

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN
JUDICIAL DEPARTMENT**

EFA No.26 of 2023

M/s Al-Harmain & Co. & others

Versus

MCB Bank Limited

J U D G M E N T

Date of hearing: 16.04.2024.

Appellants by: Mr. Muhammad Suleman Bhatti, Advocate.

Respondent *ex parte*.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant appeal, appellants have assailed vires of order dated 26.04.2023, passed by learned Judge Banking Court-I, Multan, whereby non-bailable warrants of arrest of appellants were issued and CNICs of appellants No. 2 & 3 were blocked.

2. Brief facts of the case are that respondent-bank filed suit for recovery of Rs. 51,28,534.37 along with mark up, cost and cost of funds from the date of expiry of finance till realization of dues. The suit was contested by appellants by filing petition for leave to defend the suit. Learned Judge Banking Court-II, Multan, after hearing the arguments of learned counsel for the parties, dismissed said application and passed judgment & decree dated 06.07.2010 for recovery of Rs.51,28,533.59 with costs of suit and cost of funds till the date of its realization. During execution proceedings, respondent moved application for issuance of warrants of arrest and blockage of CNIC of the judgment-debtors. Learned Judge Banking Court-I, Multan, vide impugned order dated 26.04.2023 issued non-bailable warrants of arrest against appellants No.2 & 3 along with direction to block their CNICs. Hence, instant appeal.

3. Learned counsel for appellants submits that neither any inquiry was conducted nor show cause notice was issued prior to issuance of non-bailable warrants of arrest, within the meaning of Order XXI Rules XXXVII & XL read with Section 51 CPC, therefore, impugned order is absolutely illegal and without lawful authority. In support, he has *inter alia* relied upon Messrs Azhar & Co. and others v. National Bank of Pakistan (2018 CLD 830) and Muhammad Asif v. Standard Chartered Bank (Pakistan) Limited through Manager (2022 CLD 1021).

4. None is present on behalf of respondent-bank to rebut the above submissions, since it has already been proceeded against *ex parte* vide order dated 21.09.2023.

5. Heard. Available record perused.

6. The order of learned Judge Banking for issuance of warrant of arrest and blockage of CNICs of appellants No.2 & 3 are under-challenge before us.

7. As regards blockage of the CNICs, we feel it appropriate to go through the provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“**FIO, 2001**”) dealing with the powers of a Banking Court while executing a decree. Section 19 of the FIO, 2001 mainly provides that mortgaged, pledged or hypothecated property and other assets of the judgment-debtor would be the subject matter of the execution. Section 19(2) provides various modes / actions to be taken by the Banking Court to execute a decree coupled with powers given in various sub-sections of Section 15 of the FIO, 2004 and bestows it with powers of Executing Court provided in the Code of Civil Procedure, 1908 or any other law for the time being in force. We have a glimpse to the afore-referred provisions of the FIO, 2001 together with the provisions of CPC dealing with powers of the Executing Court, however are unable to find any direct provision empowering to block CNIC of a judgment-debtor.

8. Section 18(1) of the National Database and Registration Authority Ordinance, 2000 empowers NADRA to cancel, impound or confiscate a CNIC, after giving notice in writing to the holder of CNIC to show cause as to why such order should not be passed. Section 18(2) enumerates the instances / circumstances in which such action can be taken, which includes (a) *the card has been obtained by a person who is not eligible to hold such card, by posing himself as eligible; (b) more than one cards have been obtained by the same person on the same eligibility criteria; (c) the particulars shown on the card have been obliterated or tampered with; or (d) the card is forged.* Apparently, no instance of blocking a CNIC, pertinently while conducting executing proceedings by a court of law, is visible in the afore-referred provision. Section 18(3) provides right of appeal to aggrieved person before the Federal Government against the order passed against him and again notice providing of hearing is expedient before deciding the appeal. We are mindful of the fact that the legislature has made it obligatory upon the NADRA authority as well as the appellate authority to have given a fair opportunity of hearing to lead the defence to the affected person in terms of Section 18 *ibid*. We have gone through the impugned order and proceedings being conducted before passing the said order and are astonished to observe that no such exercise of issuing a show cause notice to appellants to explain their position was undertaken by the learned Judge Banking Court.

9. In the case reported as Muhammad Umar v Federation of Pakistan, through Secretary, Ministry of Interior, Islamabad and 2 others (PLD 2017 Sindh 585), NADRA had blocked the petitioner's CNIC by issuing a notice under Section 23 instead of Section 18 of the NADRA Ordinance. The Sindh High Court observed that while the term 'block' was alien to the NADRA Ordinance, Section 18 did allow the authority to impound a card under certain conditions. The act of impounding a document is

completed by taking possession of the document, thus, if NADRA decides to impound a card under the directives of the Federal Government, they may direct the person to deposit their CNIC to NADRA. It was further observed that, it is mandatory that NADRA issues notice to the concerned person of the same under the relevant section, and gives them a fair and proper chance of hearing. Therefore, ‘blocking’ of a CNIC without giving a chance of hearing was held to be illegal as the same was not warranted under the law.

Likewise, this Court in the case reported as Hafiz Awais Zafar v Judge Family Court, Lahore and 2 others (PLD 2022 Lahore 756), held that an individual cannot be deprived of his identity card without due process and “*In as much as cancellation, impounding or confiscation of CNIC impacts the fundamental rights of a person, the provisions of section 18 of the Ordinance must be strictly construed and scrupulously followed. Any order passed or action taken on a consideration other than those stipulated therein cannot sustain.*”

Similarly, in the judgment reported as Urooj Tabani v Federation of Pakistan through Secretary Ministry of Interior, Islamabad and 2 others (PLD 2021 Islamabad 105), NADRA had issued a notice to the petitioner that she had obtained her CNIC through unfair means, and then subsequently impounded her CNIC as well as segregated her from the family tree. The Islamabad High Court held that NADRA did not have the authority to ‘block’ a CNIC upon receiving the complaint of a third party as presumption of truth is attached to the CNIC and the particulars recorded therein. It was further observed that the powers of impounding, cancelling or confiscating a card under Section 18 are explicitly confined to the four grounds prescribed.

10. Needless to say that Section 19 of the NADRA Ordinance, 2000 specifies a few circumstances when the CNIC is compulsorily required, which include passport, permit or other travel documents for going out of Pakistan and identification of a

voter at various elections. Section 19(3) empowers the Federal Government to specify any other purpose for which the production of any card issued by NADRA shall be necessary. Presently, the need for the CNIC has increased manifold. Almost every government and private organization requires CNIC from a person before attending them. CNIC is also expedient to get admission in higher education programs, apply for a job, open a bank account, get a driving license or arms license, get utility connections, purchase railway and air tickets, execute any instrument, stay in a hotel or lodge, appear in a court proceedings and enter in certain buildings and premises etc. CNIC is essential for enjoyment of a number of fundamental rights, hence, a person cannot be deprived of it without due process. The superior Courts have expanded the right to life over time (provided in Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973) and held that it includes the right to legal aid; the right to speedy trial; the right to bare necessities of life; protection against adverse effects of electro-magnetic fields; the right to pure and unpolluted water; the right to access to justice; the right to livelihood; the right to travel; the right to food, water, decent environment, education and medical care. Personal identity of a person comprises all those aspects of his profile which are significant to him. Right to identity is also associated to the right to life (Article 9) and would also be read into Article 14, which guarantees dignity of man.

11. According to the provisions of Order XXI, Rules 37 C.P.C. where an application for the arrest and detention is made, the Court instead of issuing warrant for arrest, may issue a notice calling upon the judgment-debtor to appear on a date specified in the notice and show cause as to why he should not be detained in prison. If the judgment-debtor does not appear in response to notice, the Court shall issue warrant for the arrest of judgment-debtor as provided under Rule 37(2). Rule 40 CPC provides that where the judgment-

debtor appears in the Court in pursuance of the notice or is brought before the Court after being arrested, the Court shall hear the decree-holder, take all such evidence as may be produced by him in support of his application and shall then give judgment-debtor an opportunity of showing cause why he should not be detained in prison and that pending conclusion of inquiry the Court, in its discretion, order to release the judgment-debtor on furnishing of security to the satisfaction of the Court for his appearance, when required, and that on conclusion of inquiry, the Court can subject to the satisfaction of provisions of Section 51, C.P.C., make an order in respect of detaining the judgment-debtor in prison. These rules and procedure therein have been considered in a number of cases and the consistent view taken is that before passing an order for arrest and detention of judgment-debtor, the Court shall after due inquiry and affording opportunity of evidence to parties, determine that the pre-conditions for the issuance of such directive have been satisfied by the decree-holder. Reference can be made to Habib Ahmad v. Haji Munir Ahmad (2004 YLR 1540), Messrs 3-A Trade Impex through Partner and 2 others v. Askari Commercial Bank Ltd, through Branch Manager (2005 CLD 1379), Abdul Basit Zahid v. Modaraba Al-Tijarah through Chief Executive and 2 others (PLD 2000 Karachi 322) and Muhammad Kaleem v. Arslan Aslam and others (2023 CLC 796).

12. It is pertinent to mention here that agricultural land of the judgment-debtors has already been redeemed and another agricultural land measuring 195-K 02-M, situated at Mouza Turbet Haji Shah, Tehsil & District Jhang, is under mortgage and order could have been passed regarding said property as permissible under the law, therefore, there appears no justification to pass impugned order, especially when prerequisites have not been observed.

13. For the foregoing reasons, instant appeal is allowed. Consequently, impugned order dated 26.04.2023 is set aside being

illegal and without lawful authority. However, learned Executing Court shall be at liberty to initiate fresh process as per law and the above observations of this Court.

(Raheel Kamran)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Judge

Sultan / A.H.S.