

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

**Mr. Justice Mian Saqib Nisar, HCJ
Mr. Justice Umar Ata Banidal
Mr. Justice Ijaz ul Ahsan**

CPLA No.1476 of 2016

Against judgment dated 16.02.2016 of
Lahore High Court, Lahore, passed in EFA
No.280 of 2008.

Muhammad Khalil

Petitioner(s)

VERSUS

M/s Faisal M.B Corporation, etc

Respondents

For the Petitioner(s): Kh. M. Farooq, Sr.ASC

For Respondents#1-4 : Mr. M. Munir Paracha, ASC
Mr. M. Ramzan Chaudhry, ASC

For Respondent#6 : Syed Zahid Hussain Bukhari, ASC
Ms. Khalida Parveen, ASC

Date of Hearing: 14.09.2018

JUDGMENT

IJAZ UL AHSAN, J-. This Civil Petition for Leave to Appeal arises out of an order of the Lahore High Court, Lahore dated 16.02.2016, passed in EFA No.280/2008. The said appeal had been filed by the Petitioner against the order of the Banking Court-I, Lahore dated 12.06.2008 whereby the Petitioner was denied confirmation of the sale by auction that took place on 15.03.2000.

2. The matter at hand pertains to execution proceedings of a decree passed by the Banking Court on 11.12.1998 for a sum of Rs.66,24,000/- . After the sale had taken place the Judgment Debtor, Mrs. M.B Rana (**Respondent No.3**) filed an application under Order 21 Rule 90 of the Civil Procedure Code (CPC). During the pendency of

the execution proceedings and also while the application under Order 21 Rule 90 was pending, the Judgment Debtor filed an application under S.151 CPC for converting the application of the Judgment Debtor as an application under Order 21 Rule 89 CPC. She also prayed that she be allowed to deposit the entire decadal amount along-with an additional 5% of the sale price which she had deposited with the application. The application was allowed and the Banking Court vide order dated 06.12.2005 directed that the applicant shall deposit the entire decadal amount along with 5% of the purchase money. An Appeal was preferred by her against the said order which was decided by the HC in FAO No.318/2005 whereby it was held that the application under Order 21 Rule 89 is still pending and the appeal was premature. It was directed that the same had to be decided in accordance with law after hearing all the parties.

3. Thereafter, vide order dated 18.03.2006 the Banking Court-II held that the Judgment Debtor had submitted the decadal amount as well as 5% of the purchase price and that serious illegalities had been committed in the auction that was conducted. It was observed that the auction report had been submitted later than what had been stipulated by the Court in the Schedule of auction; the Court Auctioneers had demanded Rs.500,000/- for declaring the nominee of the Judgment Debtor as the successful bidder which allegation was supported by the Affidavit of the Judgment Debtor. An affidavit of the Circle Patwari Lumberdar too, was placed on record to the effect that the

auction did not take place at the spot. Moreover, the Banking Court had observed that the land measuring 201 Kanals situated is village Maraka, Tehsil and District, Lahore which had been sold for Rs.2,600,000/- (**Rs.96,635/- per acre**) whereas the DC rate of land in the said village, which even otherwise is much lower than the market value of land, was Rs.606,400/- per acre. The real value of the land measuring 25 acres, even if calculated at the DC rate, came up to Rs.15,160,000/- at the very least. The Objection petition was thus allowed. The petitioner (Auction purchaser) was permitted to withdraw the bid price together with 5% of the said amount by way of compensation.

4. An EFA preferred against the said order was disposed off in the terms that Banking Court was directed to "*only consider the confirmation or otherwise of the auction sale in exercise of suo motu powers vested in it, in this behalf. And for such purpose the auction purchaser be allowed an opportunity to produce material and if necessary, cross-examine the deponents of the affidavits filed by the Judgment Debtors*".

5. Vide order dated 12.06.2008 the Banking Court-I, Lahore came to the same conclusion as its predecessor and the application of the Judgment Debtor, Respondent No.3 was allowed while disposing off the Execution Petition. EFA No.280 of 2008 filed by the petitioner before the High Court has been dismissed vide impugned Judgment. The learned counsel for the petitioner submits that the High Court erred in law in affirming the judgment of the Banking Court. The

said Court had set aside the sale made by public auction in favour of the Petitioner after the lapse of almost 8 years. He maintains that valuable rights had accrued in favour of the Petitioner which could not have been taken away lightly. He further submits that mere inadequacy of price does not itself furnish justification to set aside an otherwise valid sale. He argues that the lower fora have misinterpreted and misapplied the law on the subject. Therefore, the impugned judgment cannot be sustained and is liable to be interfered with by this Court. The learned Counsel for the respondents on the other hand have defended and supported the impugned judgment. They maintain that the petitioner has failed to point out any illegality infirmity or flaw in the impugned judgment.

6. We have heard the learned counsel for the parties and perused the record with their assistance. It is clear and obvious to us that land measuring 25 acres situated at Mouza Marakka, Tehsil and District Lahore was sold for a paltry sum of Rs. 2.6 Million which translates into Rs.96,635 per acre. This amount was not only much less than the actual market value of the land, but was also substantially less than the DC rate which was in the sum of Rs.6,06,400/- per acre. Calculated as per this criteria and not considering the real market value of the land, the value of 25 acres calculated at the DC rate came to Rs.15,160,000/- We are therefore in no manner of doubt that the land in question was indeed sold at a throw away price causing substantial injury and loss to the Judgment Debtor. There was a huge gulf between the value

represented by the auction price and the real market value and there is no plausible or reasonable explanation for such difference. Further, there is evidence on record that the auction proceedings were not conducted at the spot. This fact casts serious doubts upon the sanctity of the auction and the entire process which led to such auction. It is now well settled that the Court has the power to set aside any auction if the same is proved to have been conducted in an unlawful or irregular manner or the property has been sold at a throw away price. We are unable to agree with the assertion of the learned counsel for the petitioner that inadequacy of the sale price cannot constitute basis for setting aside a sale.

7. In the case of Lanvin Traders (2013 SCMR 1419) we have held that Order 21 Rule 89 is designed to protect the interests of the judgment debtor regarding sale of his property by fraudulent means or at a throwaway price. Rule 89 provides that any person either owning a property or holding an interest therein, by virtue of title acquired before the auction sale, may seek setting aside of the auction sale and restoration of the property to him by depositing in court for payment to the purchaser, a sum equivalent to 5 % of the purchase money together with the auction price deposited by the auction purchaser. Thus, in a situation where a property was sold for less than its value, by availing the benefit of this rule, the judgment debtor or any other person holding interest in such property may challenge the sale and retrieve the property from the purchaser by depositing the purchase price together with 5% of such price in Court.

8. We are not impressed by the argument of the learned Counsel for the Petitioner that by virtue of being declared the highest bidder and depositing the entire sale price in Court, valuable rights had accrued in favour of the Petitioner. It needs no reiteration that an auction is always subject to confirmation by the Court. Till such time that such confirmation is granted by the Court, after hearing all concerned parties and in accordance with law, the powers available to the Court under Order 21 Rules 89 and 90 can always be exercised. Upon coming to the conclusion that a property has been sold for less than its market value, the Court is not denuded of its jurisdiction to set aside such sale on account of inadequacy of price alone. The record indicates that the executing court never confirmed the auction. Therefore, no vested right had accrued in favour of the auction purchaser and the argument of the learned ASC for the Petitioner in this regard is totally misconceived.

9. The above are the reasons for our short order dated 14.09.2018 which, for ease of reference, is reproduced below:

*"For reasons to be recorded later, this Petition is dismissed.
Leave to appeal is refused."*