bank of Pakistan Ltd.* (PLD 1987 Supreme Court 512), wherein it was recognized that, once a judicial auction has been duly conducted and the interest of a third-party auction purchaser has intervened, a

subsequent settlement between the decree-holder and judgment-debtor cannot, by itself, constitute sufficient justification for refusing confirmation of the sale. The Apex Court further emphasized that the specific procedure prescribed under Order XXI, C.P.C., for setting aside a judicial sale cannot be circumvented by invoking the inherent jurisdiction of the Court under Section 151, C.P.C. The principle is directly relevant to the present controversy, where the auction purchaser deposited the entire consideration in compliance with the Court's directions, whereas the judgment-debtor's challenge under the prescribed statutory procedure was unsuccessful.

16. The same principle receives further support from the judgment of a Division Bench of this Court in *Asif Munawar v. Bank Islami Pakistan Ltd.* (2024 CLD 126), wherein it was recognized that an auction purchaser who has deposited the entire sale consideration pursuant to the directions of the executing Court acquires a legally protectable right and interest, notwithstanding the absence of a formal order confirming the auction sale. Significantly, while declining to interfere with the impugned proceedings, the Division Bench directed the Banking Court to proceed further for confirmation of the auction in accordance with law. The judgment, therefore, distinguishes the interest arising in favour of an auction purchaser upon compliance with the conditions of sale from the subsequent judicial act of confirmation. Applying this principle, the omission of the learned Banking Court to pass a formal confirmation order at the appropriate stage cannot, by itself, defeat the auction purchaser's legitimate interest, particularly when she deposited the entire consideration within the prescribed time and committed no default.

17. The principle embodied in the maxim *actus curiae neminem gravabit*, meaning that an act of the Court shall prejudice no one, also assumes relevance. The auction purchaser complied with the directions of the learned Banking Court and deposited the entire consideration, whereas the omission to pass a formal confirmation order at the appropriate stage was attributable to the judicial process and not to any default on her part. Such

omission cannot, by itself, be permitted to prejudice her legitimate interest or furnish an independent ground for defeating the auction. The maxim, however, does not dispense with the statutory requirement of confirmation, which must be satisfied in accordance with law.

18. Turning to the objections raised by appellant Mst. Parveen Akhter, the record reveals that she had already invoked the remedies available under Order XXI, Rules 89 and 90, C.P.C., seeking setting aside of the auction. Her application was dismissed on 01.09.2020 for non-compliance with the mandatory deposit requirements, and the application seeking recall of that order was dismissed on 14.09.2020. Both orders were challenged in First Appeal No.50 of 2020, which was dismissed by a Division Bench of this Court. The detailed judgment dated 21.01.2023 expressly addressed the failure to make the requisite deposit and the objection concerning valuation of the property. That judgment has not been shown to have been set aside or modified by any superior Court. Accordingly, the findings recorded therein, to the extent of the matters actually decided, have attained finality between the parties. The liberty granted to pursue such further remedy as might be available under law did not authorize reconsideration of objections already determined.

19. The renewed objection concerning inadequacy of the auction price also fails to furnish a sustainable ground for interference. The valuation report dated 19.10.2017 assessed the market value at Rs.137,900,000/- and the forced-sale value at Rs.110,320,000/-, whereas the auction fetched Rs.115,000,000/-. Mere inadequacy of price, without establishment of the legally requisite grounds for setting aside the sale, does not justify annulment of a judicial auction. More importantly, the valuation objection was considered in the earlier appellate proceedings and cannot be revived in substantially the same form through subsequent applications.

20. The appellant's reliance upon payment of Rs.60,000,000/- and the alleged settlement or compromise with the decree-holder Bank does not, by itself, alter the legal position. Satisfaction of the decretal liability and setting aside of a judicial sale are

distinct matters. Where the property has already been put to judicial auction and a third-party purchaser has deposited the entire consideration, a subsequent payment or arrangement between the decree-holder and judgment-debtor cannot automatically operate to annul the auction or dispense with the prescribed statutory requirements. Although the absence of confirmation may have a bearing upon the mortgagor's subsisting right of redemption, the assertion of such right must be distinguished from its lawful exercise. In the present case, the appellant's earlier attempt to obtain setting aside of the auction was unsuccessful, and no subsequent order lawfully annulling the auction has been identified. The alleged payment or compromise, therefore, cannot merely on that basis be treated as sufficient to defeat the auction purchaser's interest.

21. The objection concerning absence of a formal confirmation order must also be considered in the context of the proceedings culminating in the impugned order dated 11.11.2024. The learned Banking Court was seized of the auction purchaser's application for issuance of the sale certificate, as well as the objections and connected applications filed by the parties. By the impugned order, the learned Banking Court dismissed the judgment-debtor's application under Section 47, C.P.C., and directed issuance of the sale certificate and consequential steps for delivery of possession and title documents. Although the more appropriate course would have been to record an express determination concerning confirmation of sale before directing issuance of the sale certificate, the legality of the impugned order must be assessed on its substance rather than merely its form. Where the executing Court, after considering the objections to the auction and finding no lawful ground for setting it aside, has substantively determined that the sale should be completed, the absence of a separately worded confirmation order would not, by itself, justify appellate interference, provided that the statutory requirements for confirmation stood satisfied.

22. We now turn to the claim advanced by Al-Riaz Agencies. The company relies upon the agreement of sale dated 21.10.2019 and subsequent addenda dated 30.08.2022 and 20.12.2023,

asserting payment of substantial consideration, expenditure upon improvements and possession of the property. An agreement to sell, however, does not, by itself, constitute a completed transfer of ownership. In the present case, the property had already been mortgaged in favour of the Bank, and the recovery proceedings had culminated in a decree in March 2017. The agreement relied upon by the company was executed thereafter, during execution proceedings, and its legal effect must be considered in the context of the subsisting mortgage, the decree and the restrictions imposed by Section 23 of the Ordinance upon alienation or disposition of property by a judgment-debtor.

23. The company cannot, merely by relying upon the agreement of sale and payments allegedly made thereunder, claim a title superior to the existing mortgage or require the executing Court to disregard the judicial auction. The subsequent addenda dated 30.08.2022 and 20.12.2023 were executed after the auction purchaser had deposited the entire consideration in February 2020. Such subsequent contractual arrangements cannot, without an independent and legally sustainable basis, extinguish the interest arising from the Court-supervised auction. The enforceability of the agreement, the validity of the alleged payments, the nature of possession and the relief, if any, available to the company remain matters for determination in the appropriate proceedings.

24. The pendency of Suit No.1253 of 2024 for specific performance does not, by itself, invalidate the auction or suspend the operation of the decree under execution. The order for maintenance of status quo relied upon by the company must be understood according to its precise terms, the parties bound thereby and the subject matter to which it relates. Its existence cannot, without examining those matters, be treated as having retrospectively annulled the judicial auction conducted in February 2020. Equally, the learned Banking Court remains bound to give effect to any subsisting order of a competent Court to the extent legally applicable. We refrain from expressing any final opinion concerning the merits of the specific-performance

suit, which shall be determined independently in accordance with law.

25. In view of the foregoing discussion, we find that the auction purchaser deposited the entire sale consideration within the prescribed time and in compliance with the directions of the learned Banking Court, while the decree-holder Bank recorded its no-objection. The judgment-debtor's statutory challenge to the auction was unsuccessful, and neither the subsequent assertion of payment and compromise nor the contractual claim advanced by Al-Riaz Agencies has been shown to furnish a legally sustainable ground for setting aside the sale. The omission to pass a formal confirmation order at the earlier stage, though procedurally undesirable, cannot, by itself, defeat the purchaser's legitimate interest. The impugned order, passed after consideration of the objections and directing completion of the sale, must be examined in that context. We, therefore, find no material illegality or irregularity warranting interference, subject to compliance with the statutory requirements governing confirmation of the auction sale.

26. Consequently, First Appeal No.144 of 2024 and First Appeal No.05 of 2025 are dismissed. The impugned order dated 11.11.2024 passed by the learned Banking Court No.II, Karachi, in Execution Application No.128 of 2017 arising out of Suit No.111 of 2013 is maintained. The learned Banking Court shall proceed in accordance with law to give effect to the impugned order, subject to any subsisting order of a competent Court legally binding upon the parties and the property. Nothing observed herein shall be construed as a final adjudication of the independent contractual claims pending in Suit No.1253 of 2024, except to the extent necessary for determination of the present appeals.

JUDGE

JUDGE