

HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Execution Application No. 01 / 2025

The Bank of Punjab **Versus** M/s Agri International etc.

Sr. No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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09.12.2025 Syed Muhammad Kaswar Gardezi, Advocate for the Applicant / Decree Holder Bank.
Mr. Mughees Aslam Malik, Advocate for Judgment Debtor No. 1 to 5(a & b).

C. M. No. 1850 / 2025

The Decree Holder Bank filed instant Application under Section 19(3) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the “**Ordinance**”) read with Rules 3 & 4 of the Financial Institutions (Recovery of Finances) Rules, 2018 (the “**Recovery Rules**”) seeking permission of the Court for conducting public auction of the mortgaged properties without intervention of this Court.

2. Learned counsel for the Decree Holder Bank submits that Section 19(3) of the Ordinance read with Rules 3 & 4 of the Recovery Rules permit the Decree Holder Bank to sell the charged properties through public auction without recourse to the Banking Court in accordance with the prescribed procedure to execute the Decree already passed in favour of the Decree Holder on 18.03.2025. No specific permission of the Court is required in this behalf, however, since *Fard Taliqa* was submitted before this Court and notices were issued to the Judgment Debtors under Order XXI, Rule 66 of the Code of Civil Procedure, 1908 (the “**CPC**”), therefore, for the sake of propriety, the instant Application has been filed to seek permission of

this Court to conduct public auction without intervention of this Court in accordance with the provisions of Section 19 of the Ordinance and the Recovery Rules which may be granted, accordingly.

3. Learned counsel for the Judgment Debtors contends that the Decree Holder Bank has filed the titled Execution Application in terms of Order XXI, Rule 11 of the CPC and acting upon the same, this Court issued notice under Order XXI, Rule 17 of the CPC to the Judgment Debtors, appointed Court Auctioneers in terms of Order XXI, Rule 65 of the CPC, fixed their tentative fee and expenses with a direction to evaluate the mortgaged properties through appointed evaluator approved by Pakistan Banks Association. As such, the Decree Holder Bank has exercised its option under Section 19(2) of the Ordinance to execute the Decree in accordance with the provisions of the CPC. Therefore, after initiation of auction proceedings in terms of Order XXI of the CPC, the Decree Holder cannot switch or depart from the opted mode of execution to another as provided in the Ordinance. Hence, the instant Application under Section 19(3) of the Ordinance is not maintainable. Reliance is placed on cases titled, “Muhammad Attique v. Jami Limited and others” (**2015 SCMR 148**); “Lanvin Traders, Karachi v. Presiding Officer, Banking Court No. 2, Karachi and others” (**2013 SCMR 1419**); and “Muhammad Hussain v. Industrial Development Bank of Pakistan, Hyderabad and another” (**2014 MLD 192**).

4. At the outset, it is noted that the referred case law has been perused. In the cases of Muhammad Attique and Lanvin Traders (supra), the validity of public auctions conducted by Court Auctioneers under supervision of the Court according to the provisions of the CPC were scrutinized. In this context, a passing observation was made to the effect that once the Court opts to execute a decree in accordance with the provisions of the CPC, it cannot depart from the applicable procedure. In all fairness, the observation

in the peculiar factual context simply implies that where a public auction is carried out pursuant to the provisions of the CPC, it would be judicially examined in terms of the requirements of applicable provisions of the CPC. Similarly, in Muhammad Hussain case (supra), the Court also examined the validity of a public auction conducted under its supervision and in this behalf, observed as under:-

“48.In the case in hand, however, it is not disputed that the mode of execution as provided under C.P.C. was adopted. This fact is evident from proceedings taken place in the execution. The word or used twice in subsection (2) of section 19 of F.I.O. 2001 [Ordinance No. XLVI of 2001] has to be read disjunctively, which classify three modes for execution of the decree. In our view however, once the mode for executing of the decree is chosen then the same cannot be switched over to another mode by the executing court much less unilaterally.”

5. In the above case, the Court also did not hold that once the process of public auction has been initiated by the Banking Court under the provisions of the CPC, it is precluded forever to grant permission to the Decree Holder to exercise other options ordained in law to sell the charged properties on its own without intervention of the Court. Rather, it is emphasized that if a public auction is conducted under the supervision of the Court, the same has to proceed in accordance with the provisions of the CPC. The validity of such a public auction shall be judicially scrutinized on the touchstone of applicable provisions of the CPC and non-compliance thereof cannot be condoned for the reason that the Banking Court is empowered by Section 19(2) of the Ordinance to adopt other modes of execution. As such, in none of the above cases, it has been held that once an option to sell a charged property by way of public auction through the Court in accordance with the provisions of the CPC has been exercised, it creates a permanent clog on the right of the Decree Holder to seek and the power of the Court to grant permission to sell a charged property without the intervention of the Court through a conscious order of the Court.

6. Therefore, it emerges from the rival contentions of the parties that the precise question requiring determination is as to whether the Banking Court is precluded to grant permission to the Decree Holder to sell the charged property by itself through public auction or sealed tenders after it has commenced execution proceedings in accordance with the provisions of the CPC under Section 19 of the Ordinance?

7. Record reflects that suit for recovery was decreed on 18.03.2025. The Judgment stipulated that in the event of non-payment of decrelal amount within 30 days from the date of the Judgment, the Decree shall automatically stand converted into execution proceedings as ordained in Section 19(1) of the Ordinance and shall be listed for hearing on a date to be fixed by office. Later, the Decree Holder Bank filed the titled Execution Application accompanied with *Fard Taliqa* informing non-payment of decrelal amount and praying to proceed in the execution proceedings. The Application was fixed for hearing on 30.04.2025 when notices were issued to the Judgment Debtors, Court Auctioneers were appointed, their tentative fee and expenses were fixed and they were directed to propose terms and conditions of sale in terms of Order XXI, Rule 66 of the CPC for public auction after evaluating the mortgaged properties listed in *Fard Taliqa* from the appointed evaluator. No meaningful step was taken in furtherance of the referred order when the Decree Holder filed the instant Application.

8. The Ordinance is a special law entailing specific procedure for the ‘financial institutions’ and the ‘customers’ to resolve *inter se* disputes with reference to ‘finance’ in terms of their mutual rights and obligations through the Banking Court. Section 7(1) of the Ordinance vests all powers of Civil Court in the Banking Court. Section 7(2) thereof proclaims that the Banking Court shall follow the procedure laid down in the CPC in all matters regarding which special procedure has not been provided for in the Ordinance. Similarly, Section 7(4) of

the Ordinance confers exclusive powers to the Banking Court to deal with all matters falling within its jurisdiction including execution. Section 19 of the Ordinance is relevant to the proposition and is reproduced as under:-

"19. Execution of decree and sale with or without intervention of Banking Court.- (1) 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. Particulars of the mortgaged, pledged or hypothecated property and other assets of the judgment-debtor shall be filed by the decree-holder for consideration of the Banking Court and the case will be heard by the Banking Court for execution of its decree on the expiry of 30 days from the date of pronouncement of judgment and decree:

Provided that if the record of the suit is summoned at any stage by the High Court for purposes of hearing an appeal under section 22 or otherwise, copies of the decree and other property documents shall be retained by the Banking Court for purposes of continuing the execution proceedings.

(2) The decree of the Banking Court shall be executed in accordance with the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) or any other law for the time being in force or in such manner as the Banking Court may at the request of the decree-holder consider appropriate, including recovery as arrears of land revenue.

Explanation.- The term assets or properties in sub-section (2) shall include any assets and properties acquired benami in the name of an ostensible owner.

(3) In cases of mortgaged, pledged or hypothecated property, the financial institution may sell or cause the same to be sold with or without the intervention of the Banking Court either by public auction or by inviting sealed tenders and appropriate the proceeds towards total or partial satisfaction of the decree. The decree passed by a Banking Court shall constitute and confer sufficient power and authority for the financial institution to sell or cause the sale of the mortgaged, pledged or hypothecated property together with transfer of marketable title and no further order of the Banking Court shall be required for this purpose.

(4) Where a financial institution wishes to sell mortgaged, pledged or hypothecated property by inviting sealed tenders, it

shall invite offers through advertisement in one English and one Urdu newspaper which are circulated widely in the city in which the sale is to take place giving not less than thirty days time for submitting offers. The sealed tenders shall be opened in the presence of the tenderers or their representatives or such of them as attend:

Provided that the financial institution shall be entitled in its discretion, to purchase the property at the highest bid received.

(5) *The provisions of sub-sections (5), (6), (7), (8), (9), (10), (11) and (12) of section 15 shall, mutatis mutandis, apply to sales of mortgaged, pledged or hypothecated property by a financial institution in exercise of its powers conferred by sub-section (3).*

(6) *The Banking Court and the financial institution shall be entitled to seek the services and assistance of the police or security agency in the exercise of powers conferred by this section.*

(7) *Notwithstanding anything contained in the Code of Civil Procedure 1908 (Act V of 1908), or any other law for the time being in force —*

- (a) *the Banking Court shall follow the summary procedure for purposes of investigation of claims and objections in respect of attachment or sale of any property, whether or not mortgaged, pledged or hypothecated, and shall complete such investigation within 30 days of filing of the claims or objections;*
- (b) *if the claims or objections are found by the Banking Court to be malafide or filed merely to delay the sale of the property, it shall impose a penalty upto twenty percent of the sale price of the property;*
- (c) *the Banking Court may, in its discretion, proceed with the sale of the mortgaged, or pledged or hypothecated property if, in its opinion the interest of justice so require:*

Provided that the financial institution gives a written undertaking that in the event the objections are found to be valid, or are sustained, it shall in addition to compensating the aggrieved party by the payment of such amount as may be adjudged by the Banking Court also pay a penalty upto twenty percent of the sale proceeds and such amounts shall be recoverable from the financial institution in the same manner as in execution of decrees passed hereunder.”

(Emphasis Supplied)

9. Section 15 deals with the direct sale of mortgaged property by a financial institution prior to the decree and its sub-sections made applicable to execution proceedings as per Section 19(5) of the Ordinance being relevant are reproduced as under:-

(5) *In addition to its powers under sections 25 and 26, the Federal Government may, by notification in the official Gazette, make rules specifying the mode, conduct or method of sale of the mortgaged property and in addition to the conditions stipulated in sub-section (4).*

(6) *The financial institution shall be entitled, in its discretion, to participate in the public auction and to purchase the mortgaged property for an amount ten percent higher than the highest bid obtained in the public auction, provided that where the financial institution chooses to purchase the mortgaged property at the highest bid obtained in the public auction, it shall issue notice to the mortgagor who shall have three business days from the service of the notice to match the financial institution's bid. If the mortgagor is able to match the financial institution's bid, he shall be allowed to purchase the mortgaged property.*

(7) *Where the mortgagor or his agent or servant or any person put in possession by the mortgagor or on account of the mortgagor does not voluntarily give possession of the mortgaged property sought to be sold or sought to be purchased or purchased by the financial institution, a Banking Court on application of the financial institution or purchaser shall put the financial institution or purchaser, as the case may be, in possession of the mortgaged property in any manner deemed fit by it:*

Provided that the Banking Court may not order eviction of a person who is in occupation of the mortgaged property or any part thereof under a bona fide lease, except on expiry of the period of the lease, or on payment of such compensation as may be agreed between the parties or as may be determined by the Banking Court to be reasonable.

Explanation.- (1) Where the lease is created after the date of the mortgage and it appears to the Banking Court that the lease was created so as to adversely affect the value of the mortgaged property or to prejudice the rights and remedies of the financial

institution, it shall be presumed that the lease is not bona fide, unless proved otherwise.

(8) *For purposes of execution and registration of the sale deed in respect of the mortgaged property, the financial institution shall be deemed to be the duly authorized attorney of the mortgagor and a sale deed executed and presented for registration by duly authorized attorneys of the financial institution shall be accepted for such purposes by the Registrar and Sub-Registrar under the Registration Act, 1908 (XVI of 1908).*

Provided that no such sale deed shall be executed or registered until expiry of seven days after the completion of the public auction for the sale of the mortgaged property.

(9) *Upon execution and registration of the sale deed of the mortgaged property in favor of the purchaser all rights in such mortgaged property shall vest in the purchaser free from all encumbrances and the mortgagor shall be divested of any right, title and interest in the mortgaged property.*

(10) *Net sale proceeds of the mortgaged property, after deducting all expenses of sale or expenses incurred in any attempted sale, shall be distributed ratably amongst all mortgagees in accordance with their respective rights and priorities in the mortgaged property. Any surplus left, after paying in full all the dues of mortgagees, shall be paid to the mortgagor.*

(11) *A financial institution which has sold mortgaged property in exercise of powers conferred herein shall file proper accounts of the sale proceeds in a Banking Court within fourteen days of the sale.*

(12) *All disputes relating to the sale of the mortgaged property under this section including disputes amongst mortgagees in respect of the mode, conduct or method of the sale or the distribution of the sale proceeds, shall be decided by the Banking Court to the exclusion of any other court of law, including the High Court.*

(Emphasis Supplied)

10. In addition to the above statutory stipulations, the Federal Government in exercise of powers conferred under Section 15(5) of

the Ordinance has promulgated the Recovery Rules under Section 25 of the Ordinance envisaging a detailed procedure to be followed by a financial institution in case of sale by itself through public auction without intervention of the Court providing protection to the rights and interests of the Judgment Debtors and other stakeholders to ensure transparency and fairness.

11. The analysis of above provisions of law makes it abundantly clear that the Ordinance has endeavored to provide for multiple options regarding execution of a banking Decree so that the same is satisfied within a reasonable time. Section 19 of the Ordinance is a complete code for execution of a banking Decree and grants certain definite and substantive rights to a financial institution, subject to the conditions prescribed under Section 19 read with relevant and applicable provisions of Section 15 of the Ordinance. Section 19(1) of the Ordinance provides for automatic conversion of suit into execution proceedings without the need to file a separate application and issue fresh notice to the Judgment Debtors. However, it importantly provides that process of execution of a banking Decree shall commence at the Banking Court upon automatic conversion of Decree into execution proceedings where the Decree Holder is obliged to submit particulars of the mortgaged, pledged or hypothecated property and other assets of the Judgment Debtor for consideration of the Banking Court and the case is heard by the Banking Court. Section 19(2) of the Ordinance provides three explicit modes to the Banking Court to execute a banking Decree (a) in accordance with the provisions of the CPC; or (b) in accordance with any other law for the time being in force; or (c) in such manner as the Banking Court may at the request of the Decree Holder consider appropriate, including recovery as arrears of land revenue. Section 19(3) of the Ordinance confers a special privilege to a financial institution with respect to mortgaged, pledged or hypothecated property which is not available to a financial institution regarding other personal properties of the

Judgment Debtor. As such, a financial institution can sell or cause to be sold, the charged properties of the Judgment Debtor subject of Decree either with or without the intervention of the Banking Court either by public auction or by inviting sealed tenders and appropriate the proceeds towards total or partial satisfaction of the Decree. This privilege has been subjected to the discretion of the Court, to be exercised according to the facts of each case. The Decree constitutes and confers sufficient power and authority to a financial institution qua sale of charged assets and a financial institution can transfer marketable title subject to the remedies extended in terms of relevant and applicable provisions of Sections 15 & 19 of the Ordinance. As such, Section 19(3) of the Ordinance encapsulates a specific covenant in addition to three modes of execution available to the Banking Court under Section 19(2) of the Ordinance. The request of the Decree Holder in terms of Section 19(3) of the Ordinance, however, is required to be considered under the third mode of execution catered for in Section 19(2) of the Ordinance. The other provisions of Section 19 read with applicable provisions of Section 15 of the Ordinance and the Recovery Rules regarding execution prescribe a detailed mechanism to be complied with in case of sale of charged property through sealed tenders or public auction with or without intervention of the Court. However, the overall scheme of law regarding execution of a banking Decree importantly recognize the overarching powers and role of the Banking Court throughout the execution proceedings including the power to examine accounts and settle all disputes relating to the sale of the mortgaged property.

12. It, therefore, follows that power has been extended to the Banking Court to grant permission to the Decree Holder at any stage of execution proceedings to exercise the option to sell charged property by way of mortgage, pledge or hypothecation without intervention of the Court either by sealed tenders or public auction subject to conditions and a conscious order passed in this respect

under Section 19(1) read with Section 19(3) of the Ordinance. Any other interpretation would defeat the express intention of the legislature and would attach redundancy to the scheme of execution enshrined under the Ordinance. Therefore, the discretion vested with the Banking Court to adopt an appropriate mode of execution at the request of the Decree Holder in terms of Section 19(2) of the Ordinance cannot be curtailed and such discretion has been regulated by the law. However, once a Banking Court has adopted any permissible mode of execution under Section 19(2) of the Ordinance, a conscious order is required to annul the proceedings being conducted under any specific mode of execution and resort to another based upon the facts and circumstances of the case. Nevertheless, if the Banking Court intends to sell a property through public auction under its supervision in accordance with the provisions of the CPC, then the procedure listed in the CPC shall be followed. Similarly, if the Banking Court intends to sell a property in accordance with any other law for the time being in force, the procedure envisaged therein shall be followed. Hence, the Banking Court at any stage of execution proceedings can consider the request of the Decree Holder to execute a banking Decree in such manner as it may consider appropriate through conscious application of mind. For reference, see case titled, “Shahida Bibi and others v. Habib Bank Limited and others” (**PLD 2016 Supreme Court 995**).

13. In the instant case, the Decree Holder Bank has procured the banking Decree. Mortgaged, pledged and hypothecated properties subject of Decree dated 18.03.2025 are listed in *Fard Taliqa*. No meaningful steps in terms of Order dated 30.04.2025 have taken place beyond issuance of notice under Order XXI, Rule 66 of the CPC and passing of ancillary directions which were not complied with till the filing of Application under consideration. The sale of charged properties by the Decree Holder Bank through public auction without intervention of the Court is likely to complete at a faster time track

and would save precious time of the Court. Section 19(3) of the Ordinance allows the Decree Holder Bank to sell charged properties through public auction and there is no impediment to withhold or deny such permission.

14. In view of the above, the instant Application is allowed; the Order dated 30.04.2025 to the extent of appointment, fee and expenses of Court Auctioneers along with ancillary directions to them qua filing of proposed terms and conditions of sale and evaluation of properties through appointed evaluator is hereby recalled; and the Decree Holder Bank is permitted to sell the charged properties listed in *Fard Taliqa* through public auction without intervention of the Court in accordance with the requirements of Section 19 of the Ordinance read with the Recovery Rules.

C. M. No. 1548 / 2025

15. The instant application seeking appointment of same Court Auctioneers in the titled and connected Execution Application No. 2 / 2025 has become infructuous and is disposed of, accordingly.

Main Case

16. The titled Execution Application is adjourned *sine die* which can be revived by filing an appropriate application within the scope and ambit of Section 19 of the Ordinance.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge