

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE QAZI FAEZ ISA, CJ  
MR. JUSTICE MUHAMMAD ALI MAZHAR  
MS. JUSTICE MUSARRAT HILALI

**CIVIL PETITION NO.3811 OF 2019**

(Against the Order dated 12.09.2019  
passed by Lahore High Court, Lahore in  
EFA No.50073/2019)

Chaudhary Ghulam Hussain and another ...Petitioners

**VERSUS**

M/s Saudi Pak Commercial Bank Limited,  
Lahore and another ...Respondents

For the Petitioners: Rai Azhar Iqbal Kharal, ASC

For Respondent No.1: Mr. Zulfiqar Khalid Maluka, ASC

For Respondent No.2: Mr. Abdul Hameed Chohan, ASC

Date of Hearing: 15.01.2024

**JUDGMENT**

**Muhammad Ali Mazhar, J.** This Civil Petition for leave to appeal is directed against the judgment dated 12.09.2019, passed by the Lahore High Court in EFA No. 50073/2019, whereby the Execution First Appeal filed by the petitioner under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, was dismissed.

2. The transitory facts germane to the present controversy are that the Respondent No. 1 filed a banking suit for recovery, resulted in an ex-parte decree against the petitioners. An application was filed for setting aside the ex-parte decree, but it was dismissed on 14.01.2010, against which, FAO No. 59/2010 is pending in the Lahore High Court. In order to satisfy the decree in the execution proceedings, the mortgaged property was auctioned on 19.07.2016, which was also challenged by the petitioners in EFA No. 958/2016. The High Court disposed of the said appeal with the permission to the petitioners to match the highest bid. Despite approaching to match the highest bid, the petitioners failed to deposit any amount; hence, the application was dismissed on 28.04.2018. The subsequent application for seeking a review of the order was also dismissed on 25.06.2018. This order was further challenged in a separate EFA No. 224295/2018, in which an interim order was passed by the High Court, which was vacated on 06.02.2019. The matter did not end here, and the petitioners filed objections under Order XXI Rule 90 of the Code of Civil Procedure, 1908 ("C.P.C.") read with Section 19 (7) of the Financial Institutions

(Recovery of Finances) Ordinance, 2001, but these objections were dismissed vide order dated 04.07.2019, and as a consequence thereof, the sale was confirmed vide order dated 24.07.2019.

3. The learned counsel for the petitioners argued that the impugned judgment is against the law and is also based on misreading and non-reading of the record. It was further contended that the High Court wrongly dismissed the appeal on the grounds of delay and non-deposit of the sale price. On the contrary, the record demonstrates that the petitioners sought the permission to deposit the requisite sale price as security, but this fact was not considered by the High Court. It was further contended that the High Court was bound to examine the transparency of the auction proceedings and its confirmation. The learned counsel argued that the actual value of the property was more than 100 Million PKR, but it was auctioned for only 45 Million PKR, which deprived the petitioners from their valuable rights.

4. Heard the arguments. The record reflects that when the sale was confirmed by the Executing Court, there were no interim orders passed by the High Court in EFA No. 224295/2018 in field and the impugned judgment indicates that the stay was vacated vide order dated 06.02.2019. For all practical purposes, the Executing Court proceeded in accordance with the law. It is also a matter of record that the petitioners were allowed to match the highest sale price and move a proper application in the executing proceedings, but the petitioners failed to deposit the sale price; hence, their application was dismissed. At this juncture, the reference to Order XXI Rule 89 C.P.C. is also quite relevant, which envisages that where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court; (a) for payment to the purchaser, a sum equal to five per cent of the purchase money; and (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder. It is also provided that nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

5. The learned counsel for the petitioners failed to highlight any material irregularity in the auction proceedings. The Order passed by this Court on 20.2.2023, refers to CMA.No.8935/2022, filed by the

Bank, which depicts that auction purchaser deposited Rs.45,000,000/- (sale price), within ten days from the date of auction i.e. 19.7.2016, whereas the petitioners deposited from 24.4.2019 to 30.4.2019 only Rs.25,000,000/-. According to Order XXI Rule 90 C.P.C, where any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it; provided that no sale shall be set aside on the ground of irregularity or fraud unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud and that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty per cent of the sum realized at the sale, or furnishes such security, as the Court may direct. In the case at hand, it is clear that the property was auctioned on 19.07.2016, while the petitioners filed the objection in the executing Court on 14.05.2019. Compliant with Article 166 of the Limitation Act, 1908, only thirty days' time is provided for making any application for setting aside a sale in execution of a decree, including any such application by a judgment-debtor. However, in the instant case, the petitioners filed their objection petition to sale after more than three years, hence the objection petition was also time barred.

6. In view of the above discussion, we do not find any illegality in the impugned judgment passed by the High Court. On 15.01.2024, for reasons to be recorded later, this petition was dismissed vide our short order and the interim order was also recalled.

7. Above are the reasons assigned in support of our short order.

Chief Justice

Judge

Judge