

Form No: HCJD/C-121

ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

E.F.A.No.20277 of 2023

Humaira Mehboob

V/S

Summit Bank Limited etc

<i>S.No.of order / Proceedings</i>	<i>Date of order /Proceedings</i>	<i>Order with signatures of Judge, and that of parties or counsel, where necessary.</i>

27.03.2023 Sh. Imran Mohammad Naeem, Advocate for the Appellant.

This appeal in terms of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter to be referred as the “**Ordinance**”) arising out of execution proceedings calls in question the vires of order dated 13.03.2023 whereby learned Judge Banking Court-VI, Lahore (the “**Banking Court**”) proceeded to dismiss the application filed by the Appellant. She also challenges order dated 09.02.2023 regarding fixation of reserve price of the mortgaged property.

2. Learned counsel for the Appellant *inter alia* submitted that the Banking Court has not taken into consideration the true facts and circumstances of the case while dismissing the application of the Appellant; that the Banking Court has not taken into consideration the fact that value of the mortgaged property sought to be auctioned is much more than what has been assessed by the Masud Associates Pvt. Limited i.e. assessed market value as Rs.50,276,563/- and forced sale value as Rs.40,221,250/-; that the Appellant has got the mortgaged property evaluated from Diamond Surveyors Pakistan

which has assessed the market value thereof to be Rs.151,650,000/- and forced sale value as Rs.128,902,500/-.

3. We have heard the arguments and perused the record.

4. It evinces from the record that an independent evaluator namely “Masud Associates Pvt Limited” (the “**Evaluator**”) was appointed by the “Banking Court” vide order dated 20.01.2023. Vide order dated 27.01.2023, the “Banking Court” directed the court auctioneer to contact the “Evaluator” to submit valuation report which he did on 03.02.2023 and vide the same order, the Appellant was provided an opportunity to file objections, if any, but she did not file and consequently, the “Banking Court” vide order dated 09.02.2023 fixed the reserved price of the mortgaged property in terms of the report of the “Evaluator” and where after the present application challenging the report was filed by the Appellant. The record does not show that at the time of filing this report, the Appellant has ever filed an objection while the “Banking Court” in order dated 13.03.2023 observed that *“an opportunity was given to the judgment debtor for submission of objection on the valuation report but the judgment debtor has not filed the objection at that time and reserve price was fixed on 09.02.2023. The judgment debtor filed the objection petition at belated stage just to linger on execution proceedings”*. Admittedly, execution proceedings are underway since year 2014 and the Appellant was well aware about it but she knowingly did not file objections at the relevant time rather the same were filed belatedly on 18.03.2023 as is evident from the order sheet attached with record so she is estopped from her own

conduct. The Hon'ble Supreme Court of Pakistan in the case of "Dr. MUHAMMAD JAVAID SHAFI Versus Syed RASHID ARSHAD and others" (**PLD 2015 SC 212**) has held that "*a person was estopped by his own conduct, if he though was aware of certain fact(s), which was likely to cause harm to his rights and adversely affect him and was prejudicial against him, avowedly or through some conspicuous act or by omission, intentionally permitted and allowed another person to believe a thing to be true and act on such belief without taking any steps to controvert or nullify such adverse fact and instead he slept over the matter. Such waiver or estoppel may arise from mere silence or inaction or even inconsistent conduct of a person*".

5. The counsel for the Appellant strenuously argued before us about fixation of reserve price by the "*Banking Court*" on lesser side based on report submitted by the "*Evaluator*". It is pertinent to mention here that the amendment brought about by Lahore High Court in Order XXI Rule 66 CPC, which added a proviso to sub-rule 2 (e).

It reads as under:

"Provided that it shall not be necessary for the court itself to give its own estimate of the value of the property; but the proclamation shall include the estimate, if any, given by either or both of the parties".

6 Pertinently, fixing the value of the property is a matter of opinion, and the Court cannot give its opinion on such a point. It appears that the object of the above proviso is to relieve the Court from the burden of affirming the accuracy of the value of the property shown in the proclamation of sale and to enable the prospective

purchaser to form his own opinion relying upon the estimates given by the parties. After all, Order XXI Rule 66 (2) (e) CPC stipulates that the proclamation shall contain every other thing which the Court considers material for a purchaser to know in order to judge the nature and value of the property. Notwithstanding the afore-mentioned provision, with the availability and benefit of the evaluation reports from the PBA approved evaluators, the Courts do fix the reserve price of the properties being put to auction on the basis of the value placed therein. In the case in hand, the Appellant, while relying upon her evaluation report, has invited this Court to disregard the report prepared by the "*Evaluator*". The contention so raised cannot be accepted. The fact that the evaluation report prepared under the instructions of the Appellant places higher price of the mortgaged property than the evaluation report, which the "*Evaluator*" prepared under the directions of the "*Banking Court*", should not form basis for rejecting the latter report. The preference would always be given to evaluation report prepared under the orders of the Courts rather than a report which is prepared at the behest of a judgment debtor. In this case, the reserve price was fixed by the "*Banking Court*" based on the report of "*Evaluator*" hence it ensures reasonableness, fairness and otherwise promotes transparency whereas mere bald assertion of inadequacy of reserve price fixed by a private evaluator not appointed by the Court is per se no ground to re-fix the reserve price especially when no substantial injury was otherwise caused. Reliance is placed on "AL-HADI RICE MILLS (PVT.) LTD through Chief Executive and 4 others Versus MCB BANK LIMITED and 6 others" (**2023 CLD 85**). It is

not uncommon for the judgment debtors to prepare the evaluation report showing exaggerated value of the mortgaged properties in order to delay and frustrate the auction process. It may again be emphasized that evaluation report by the "*Evaluator*" was prepared under the orders of the "*Banking Court*" and, therefore, the selection is not between the evaluation reports of the contesting purchasers that the Court is merely accepting the value placed by one side as *ipse dixit*. It must also be kept in mind that determination of the value of any property is always subjective and opinions in this regard differ. The consistent view expressed by the Courts that the reserve price of a property is always based on a tentative estimate, therefore, appears to be correct. Notwithstanding the concern of the Courts to balance out the interests of both the judgment debtor as well as the decree holder, a transparent auction which is well advertised with competitors taking part in the bidding process is itself the biggest safeguard against collusion amongst the bidders and shall ensure that the final price received will largely be independent of the reserve price and reflect the best price that the property can obtain. Objections of such nature by the judgment debtors are always meant to delay the process of auction. Nothing stops a judgment debtor to locate and bring forward a buyer of his choice either in the auction or before the Court prior to the sale if the property is being sold for a price which in the estimation of the judgment debtor is on the lower side. For this very purpose Rule 83 Order 21 CPC has been enacted under which Court sales can be postponed to enable a judgment debtor for raising money through private sale of the property. A judgment debtor

cannot be allowed to derail the auction process by submitting evaluation report prepared at his instance instead of arranging a buyer for the properties to be auctioned. It may further be added that the condition of confirmation of sale by the court also operates as a biggest safeguard against the property which has been sold at inadequate price irrespective of the fact whether any irregularity or fraud in the conduct of the sale has been committed or not.

7. We, therefore, fully agree with the findings of the Banking Court which rightly dismissed the application of the Appellant and do not see any illegality or perversity in the impugned orders which have been passed strictly in accordance with law, as such do not warrant any interference by us. Since the appeal is at limine stage and it can be dismissed by applying doctrine of “Limine Control” in the light of case “M/s COLONY TEXTILE MILLS LIMITED and another Versus FIRST PUNJAB MODARABA” (2021 CLD 1212). Consequently, the Appeal in hand, being devoid of any merit, is hereby **dismissed in limine.**

**(Muhammad Sajid Mehmood Sethi)
JUDGE**

**(Jawad Hassan)
JUDGE**