

31/21

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE YAHYA AFRIDI

A.F.R.

Civil Petition No. 2104-L of 2019

(Against the judgment dated 17.06.2019 passed by the Lahore High Court, Lahore in E.F.A. No. 702 of 2010)

Muhammad Sharif, etc.

...Petitioners

versus

MCB Bank Limited, etc.

...Respondents

For the petitioners: Mr. M. Imran Malik, ASC

For the respondents: N.R.

Date of hearing: 09.03.2021

ORDER

YAHYA AFRIDI, J.- The matter in dispute relates to a double story house, bearing No. B-III-14-S-295/1/RH on land measuring 9 *Marlas* of land, situated at Mohallah Mianapura, East Sialkot ("disputed property"), which was auctioned in execution of a decree dated 06.10.2000 for recovery of Rs.1,50,861.58/- with future mark up till the realization of the decretal amount passed by the Banking Court, Gujranwala in favour of Muslim Commercial Bank ("MCB").

2. By an order of the Banking Court, an auction was carried out on 06.07.2001, the report thereof was filed on 19.10.2001, the

auction sale was confirmed and the sale certificate in this regard was issued in favour of the auction purchaser on 23.05.2002. The present petitioners challenged the confirmation of the sale *vide* his application dated 23.07.2002 purportedly under the provisions of Order XXI, Rule 89 of the Civil Procedure Code, 1908 ("CPC"). Similar objection petitions were repeatedly submitted by the petitioner, and finally the executing court dismissed the same *vide* its order dated 01.06.2010 in terms that:

"This property was earlier owned by Muhammad Sharif which was transferred through two registered sale deeds by the judgment debtor No. 2 as General attorney of the objector Muhammad Sharif in favour of the judgment debtor No. 3 and therefore the petitioner Muhammad Sharif Alias Muhammad Sadiq has no locus standi, what so ever to file an objection petition qua this property. The judgment debtors have also filed an application for cancellation of auction and setting aside the sale certificate in favour of the auction purchaser Nasir Saleem Mirza and they have also not paid a single penny towards the sale price or any decretal amount or the proclamation money alongwith 5% for its payment to the auction purchaser. This averments of the petitioner Muhammad Sharif that the present value of this property is more than of Rs. 20,00,000/- is concerned, he has not paid a single penny of the decretal amount or proclamation money alongwith 5% for payment to the auction purchaser and as such he has no locus standi to file an objection petition and as such his averments as far as the value of this property is concerned is of no significance. The judgment debtors have also proclamation to be paid to the auction purchase for a period of about 8 years. The judgment debtors may deposit the proclamation money along with 5% to be paid to the auction purchaser within a period of one month of the sale and on their request the sale can be set aside. The judgment debtors and as well as the petitioners/objectors have been delaying the matter on one pretext or the other. Therefore, these all objection petitions filed by the petitioner Muhammad Sharif Alias Muhammad Sadiq and as well as the objection petition filed by the objector Muhammad Asif and also an application filed by the judgment debtors for setting aside the auction proceedings and as well as the sale certificate in favour of auction purchaser are hereby dismissed.

17. Now a warrant of possession be issued in favour of the auction purchaser through Bailiff of this court on process fee for 19.06.2010 for report at Campt at Sialkot."

Aggrieved thereof, the present petitioners moved the High Court in appeal, which was also dismissed in terms that:

"Therefore, the objector/petitioner Muhammad Sharif Alias Muhammad Sadiq has been lingering on this matter extending over a period of about 8 years without any rhyme and reason. We

are also coincided with the findings of the Judge Banking Court that the present value of the property is more than of Rs. 20,00,000/-, the Appellant has not paid a single penny of the decreetal amount or proclamation money alongwith 5% for payment to the auction purchaser and as such he has no locus-standi to file an objection petition and as such his averments as far as the value of this property is concerned is of no significance. It also transpires that the judgment debtors have also not paid a single penny towards the decreetal amount or value of the proclamation to be paid to the auction purchaser for a period of about 8 years. The Judge Banking Court has rightly dismissed the objection petitions filed by Muhammad Sharif alias Muhammad Sadiq as well as that of the objector Muhammad Asif and an application filed by the judgment debtors for setting aside the auction proceedings and as well as the sale certificate in favour of the auction purchaser. We do not see any illegality or perversity with the impugned order which has been passed in accordance with law as such does not warrant any interference by us. Consequently, the appeal in hand being devoid of merit is hereby dismissed."

3. At the very outset of the proceedings, the worthy counsel of the petitioners was confronted to explain whether the objection petition filed for setting aside the sale made in execution of the decree was within the time period as stipulated under Article 166 of the Limitation Act, 1908 ("Act"). Despite all his efforts, the worthy counsel was unable to justify the delay or to refer any application filed by the petitioner seeking condonation of the said delay.

4. Faced with the time bar to the maintainability of the objection petition, the worthy counsel urged the court that, the auction proceedings were void in the eyes of law and that no period of limitation would run against a void order.

5. The law is by now settled that limitation against a void order would run from the date of knowledge which has to be explicitly pleaded.¹ In the instant case, in all the objection petitions that were filed, the petitioners did not state the date when they

¹ Muhammad Raz Khan v Government of N.W.F.P. (PLD 1997 SC 397) at page 400; Messrs Blue Star Spinning Mills Ltd v Collector of Sales Tax and others (2013 SCMR 587)

obtained knowledge of the alleged void order. In these circumstances, the petitioners cannot legally take this stance and that too at this belated stage.

6. Moving on to the irregularities asserted in the auction proceedings, the stance of the worthy counsel was that the terms of the auction were never approved by the executing court nor was the proclamation of sale issued as mandated under the enabling provisions of Order XXI, CPC. This stance is belied by the order of the executing court dated 12.04.2001, which clearly states that:

"notice under Order 21 rule 66 CPC has been effected through proclamation and affixation. To come up for appointment of court auctioneer on 28.04.2001."

A presumption of correctness is attached to judicial proceedings, and strong and unimpeachable evidence is required to rebut such presumption.² In the present case, the petitioners have not produced any cogent evidence to dislodge the said presumption.

7. Lastly, the learned counsel for the petitioners contended that the petitioners are owners-in-possession of the disputed property, and they have been defrauded and deprived of their valuable rights, by mortgaging the disputed property through a forged power of attorney leading to the auction proceedings. In this regard, reference was made to Mutation No. 8326 dated 05.08.1960. However, the learned counsel for the petitioners conceded that their title over the disputed property is *sub judice* awaiting a judicial pronouncement. Therefore, it would not be appropriate for this Court to pass any observation on the evidential

² Article 129(e), Qanun-e-Shahadat 1984; Fayyaz Hussain v. Akbar Hussai, (2004 SCMR 964)

value of the mutation *qua* the title of the disputed property, lest it may prejudice the case of any of the contesting parties.

8. Accordingly, the facts and circumstances of the present case do not warrant any interference by this Court. The present petition is, thus, dismissed and leave is refused.

Sd/- J

Sd/- J

Sd/- J

Islamabad

09.03.2021

Not approved for reporting.

Arif /