

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED  
MR. JUSTICE FAISAL ARAB  
MR. JUSTICE SAJJAD ALI SHAH

**CIVIL PETITION NO. 381-K OF 2019**

(Against the judgment dated 18.03.2019  
passed by the High Court of Sindh, Karachi in  
First Appeal No. 14/2015)

Nazli Hilal Rizvi

...Petitioner(s)

**VERSUS**

Bank Al-Falah Ltd and others

...Respondent(s)

For the petitioner(s): Mr. Muhammad Haseeb Jamali, ASC  
Mr. Ghulam Rasool Mangi, AOR

For the respondent(1): Mr. K.A. Wahab, AOR

For the respondent (5): Mr. Liaquat Hussain Khan, ASC  
Mr. K.A. Wahab, AOR

Date of hearing: 07.08.2019

**JUDGMENT**

**FAISAL ARAB, J.-**Fibercare Specialties, a proprietorship concern of the petitioner's husband, availed financial facilities from the respondent No.1 bank between the years 2007 and 2010. This business was being run on property situated in Shah Baig Gabool Goth, F.B. Industrial Area, Karachi, owned by the petitioner. To secure the finance availed by petitioner's husband, this property was mortgaged with the respondent No.1 bank. The last date to retire the debt availed by the petitioner's husband expired on 30.04.2010 on which date a sum of Rs.3,972,399.47 was due towards principal amount excluding markup. As the business failed to discharge its financial obligation within the stipulated time, even after a lapse of about ten months of the debt becoming due, the respondent No.1 filed

suit in the banking court on 11.02.2011 for recovery of principal amount along with markup and cost of funds.

2. The husband and son of the petitioner were both sued as guarantors of the finance provided for the business and she herself was sued as mortgagor as well as guarantor. They all engaged Mr. Farhan Zia Abrar as their advocate to defend them. Leave to defend applications were filed which were dismissed on 14.11.2012. The suit was then decreed for a sum of Rs.4,356,902.58 (Rs.3,972,399.47 being principal amount and Rs.384,503.11 towards markup that accrued upto 30.04.2010). The decretal amount was to be recovered along-with the applicable rate of cost of funds recoverable after the date of default i.e. after 30.04.2010 till recovery is made. None of the three judgment debtors preferred appeal and the judgment and decree passed by the Banking Court attained finality upon expiry of the period of limitation.

3. In order to seek recovery of the decretal amount through sale of mortgaged property, the respondent No.1 bank moved an application to the Banking Court on 21.10.2013 seeking conversion of the suit into execution proceedings as envisaged under Section 19 (1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 though such conversion automatically takes place under the said Section 19(1) and to that effect it was so stated in the judgment passed by the Banking Court. The Banking Court thereafter while proceeding with execution of the decree issued notice for attachment of the mortgaged property on 12.02.2014 which was followed by another notice on 17.04.2014 for settlement of proclamation of sale after which on 23.05.2014 a notice for the sale of mortgaged property was issued. All notices were issued at the address on which the judgment debtors were initially served. Thereafter, auction notice inviting bids was published in leading newspapers i.e. daily Jang and Dawn on 06.08.2014. Finally, on 11.08.2014 the mortgaged property was

sold in auction for a sum of eleven million rupees as against the forced sale value assessed at Rs.10.344 million.

4. After the property was auctioned, the petitioner moved an application under Order 21 Rule 90 of Code of Civil Procedure on 08.09.2014 seeking to set aside the auction mainly on the grounds of want of notice of the execution proceedings and incorrect appraisal of the mortgaged property. In the application it was claimed that the petitioner was a resident of USA and no notice of execution application was served at her US address and the property worth twenty-one million rupees, having forced sale value of sixteen million rupees was sold for a lesser amount of eleven million rupees. Not convinced with any of the pleas taken by the petitioner, the Banking Court dismissed her application against which the petitioner preferred appeal in the High Court vide impugned judgment which too was dismissed, hence this appeal.

5. Learned counsel for the petitioner argued that the petitioner being a permanent resident of USA ought to have been served at her USA address but neither any notice of the execution proceedings was served upon her nor the value of the mortgaged property was properly ascertained nor all the legal requirements necessary for the auction were fulfilled, therefore, the sale in favour of auction purchaser may be set aside.

6. As to the argument that proper course for auction of the mortgaged property was not adopted, the paper book contains copies of notices that were sent in the execution proceedings to the petitioner at the address on which she was served when summons was issued in the suit. These notices include notice dated 12.02.2014 for attachment of the mortgaged property, notice dated 17.04.2014 for settling the terms of proclamation of sale and notice dated 23.05.2014 for sale of the mortgaged property. Thereafter, auction notice was also published in two leading

newspapers i.e. daily Dawn and daily Jang. With regard to the plea that no notice of execution proceeding was served upon the petitioner at her USA address, the Banking Court in its judgment dated 13.02.2011 had referred to Section 19 (1) of the Financial Institutions (Recovery of Finances) Ordinance 2001 which provides *"Upon pronouncement of judgment and decree by a Banking Court, the suit shall automatically stand converted into execution proceedings without the need to file a separate application and no fresh notice need be issued to the judgment-debtor in this regard...."*. Section 19 (1) has clearly done away with the general requirement of instituting fresh proceedings for the execution of the decree as provided in the Code of Civil Procedure, hence a clear deviation is intended by the legislature from the general procedure and envisages that after the banking suit is decreed, the proceedings do not come to an end but stand automatically converted into execution proceedings for which no fresh notice is required to be served. Conscious of the provision of Section 19(1), the Banking Court in the last paragraph of its judgment converted the suit into execution proceedings and to avoid any ambiguity in the minds of the parties also stated that no fresh notice would be issued. Henceforth the petitioner and the other co-judgment debtors clearly knew from the judgment of the Banking Court passed on 13.04.2013 that suit proceedings by operation of law stood converted into execution proceedings and no fresh notice would be issued.

7. It is borne out from the record that the petitioner's address in the suit was her residence in Karachi on which the summons was served and she also filed her leave to defend the said application. It was her obligation to place on record her new address for any future service on her, if at all such service was required by law, which she did not do. Even otherwise, the Banking Court in its judgment dated 13.02.2013 had already put the judgment debtors on notice that the suit stands converted into execution proceedings under Section 19(1) of the Financial Institutions (Recovery of Finances) Ordinance 2001 and no further notice would be issued. It is on account of such conversion that

the decree holder did not file separate and independent execution proceedings but filed an application seeking conversion of suit into execution proceedings which had already happened at the time when the judgment was passed by the Banking Court. The learned judge in the High Court also noticed that the petitioner had herself stated in the second recital of the Power of Attorney filed on her behalf by her attorney that her advocate had informed her about the dismissal of her leave to defend application. Mr. Farhan Zia Abrar Advocate who represented the petitioner and other judgment debtors in the suit also continued to appear before the Banking Court even after conversion of suit into execution proceedings that finally culminated in the sale of the mortgaged property. Hence, the petitioner cannot feign ignorance about the periodical developments taking place in the proceedings. Looking from both angles, the question of non-service to the petitioner does not arise at all.

8. From the proceedings of the case it also becomes quite apparent that the petitioner, her husband and her son, being the co-judgment-debtors had every opportunity to prevent the auction of the mortgaged property by coming forward and satisfying the decree right from the day when judgment and decree was passed by the Banking Court in February, 2013 till the auction notice was published in the leading newspapers in June, 2014 yet they chose not to. On the contrary they preferred to sit quietly on the sidelines under the impression that non-issuance of notice to the petitioner at her address in USA, which was never brought on record, would vitiate the auction proceeding and they would continue to enjoy the decretal amount and interject in the proceedings only when the final step in the recovery proceeding was taken. The husband and son of the petitioner who were guarantors of the finance did not care to pay the decretal amount in order to avoid auction of the mortgaged property. Where the petitioner and the other two co-judgment debtors accepted their financial liability determined by the Banking Court vide judgment dated 13.02.2013 and did not prefer appeal then in order to prevent auction of the mortgaged property the decree ought to have been satisfied but they failed to

do so. On the contrary, they enjoyed the decretal amount right from the date of default that occurred way back on 30.04.2010 till the property was auctioned on 11.08.2014 (for about four and half years) under the false notion that non-issuance of notice of execution proceedings at the petitioner's USA address would be sufficient to get the court auction nullified. This becomes quite evident from the fact that it was only when the property was sold in court auction that the petitioner raised an objection and sought nullification of the sale on the pretext of want of notice and wrong appraisal of mortgaged property. Both the courts below rightly held that no case of want of notice on the petitioner of the execution proceedings was made out as in terms of Section 19(1) of the Financial Institutions (Recovery of Finances) Ordinance 2001 no fresh notice was required for commencement of execution proceedings and power of petitioner's counsel in any case was on the record to represent her.

9. After dismissal of the leave to defend application, the judgment debtors ought to have anticipated that judgment and decree would be eventually passed for the sale of the mortgaged property, which was ultimately passed and was accepted by not preferring appeal. In such eventuality the only act that could have prevented the sale through auction was payment of the decretal amount for which considerable period of time was at their disposal i.e. eighteen long months but they failed to do so. The executing court, though in terms of Section 19(1) of the Financial Institutions (Recovery of Finances) Ordinance 2001 was not legally obliged to issue notice of execution proceedings, out of abundant caution had issued the same at the petitioner's address available on record i.e. the address on which she was served in the suit and had filed leave to defend application through her counsel who continued to hold power to represent the judgment debtors throughout proceedings. Thus the petitioner and the rest of the judgment debtors from their own conduct which they demonstrated right from the date when the finance became due on 30.04.2010 till the property was auctioned on 11.08.2014 (four and a half long years) avoided to fulfill their financial obligation towards the respondent

bank and enjoyed its money, without realizing that the auction of the mortgaged property in the circumstances was a foregone conclusion. In the circumstances, the learned High Court rightly did not interfere with the findings of the Banking Court and held that the petitioner had notice of the proceedings and inadequacy in the valuation of the forced sale value of the mortgaged property, if any, is not a valid ground to set-aside a court sale.

10. In view of what has been discussed above we find no justification to interfere with the findings of the learned Single Judge of the High Court. We therefore refuse to grant leave and dismiss this petition.

JUDGE

JUDGE

JUDGE

Karachi, the  
7<sup>th</sup> of August, 2019  
Approved For Reporting  
**Khurram**