

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

AJR

CIVIL APPEAL NO. 839 OF 2015

(Against the judgment dated
15.6.2015 of the Lahore High
Court, Multan Bench, Multan
passed in FAO No. 64 of 2015).

Habib Bank Ltd.

...Appellant(s)

Versus

Bashir Ahmad, etc.

...Respondent(s)

For the appellant(s): Sardar Riaz Karim, ASC.
Ch. Akhtar Ali, AOR.

For respondent No.1: Mr. Muhammad Suleman Bhatti, ASC.

For respondents 2-8: Ex-parte.

Date of Hearing : 06.12.2018.

O R D E R

IJAZ UL AHSAN, J.- This appeal is directed against the judgment of the Lahore High Court, Multan Bench, Multan passed on 15.06.2015. Through the impugned judgment, the appeal filed by respondent No. 1 was allowed, the order dated 22.04.2015 passed by the Banking Court, Multan was set aside and the Appellant bank was directed to return the amount deposited by the auction purchaser (respondent No.1, Bashir Ahmad) with penalty @ 10% per annum on the amount deposited by the auction purchaser with the bank which had remained in custody and use of the bank for about nine years.

2. The brief facts necessary for decision of this lis are that the Appellant bank being a decree holder placed a mortgaged property owned by the judgment debtor up for auction on 02.07.2008 to recover the decretal amount. Respondent No. 1 submitted the highest bid in the sum of Rs.50,50,000/- . The Banking Court Multan confirmed the auction of the property in favour of the auction purchaser. The judgment debtor however filed an appeal before the High Court which was accepted and the case was remanded to the Banking Court for fresh decision. The Banking Court dismissed the objection petition filed by the judgment debtor, vide order dated 08.08.2012. The judgment debtor once again appealed the order which was allowed on 05.11.2012. The Banking Court after hearing the parties again dismissed the objection petition which the judgment debtor again appealed through FAO No. 110 of 2013. This appeal was allowed, vide order dated 29.05.2013 setting aside the impugned order of the Banking Court. Respondent No. 1 thereafter filed an application for return of the auction amount. However, the Banking Court dismissed the same. The auction purchaser approached the High Court against the order of the Banking Court which found in his favour and directed the bank to refund the afore-noted amount of Rs.50,50,000/- together with 10% mark up as penalty. The Appellant bank is aggrieved of the said order.

3. At the very out set, the learned counsel for the Appellant contended that Section 19(7) of the Financial

Institutions (Recovery of Finances) Ordinance, 2001 (the Ordinance) needs to be interpreted. He argued that the provisions of the Ordinance had been incorrectly applied and interpreted. He maintained that Respondent No. 1 participated in the auction having consented to and accepted the terms and conditions of the same. Further, the Appellant bank had given no undertaking regarding success of the auction or payment of mark up/interest on the amount deposited. He therefore submits that the order of the High Court directing the Appellant bank to pay 10% over and above the amount deposited by the auction purchaser is unjustified and not supported by statutory provisions.

4. On the other hand, the learned counsel for the Respondent No. 1 has pointed out that in the first place the auction purchaser was not at fault if the matter lingered on for so long. Further, the bank had possession and use of the funds which it utilized for about nine years and obviously earned returns on the same. He therefore, contended that it would only be just and fair if the bank is directed to return the amount together with at least such mark up as it pays to persons who deposit funds with it.

5. Having heard the learned counsel for the parties we find substance in the argument of the learned counsel for the Respondent that he is entitled to receive compensation on the amount which he deposited with the Appellant bank by way of price of the auction property. There is no denial of the

fact that if the matter lingered on for a number of years, it was for no fault of the Respondent. It is apparent that the matter lingered on in Courts and in appellate proceedings for which the Respondent could not have been penalized. It is settled law that an act of the Court shall not prejudice any of the parties. It is also evident that the bank had possession and use of the said funds for a period in excess of nine years. During this time surely the money was utilized by the bank in its business and obviously the bank earned returns on the same. It would therefore neither be just nor proper to allow the bank, free use of the money, as it would amount to unjust enrichment at the cost of the auction purchaser who was not to be blamed for delay in the legal process. The Appellant has raised no valid objection as to why Respondent No. 1 may not be allowed compensation for the amount which was held and utilized by the bank for about nine years. At the same time we find that the amount of 10% is on the higher side in view of the fact that the return that the bank offers on 3 to 5 year deposit is approximately an average about 8% per annum. We accordingly modify the judgment of the High Court while upholding the same on merits to the extent only of reducing the amount of penalty/mark up awarded by the High Court in favour of Respondent No.1 from 10% to 8% per annum. We, for avoidance of doubt, clarify that the respondent shall now be entitled to recover the entire amount of Rs.50,50,000/- together with penalty mark up calculated @ 8% per annum from the date of deposit till the date of refund.

Other than the above modification the judgment of the High Court is upheld and affirmed.

6. Appeal disposed of in the afore-noted terms.