

(Appellate Jurisdiction)

MR. JUSTICE MAQBOOL BAQAR  
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL  
MR. JUSTICE QAZI MUHAMMAD AMIN AHMAD

*(Against the judgment dated 11.05.2010 of the Lahore High Court, Lahore passed in RFA No.592 of 2006)*

Vs.

Date of Hearing 19.2.2020

2. The judgement and decree sought to be enforced by the respondent bank, was passed by a Banking Court, under Banking

Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (the repealed Act), on 11.5.2001 (the judgment and decree).

3. The attachment and sale of the property, as noted above, was sought on the ground that the same, at the time the above judgment and decree was pronounced, belonged to the respondent No.3, who is a judgment debtor in terms of the aforesaid judgment and decree, and the sale of the property by the respondent No.3, after the said judgment, through a sale deed registered on 18.8.2001, being violative of the restriction placed by the Sub-section (2) of Section 23 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the 2001 Ordinance), was/is, as prescribed by the said provision, void and of no legal effect, and the property is thus available and liable to be sold towards the satisfaction of the respondent No.3's liability under the judgement and decree.

4. Heard the learned counsel for the parties and perused the record with their assistance.

5. Indeed in terms of sub-section 2 of Section 23 of the 2001 ordinance, sale/disposition by the judgment debtor, of his property, after pronouncement of a judgment and decree by the Banking Court, without a written permission of the Banking Court is void. The text of the above provision runs as follows:

“(2) After pronouncement of judgment and decree by the Banking Court, including an interim decree under section 11, no judgment-debtor shall without the prior written permission of the Banking Court transfer, alienate, encumber or part with possession of any assets or properties and any such transfer, alienation,

encumbrance or other disposition by a judgment-debtor in violation of this sub-section shall be void and of no legal effect."

6. Now, the essential prerequisite for a sale of the nature as described by the above provision, to attract the restriction and to suffer the consequences as prescribed thereby, is the pronouncement of a judgment and decree by "the Banking Court", such being the Court as described thereby, and therefore the judgment and decree that meets the requirement, is the one that is rendered by the Banking Court and of no other Court. Whereas "Banking Court", in respect of a case, (i) in which the claim does not exceed hundred million rupees, (as in the present case), and for the trial of offences under the 2001 Ordinance, in terms of section 2(b) (i), (ii) means, a court established under section 5 of the 2001 Ordinance, and in respect of any other case, the High Court. While section 5 of the 2001 Ordinance, enables the Federal Government to establish Banking Courts to exercise jurisdiction under the said Ordinance. Therefore 'The Banking Court' in the context of section 23(2) of the 2001 Ordinance, is the Court established by virtue of section 5 of the 2001 Ordinance, and the thus the judgment and decree required to invoke the provisions of section 23(2) of the 2001 Ordinance, is the judgment and decree passed by a Banking Court established as above, and not any other Court and, for that matter, not a Banking Court that was established under the repealed Act. However, in the present case the judgment and decree sought to be enforced and on the basis whereof the respondent-bank has invoked section 23(2) of the 2001 Ordinance, was rendered under the repealed Act and was pronounced by a Banking Court established under the said Act, the same is therefore wholly irrelevant for the purposes of section 23(2) of

the 2001 Ordinance, and cannot be of any help to the respondent No.1 in invoking the said provision.

7. Even otherwise the sale deed in respect of the property was executed by respondent No.3, in favour of the appellant on 18.8.2001, prior to the 2001 Ordinance, that was promulgated on 30.8.2001, and whereby the 1979 Act was repealed and replaced by a new law as such, and upon registration of the sale deed on 11.4.2002, whereupon the property came to be invested in the appellant, vesting its title in the appellant exclusively, from the date the sale deed was executed, i.e. 18.8.2001, from which date the respondent No.3 ceased to have any right or interest in/or over the property at all. The sale/transfer of the property in favour of the appellant on 18.8.2001, thus became a past and closed transaction and could not have been put into jeopardy through an application purportedly seeking to invoke the provision of section 23(2) of the 2001 Ordinance, on 23.8.2004. The 2001 Ordinance does not, either expressly or impliedly, provide for any retrospective application of the provision of section 23(2) thereof, the same cannot therefore operate to reverse or undo a transaction which took effect from 18.8.2001, prior to the date the said provision and the law containing the same, i.e. 2001 Ordinance, came into existence.

8. It is now well settled that when the legislator alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them<sup>1</sup>. It is the general rule of the common law that the statute changing the law ought not, unless the intention appears with reasonably certainty to be understood as applied to facts, or events that have already occurred in such a way as to confer or

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<sup>1</sup> PLD 1969 SC 187

impose or otherwise effect rights or liabilities which the law had defined with references to past events.<sup>2</sup>

9. Indeed it is true that in terms of section 54 of the Transfer of Property Act, 1882, the transfer of immoveable property of the value of hundred rupees and upwards can be made only by registered instrument, whereas in terms of section 49 of the Registration Act, 1908, a document, which is required to be registered under the said Act, can operate to create any right, title or interest in any immoveable property, only if it is so registered. However, section 47 of the Registration Act, clearly lays down that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.<sup>3</sup>

10. In view of the foregoing, we have found the order of the Banking Court not to be in consonance with law and would therefore allow this appeal and set-aside the impugned judgment.

Judge

Judge

Judge

**Islamabad, the**  
Announced in open Court on \_\_\_\_\_  
at \_\_\_\_\_

Judge

**'APPROVED FOR REPORTING'**  
(Aamir Sh.)

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<sup>2</sup> (1957) 96 CLR 261, 267

<sup>3</sup> PLD 2003 SC 818