

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

F.A.O.No.38of 2020

Muhammad Nawaz

Vs.

Royal Bank of Scotland Limited and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**05.03.2020    Mr. Ahmad Nawaz Bhatti, Advocate for the appellants**

Through the instant appeal, the appellant, Muhammad Nawaz, impugns the interim order dated 10.10.2019 passed by the learned Judge Banking Court, Islamabad, whereby his objection petition as well as application for appropriate order was dismissed. The said order was passed during execution proceedings of judgment and decree dated 21.09.2010 passed by learned Banking Court Rawalpindi against respondent No.2/ Zafar Iqbal.

2.     Learned Counsel submits that the impugned order had been passed arbitrarily by ignoring important aspects of the case; that the appellant is not alien to execution proceedings being bona fide purchaser of the mortgaged property having a decree for specific performance in his favour; that the appellant had deposited entire decretal amount in the Banking Court which had not been considered in the impugned order; and that valuable rights of the appellants are attached with the execution proceedings. Learned counsel prayed for the appeal to be allowed as prayed for.

3. We have heard the learned counsel for the appellant and have perused the record with his able assistance.

4. It is an admitted position that on 05.09.2008 respondent No.1/ erstwhile Royal Bank of Scotland Limited instituted a suit against respondent No.2, for recovery of Rs.7,585,494.42/- under section 9 of the Financial Institutions (Recovery Of Finances) Ordinance, 2001 ("the 2001 Ordinance"). The said suit was decreed on 21.09.2010 by the learned Judge Banking Court, Rawalpindi. The decretal amount at that time came to Rs.7,585,494.42/-. The said decree was converted into execution petition and subsequently the matter was transferred to newly established Banking Court at Islamabad.

5. Learned Counsel took the position that during pendency of the suit before learned Banking Court, the appellant and respondent No.2 executed a settlement agreement dated 24.03.2010 whereby the appellant had to pay an amount of Rs.55,00,00/- to the decree holder bank and Rs.14,00,000/- to respondent No.2 towards balance sale consideration for the mortgaged property.

6. Be that as it may, after passing of the decree dated 21.09.2010 the learned Banking Court vide order dated 10.09.2014 decided to auction the mortgaged property, i.e. House No. 151, Street No. 14, Sector G-8/1, Islamabad ("the mortgaged property"). The appellant filed an objection petition while claiming to be *bona fide* purchaser of the mortgaged property. The order dated 01.03.2016 passed by the learned Judge Banking Court shows that the appellant deposited decretal amount on behalf of

respondent No.2/judgment debtor whereafter auction proceedings were provisionally suspended. It is pertinent to mention that suit for specific performance etc. filed by the appellant against respondent No.2 was decreed by the learned Civil Court, Islamabad on 17.01.2016.

7. The order dated 27.05.2016 shows that the judgment debtor/respondent No.2 got recorded his statement before the learned Banking Court that in the year 2007 he had sold the mortgaged property to the appellant and received Rs. 51,00,000/- on account of advance sale consideration whereas the appellant agreed to pay balance sale consideration to the Bank which the appellant failed to pay. In the said statement the judgment debtor/respondent No.2 sought time from the Court enabling him to deposit decretal amount in the Court failing which he consented that the Court may proceed in accordance with settlement dated 24.03.2010. The said request of the judgment debtor was allowed. The judgment debtor failed to make required payment of decretal amount despite extension in time.

8. The learned Banking Court vide order dated 17.11.2016 issued revised auction schedule. The appellant moved an application for appropriate order which was dismissed vide order dated 10.03.2017 by holding that the appellant does not fall in the definition of 'customer' as provided under section 2 (c) of the Ordinance, 2001 hence he is alien to execution proceedings.

9. On 11.01.2019 the appellant moved another application in the nature of settlement of accounts and for permission to deposit balance decretal amount by claiming to have stepped into

the shoes of judgment debtor after issuance of decree dated 17.01.2016 in his favour. The said application as well as objection petition of the appellant was dismissed through the impugned order dated 10.10.2019 passed by the learned Banking Court by holding the appellant stranger to execution proceedings and was allowed to withdraw Rs.75,00,000/- already deposited by him in the Court,.

10. The appellant was declared alien to execution proceedings vide order dated 10.03.2017 passed by learned Banking Court and there is nothing on record to show that the said order was assailed. As such the appellant has no *locus standi* to participate in the execution proceedings. Moreover, in the impugned order learned judge Banking Court had observed, and rightly so, that there is nothing preventing the decree holder bank and the appellant to enter into such a transaction out of Court, if they desire.

11. Beside the above, there is no denying that the instant appeal has been preferred against an interlocutory order. Section 22(1) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("the 2001 Ordinance") provides *inter alia* that any person aggrieved by any judgment, decree, sentence or final order passed by a Banking Court, may within thirty days of such judgment, decree, sentence or final order prefer an appeal to the High Court. The impugned order dated 10.10.2019 is not a judgment, decree, sentence or final order so as to make it appealable under Section 22(1) of the 2001 Ordinance.

12. As Section 22(6) of the 2001 Ordinance expressly bars a right of appeal or revision against an interlocutory order passed by a Banking Court. A party aggrieved by such an interlocutory order has to wait until a Banking Court passes a final order and then to challenge it in an appeal. This is because an interlocutory order merges into the final verdict. The purpose behind barring an appeal or a revision against an interlocutory order of a Banking Court is to avoid delays in disposal of the cases by the Banking Court. Reference in this regard may be made to the case of Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165), it has been held as follows:-

*"The statute excluding a right of appeal from the interim order cannot be passed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders."*

13. In view of the above, the instant appeal is dismissed as being not maintainable.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE