SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
Justice Yahya Afridi, CJ
Justice Muhammad Shafi Siddiqui
Justice Miangul Hassan Aurangzeb

C.A.No.1740 of 2021 and C.P.L.A.No.917-K of 2021
(Against the judgment dated 04.02.2021 of the High Court of Sindh, Karachi passed in Special H.C.A.No.23 of 2016)

Liberty Mills Limited
...Petitioner(s)/Appellants(s)

Versus

Muslim Cotton Mills (Pvt.) Limited
...Respondent(s)

For the Petitioner(s)/Appellant(s):	Mr. Makhdoom Ali Khan, Sr. ASC Mr. Saad Mumtaz Hashmi, ASC Syed Rifaqat Hussain Shah, AOR *(also for respondent No. 2 in C.P.L.A.No. 917-K/2021)*
For Respondent No.1 in C.A. No.1740/2021 and for petitioner in C.P.L.A.No.917-K/2021:	Mr. Anwar Mansoor Khan, ASC along with Mr. Asim Mansoor Khan, ASC
For Allied Bank Limited (in both cases):	Khawaja Ahmad Tariq Raheem, Sr. ASC (on 22.09.2026 *via* video link Lahore and on 08.09.2026 at Islamabad) Mr. Tariq Aziz, AOR (at Islamabad)
Date of Hearing:	23.09.2026

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.- Through this judgment, we propose to decide Civil Appeal No.1740/2021 and Civil Petition for Leave to Appeal No.917-K/2021 as both arise between the same parties and out of the same factual background.

2. The record shows that Allied Bank Limited ("**ABL**") had instituted Suit No.B-89/2009 against Muslim Cotton Mills (Pvt.) Ltd. ("**Muslim Cotton**") and its directors before the High Court of Sindh, seeking recovery of Rs.166,630,737/- under the provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("**the 2001 Ordinance**"). The application for leave to defend the suit filed by Muslim Cotton and its directors was dismissed by judgment dated 15.11.2010, and the suit was consequently

decreed. Under the decree, the defendants were jointly and severally liable to pay the decretal amount of Rs.166,630,737/- together with costs of funds. In addition to Muslim Cotton, the other defendants in the said suit were Messrs. Muneer Razzaq, Maroof Muneer and Mubeen Muneer. These defendants are hereinafter collectively referred to as the **"judgment-debtors."**

3. The judgment-debtors challenged the judgment and decree dated 15.11.2010 by filing Banking Appeal No.23/2011 filed before the Division Bench of the High Court. The appeal was dismissed for non-prosecution on 01.10.2019. On 03.08.2020, an application (C.M.A.No.682/2020) was filed seeking the restoration of the said appeal. That application was also dismissed by order dated 08.07.2021. The said judgment and decree thus attained finality.

4. On 08.01.2011, ABL filed Execution Application No. 10/2011 before the High Court of Sindh seeking the sale of the mortgaged property (i.e., immovable industrial property bearing Plot No.A/1-A/1 measuring about 1.04 acres along with 70.50% construction thereon situated at Textile Avenue, Sindh Industrial Trading Estates Area, Karachi ("**the Mortgaged Property**") and hypothecated assets. On 04.03.2011 and 25.03.2011, the executing court issued notices to the judgment-debtors. These notices were served on the judgment-debtors. Notices were also issued to the judgment-debtors through publication in the daily "Jang" and the daily "The News" of 06.11.2011. The judgment-debtors neither deposited the decretal amount nor appeared before the executing court. Consequently, the executing court, after satisfying itself that no interim orders had been issued suspending the operation of the judgment and decree dated 15.11.2010, allowed the execution application vide order dated 06.08.2013 and directed the *Nazir* of the court to sell the Mortgaged Property and the hypothecated assets.

5. According to the *Nazir's* report dated 14.10.2013, an auction notice was prepared after notices had been issued to the parties. After approval by the decree-holder, the auction notice was published in leading newspapers on 06.11.2011 for an auction of the Mortgaged Property scheduled for 10.10.2013. On that date, no one submitted a bid for the Mortgaged Property or the

hypothecated assets. In the circumstances, the *Nazir* referred the matter back to the executing court for further orders.

6. By order dated 12.12.2013, the executing court directed the *Nazir* to make another attempt to auction the Mortgaged Property and the hypothecated assets. The evaluators appointed by the *Nazir* assessed the market value of the Mortgaged Property at Rs.253,660,447/- and its forced-sale value at Rs.227,500,000/-. In terms of the auction notice published on 09.04.2014 in the daily Dawn, the auction was scheduled to be held on 22.04.2014. The auction notice adequately describes the Mortgaged Property and mentions a reserve price of Rs.227,500,000/- for the same. It is not disputed that the said reserve price was fixed with the consent of the decree-holder and the judgment-debtors.

7. At the auction, Liberty Mills Limited ("**Liberty**") submitted a bid of Rs.125,000,000/- for the Mortgaged Property. On the day of the auction, Liberty deposited 25% of its bid, i.e., Rs.31,250,000/- with the *Nazir* by way of a pay order. On 30.04.2014, the *Nazir* placed Liberty's bid before the executing court for necessary orders.

8. Vide order dated 08.08.2014, the executing court *"accepted and confirmed"* Liberty's bid and directed the *Nazir* to proceed further in accordance with the law. On 12.09.2014, a sale certificate was issued to Liberty upon payment of stamp duty of Rs.3,750,000/-. As per the contents of the sale certificate, the sale consideration for the Mortgaged Property was Rs.125,000,000/-.

9. It may be mentioned that the judgment-debtors did not prefer an appeal against the said order dated 08.08.2014. However, on 23.08.2014, the judgment-debtors filed an application (C.M.A.No.236/2014) under Section 47 read with Order XXI, Rule 90 of the Code of Civil Procedure, 1908 ("**C.P.C.**"), seeking to set aside the sale confirmed by the executing court vide order dated 08.08.2014. On 23.08.2014, the judgment-debtors filed another application (C.M.A.No.237/2014) under Order XXXIX, Rules 1 and 2 C.P.C., praying for an injunction to restrain ABL or anyone acting on its behalf from creating a third-party interest in the Mortgaged Property. ABL contested this application by filing a counter-affidavit.

10. The executing court dismissed both applications vide order dated 04.10.2016. The executing court also issued a direction for

possession of the Mortgaged Property to be handed over to Liberty, and for the amount deposited by Liberty to be released to ABL. The judgment-debtors challenged the order dated 04.10.2016 in Special High Court Appeal No.23/2016 before the Division Bench of the High Court. Vide interim order dated 14.10.2016, the appellate court suspended the operation of order dated 04.10.2016. Furthermore, the appellate court recorded the judgment-debtors' undertaking that they would deposit Rs.160,000,000/- with the *Nazir* of the court, failing which they would lose the right of hearing. According to the *Nazir's* report dated 19.11.2016, the judgment-debtors had deposited Rs.160,000,000/-.

11. Vide judgment dated 04.02.2021, the judgment-debtors' appeal was partly allowed; the executing court's order confirming the sale after the *Nazir's* report dated 30.04.2014 was declared as illegal and was set aside for having been passed in violation of the requirements of Order XXI, Rule 66(2) C.P.C., which requires a proclamation of sale by public auction to be drawn up after notice to the decree-holder and the judgment-debtor. After observing that Liberty's bid was below both the market value and the forced-sale value of the Mortgaged Property, the appellate court gave Liberty the option to purchase the Mortgaged Property at the forced-sale value of Rs.227,500,000/- by depositing the balance amount with the *Nazir* within one month. It was also ordered that if Liberty does not exercise such option, the judgment-debtors would have the option to satisfy the decree.

12. On 06.02.2021, Liberty deposited the differential amount of Rs.102,500,000/- through a pay order with the *Nazir*. This payment, according to Liberty, had the effect of the sale of the Mortgaged Property becoming final in terms of the appellate court's judgment dated 04.02.2021. Although, Liberty filed C.P.L.A. No. 588/2021 (which this Court converted into Civil Appeal No. 1740/2021 vide order dated 17.08.2021) against the said judgment dated 04.02.2021, the judgment-debtors, instead of an appeal, preferred to file a review application (C.M.A.No.240/2021) under Order XLVII, Rule 1 C.P.C. before the appellate court. Along with the review application, the judgment-debtors also filed an application (C.M.A.No.241/2021) praying for the suspension of the judgment dated 04.02.2021 to the extent whereby option was given

to Liberty to purchase the Mortgaged Property at the forced sale value of Rs.227,500,000/-. The primary ground taken in the review application was that since the appellate court had, through order dated 04.02.2021, set aside the auction proceedings and held the confirmation of sale in Liberty's favour to be illegal, the option to purchase the Mortgaged Property at the forced-sale value should have been given to the judgment-debtors and not Liberty.

13. The review application as well as the application for interim relief were dismissed vide order dated 25.06.2021 (**"Review Order"**) by the appellate court. The High Court took the view that, before the order dated 25.06.2021, the judgment-debtors had not offered to pay the reserve price of 227,500,000/-. Furthermore, it was held that since third-party interests had been created in favour of the auction-purchaser/Liberty, in whose favour the sale had been confirmed, the order dated 04.02.2021 could not be reviewed. The said order dated 25.06.2021 has been challenged by the judgment-debtors before this Court in C.P.L.A.No.917-K/2021. Through this C.P.L.A., the judgment-debtors had also challenged the appellate court's order dated 04.02.2021 to the extent whereby an option was given to Liberty to purchase the Mortgaged Property at the forced-sale value of Rs.227,500,000/-.

14. By order dated 17.08.2021, this Court issued notices in C.P.L.A.No.917-K/2021 filed by the judgment-debtors against the High Court's Review Order dated 25.06.2021 as well as the judgment dated 04.02.2021 (to the extent whereby Liberty was given the option to purchase the Mortgaged Property at the forced-sale value of Rs.227,500,000/-). Furthermore, this Court restrained the parties from taking any decisive step in the auction proceedings which may cause prejudice to either party. To date, possession of the Mortgaged Property remains with the judgment-debtors. Additionally, Rs.227,500,000/- deposited by Liberty, and Rs.160,000,000/- deposited by the judgment-debtors still remain deposited with the *Nazir*.

15. Learned counsel for the judgment-debtors, after recounting the facts leading to the filing of the petition before this Court, submitted that even though the judgment and decree dated 15.11.2010 had attained finality with the dismissal of the judgment-debtors' appeal for non-prosecution, and the dismissal of the application for the restoration of the appeal, it was incumbent

on the *Nazir* to have issued notice to the judgment-debtors in terms of the mandatory provisions of Order XXI, Rule 66(2) C.P.C. before drawing up the proclamation for the sale of the Mortgaged Property through a public auction; that since the judgment-debtors had no notice as to the drawing up of the proclamation, they were unable to object to the same; that even though objections for the first time were made by the judgment-debtors after the sale of the Mortgaged Property, this did not preclude them from agitating the procedural irregularities in the process for the auction of the Mortgaged Property.

16. Although the learned counsel for the judgment-debtors admitted that the process of evaluation of the Mortgaged Property and fixation of the reserve price was in the judgment-debtors' knowledge, this did not absolve the *Nazir* from his obligation to issue notice contemplated by the provisions of Order XXI, Rule 66(2) C.P.C. He submitted that, in their objections filed on 23.08.2014, after the executing court had accepted Liberty's bid and confirmed the sale, the judgment-debtors had pleaded that the *Nazir* had not informed the executing court as to the evaluation of the Mortgaged Property having been conducted, and that a bid below the reserve price should not have been entertained. Learned counsel for the judgment-debtors prayed that C.P.L.A.No.917-K/2021 be allowed and for the Review Order dated 25.06.2021 as well as the judgment dated 04.02.2021, to the extent of giving an option to Liberty to purchase the Mortgaged Property at the forced-sale value, to be set aside.

17. On the other hand, learned counsel for Liberty submitted that in the prayer clause of C.P.L.A.No.917-K/2021, the judgment-debtors had sought not only the setting aside of the Review Order dated 25.06.2021, but also the judgment dated 04.02.2021 to the extent whereby Liberty was given the option to purchase the Mortgaged Property at the forced-sale value; that the said C.P.L.A. was time-barred insofar as it challenged the said judgment dated 04.02.2021; and that the said C.P.L.A. was not accompanied by an application for condonation of delay.

18. Furthermore, it was submitted that the judgment-debtors had manipulated the process of law in order to delay the execution of a decree passed more than 16 years ago; that the execution proceedings were stayed at the instance of the judgment-debtors

by the Division Bench of the High Court vide order dated 14.10.2016 and then by this Court vide order dated 17.08.2021; that the judgment-debtors were aware of the execution proceedings but did not appear despite notices issued to them by the executing court on 04.03.2011 and 25.03.2011; that they did not even respond to the publication made on 06.11.2011 in the newspapers; that along with their application under Order XXI, Rule 90 C.P.C. the judgment-debtors did not deposit any amount as required by the second proviso to Order XXI, Rule 90 C.P.C.; that till date, the full decretal amount has not been deposited by the judgment-debtors; that an amount of Rs.160,000,000/- had been deposited by the judgment-debtors six years after the decree dated 15.11.2010; and that the judgment-debtors are still in possession of the Mortgaged Property and are deriving benefits therefrom. Learned counsel for Liberty prayed for C.A.No.1740/2021 to be allowed and C.P.L.A.No.917-K/2021 to be dismissed.

19. We have heard the contentions of the learned counsel for the contesting parties, and with their assistance, perused the record. The facts necessary to decide C.A.No.1740/2021 and C.P.L.A.No.917-K/2021 have been set out above and need not be repeated.

20. At the very outset, we propose to address the objection raised by the learned counsel for Liberty to the maintainability of the judgment-debtors' petition insofar as it seeks to challenge the judgment dated 04.02.2021 passed by the appellate court.

21. The judgment-debtors had challenged, before the Division Bench of the High Court, the executing court's order dated 04.10.2016, whereby their objections to the confirmation of sale in Liberty's favour had been dismissed. The judgment-debtors' appeal against the said order dated 04.10.2016 was decided by the Division Bench vide judgment dated 04.02.2021. The judgment-debtors' review application against that judgment was also dismissed vide Review Order dated 25.06.2021. Thereafter, on 08.07.2021, they filed C.P.L.A.No.917-K/2021, impugning both the judgment dated 04.02.2021 and the Review Order dated 25.06.2021. The limitation period of sixty days for filing a petition for leave to appeal against the judgment dated 04.02.2021 expired on 06.04.2021. The petition, insofar as it challenges that judgment, is not accompanied by any application seeking

condonation of delay. Consequently, the challenge to the judgment dated 04.02.2021 is liable to be dismissed as time-barred.

22. Learned counsel for the judgment-debtors has, however, contended that, while examining the legality of the Review Order dated 25.06.2021 dismissing the review application, this Court may also scrutinize the judgment dated 04.02.2021. This contention is contrary to the settled position of law. Where a party, instead of challenging a judgment of the High Court before this Court within the prescribed period of limitation, elects to seek review of that judgment before the High Court, the filing of the review application does not extend the period of limitation for challenging the original judgment. If, by the time a petition for leave to appeal is filed against the order disposing of the review application, the period of limitation for challenging the original judgment has expired, the subsequent challenge to the original judgment remains time-barred. The dismissal of the review application does not furnish a fresh period of limitation for assailing the original judgment, nor can the delay in challenging the latter be circumvented by framing the challenge as one directed against the order dismissing the review application. The relevant principles emerge from the following judgments:-

(i) In *Ghulam Hussain Vs. Kanwar Ashiq Ali Khan* (PLD 1980 SC 198), the petitioners sought review of a judgment whereby a regular second appeal had been decided against them. Their review application was dismissed *in limine* on the ground that they had failed to point out any error apparent on the face of the record. They thereafter filed a petition for leave to appeal before this Court, challenging both the order dismissing the review application and the original judgment deciding the regular second appeal. Although the petition was within time insofar as it challenged the order dismissing the review application, it was barred by limitation insofar as it challenged the original judgment. This Court held that, once the period of limitation for challenging the original judgment had expired, that judgment had become binding upon the petitioners and could not subsequently be assailed through a petition directed against the order refusing review. The Court observed that the refusal to review the original judgment did not give rise to a fresh period of limitation for challenging it. The relevant portion of the judgment is reproduced below:-

> *"7. The present petition, against the basic order of the high Court dated 14-12-1977 is barred by 395 days and there is no application or prayer either for condonation of delay or to set aside that order as such. When confronted with this situation the learned counsel argued that the present is a petition against the order dated 12-2-1978 refusing to review the previous order dated 14-12-1977 and in, its own turn is within limitation qua that order. This may be so but while seeking leave to appeal against order refusing to review the main previous order, in fact the object of the petitioner is to seek vacation of the said previous order which by efflux of time has become final. The fact that in review the Court further affirmed the aforesaid order is immaterial inasmuch as a refusal to review the same will not give a fresh period of limitation to challenge it. In this peculiar situation therefore when the previous order has become binding on the petitioners, they cannot be allowed to bypass it by simply pleading that the present petition is against order refusing to review the same because while stating so their intention is to point out errors and mistakes in the basic order which were sought to be removed through a review application but which failed. There may be cases where for instance petition of review may be refused merely for want of jurisdiction in which of course a petition may lie but will be on ground of refusing to exercise jurisdiction vested in a Court by law on the ground that it has no jurisdiction whereas in fact and in law it had such jurisdiction. In those cases a petition against refusal to review will not be a petition directly or indirectly against the main previous order on merits but only against the order in review itself. The position in the instant case is however different. Here the question is not of lack of jurisdiction of the High Court to entertain review, but after entertaining it refusing the same on the ground that no case for review on merits exists. Such a decision will essentially compel a suitor to challenge the previous order itself to point out the mistakes allegedly existing therein, which exercise obviously cannot be resorted to if the period of limitation for challenging the main previous order has run out and because you cannot do that indirectly which you cannot do directly."*

(ii) In *Mullah Ahmed Vs. Assistant Commissioner, Sibbi* (1986 SCMR 1624), the appellant challenged two judgments of the Balochistan High Court, dated 10.06.1981 and 02.11.1981, respectively. By the former judgment, the appellant's constitutional petition had been dismissed, while by the latter, his review petition had also been dismissed. The respondents raised a preliminary objection that, although the appeal was within time insofar as it challenged the judgment dated 02.11.1981, it was time-barred insofar as it challenged the original judgment dated 10.06.1981. The appellant's counsel sought condonation of the delay in challenging the original judgment. This Court declined the request and dismissed the appeal as time-barred to the extent that it challenged the judgment dated 10.06.1981, whereby the constitutional petition had been dismissed.

23. In the present case, the judgment-debtors have not filed any application seeking condonation of the delay in challenging the appellate court's judgment dated 04.02.2021. Their petition is, however, within time insofar as it challenges the subsequent Review Order dated 25.06.2021, whereby their review application was dismissed. The fact that the challenge to the order dismissing the review application is within time does not, by itself, render the challenge to the original judgment maintainable. Accordingly, we shall examine the judgment-debtors' petition on its merits insofar as it impugns the Review Order dated 25.06.2021, but the time-barred challenge to the judgment dated 04.02.2021 cannot be entertained in the absence of an application for condonation of delay.

24. As mentioned above, Liberty's bid of Rs.125,000,000/- for the Mortgaged Property submitted at the auction held on 22.04.2014 was accepted and confirmed by the executing court vide order dated 08.08.2014. The first application filed by the judgment-debtors in the execution proceedings was their application dated 23.08.2014 filed under Section 47 read with Order XXI, Rule 90 C.P.C. seeking to set aside the sale of the Mortgaged Property in Liberty's favour.

25. Order XXI, Rule 90 C.P.C. entitles, *inter alia,* a party whose interests are affected by the sale of immovable property in execution of a decree to apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it. The first proviso to the said rule provides 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. The second proviso provides that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty percent of the sum realized at the sale, or furnishes such security as the court may direct.

26. In view of the provisions of Rule 90 and its two provisos, it is necessary to identify the irregularity or fraud alleged by the judgment-debtors in their application dated 23.08.2014. The primary ground taken in the said application was that a bid below the reserve price could not have been entertained by the *Nazir.* In paragraph 5 of the affidavit in support of the said application, it

has been deposed that the High Court's order dated 08.08.2014, whereby Liberty's bid of Rs.125,000,000/- was accepted and confirmed was based on the *Nazir's* report dated 30.04.2014 in which he had failed to mention that an evaluation of the Mortgaged Property had been conducted or that its forced-sale value had been evaluated by M/s Zia Jaffrey, Architects.

27. On examination of the *Nazir's* report dated 30.04.2014, we find that it records the appointment of Mr. Zia Jaffrey as the evaluator to determine the value of the land and building of the Mortgaged Property. It also mentions that the reserve price was fixed as per the valuation report furnished by the evaluators. It is not disputed that the reserve price mentioned in the auction notice dated 09.04.2014 was Rs.227,500,000/- which was the same as the forced-sale value determined by the evaluator for the Mortgaged Property. The executing court, in its order dated 08.08.2014, had recorded that the offer made by Liberty for the Mortgaged Property "*with reference to the advertisement published in daily Dawn Karachi dated 09.04.2014*" was accepted and confirmed. Therefore, it is safe to conclude that the executing court, while accepting and confirming Liberty's offer, was aware of the fact that the reserve price of Rs.227,500,000/- for the Mortgaged Property was based on the evaluation of the Mortgaged Property carried out by the evaluator.

28. The executing court, vide order dated 04.10.2016, dismissed the judgment-debtors' application dated 23.08.2014 on the grounds that they had failed to establish substantial injury by the confirmation of sale in Liberty's favour, and that the judgment-debtors had not deposited any amount along with their application, as required by the second proviso to Order XXI, Rule 90 C.P.C. Indeed, in the said order, the executing court had observed that before confirming the sale of the Mortgaged Property in Liberty's favour it had considered all aspects of the case, including the *"reserve price and the evaluation report."* The executing court also recorded that the judgment-debtors had not taken the plea that they were ignorant of the execution proceedings or of Liberty's offer, and that despite this they had not objected to Liberty's offer.

29. It is significant that, in their application dated 23.08.2014, the judgment-debtors did not plead either that they were unaware

of the auction proceedings or that the proclamation published in the daily Dawn of 09.04.2014 had been drawn up or published without prior notice to them. This silence on the judgment-debtors' part gives credence to the contention made on behalf of Liberty that the judgment-debtors were well aware of the execution proceedings, and that the Mortgaged Property was evaluated and the reserve price of Rs.227,500,000/- was fixed with the consent of the parties.

30. ABL's banking suit instituted by ABL against the judgment-debtors had been decreed under the provisions of the 2001 Ordinance. Vide judgment and decree dated 15.11.2010, the Banking Court had decreed ABL's suit for Rs.166,630,737/- along with costs of funds. In the said judgment, it was explicitly mentioned that the *"decree [was] to be executed, inter alia, by the sale of the mortgaged properties and hypothecated goods."* Section 19(1) of the 2001 Ordinance provides that upon pronouncement of judgment and decree by a Banking Court, the suit shall automatically stand converted into execution proceedings without the need to file a separate application and no fresh notice need be issued to the judgment-debtor in this regard. Hence, by operation of law, after the said judgment and decree was passed, the suit stood converted into execution proceedings. The judgment-debtors could not be expected to be unaware of this. Since they had filed an appeal against the said judgment and decree, they were also aware that the decree was to be executed by selling the Mortgaged Property and the hypothecated assets. Yet they chose to remain absent from the execution proceedings until after the confirmation of the Mortgaged Property's sale in Liberty's favour.

31. Section 19(1) of the 2001 Ordinance also requires the decree-holder to file particulars of the mortgaged, pledged or hypothecated property and other assets of the judgment-debtor for consideration of the Banking Court for execution of its decree on the expiry of 30 days from the date of pronouncement of judgment and decree. ABL, as the decree-holder, filed these particulars as far back as 08.01.2011, which were none other than those pertaining to the Mortgaged Property and the hypothecated assets. Although, the executing court was not under any statutory obligation to issue notice of execution proceedings to the judgment-debtors, yet as an abundant caution, the said court not just issued notices on

04.03.2011 and 25.03.2011 to the judgment-debtors but also tried to procure the judgment-debtors' attendance by publication in the newspapers. Despite the said notices, the judgment-debtors stayed away from the first auction scheduled to be held on 10.10.2013 as well as the second auction held on 22.04.2014.

32. Apart from the allegation that the executing court was unaware of the forced-sale value of the Mortgaged Property determined by the evaluator, the judgment-debtors had taken a vague and unspecific ground by deposing that the executing court's order dated 08.08.2014 *"was passed without considering all questions arising between the parties and with prima facie material irregularity or fraud which is apparent from the face of the record causing the [judgment-debtors] substantial financial injury."* Vague, ambiguous and generalized pleas do not satisfy the requirements of Order VI, Rules 2 and 4 C.P.C. Since this deposition was not in conformity with the requirements of the said provisions, it was not worthy of consideration. The executing court, vide order dated 04.10.2016, rightly dismissed the judgment-debtors' application dated 23.08.2014 as they had not been able to satisfy the court as to any irregularity or fraud in publishing or conducting the auction.

33. Although the judgment-debtors, in their application dated 23.08.2014, did not take a ground as to the non-issuance of notice to them prior to the drawing up of the proclamation, they raised this as a ground for the first time in their appeal against the executing court's order dated 04.10.2016. This is the primary ground which prevailed with the appellate court in setting aside the executing court's order dated 04.10.2016 (whereby the judgment-debtors' application against the order dated 08.08.2014 confirming the sale in Liberty's favour was dismissed) and declaring the order dated 08.08.2014 (whereby the sale of the Mortgaged Property in Liberty's favour was confirmed) to be illegal. Another ground that prevailed with the appellate court in setting aside the order dated 04.10.2016 was that the confirmation of the sale for an amount below the reserve price was *"in derogation of mandatory requirements of law."* This was done through judgment dated 04.02.2021.

34. Liberty, in its appeal (C.A.No.1740/2021) challenged the appellate court's judgment dated 04.02.2021 to the extent of

declaring the confirmation of sale in Liberty's favour to be illegal for want of notice under Order XXI, Rule 66(2) C.P.C. However, since the judgment-debtors filed a review application against the appellate court's judgment dated 04.02.2021 only to the extent whereby Liberty was given the option to purchase the Mortgaged Property for the reserve price of Rs.227,500,000/-, and since the judgment-debtors' petition before this court is against the appellate court's Review Order dated 25.06.2021, the question to be considered is whether, in the facts and circumstances of this case, the appellate court's decision to give Liberty the option to purchase the Mortgaged Property for Rs.227,500,000/-, notwithstanding its finding that notice under Order XXI, Rule 66(2) C.P.C. had not been issued, constituted an error apparent on the face of the record warranting review of the judgment dated 04.02.2021 and an order for a fresh auction. Review proceedings are not an opportunity to re-argue the matter as though it were an appeal. The question is whether the judgment-debtors have been able to demonstrate that the decision to give Liberty the option to purchase the Mortgaged Property at the reserve price was an error apparent on the face of the record. For the reasons to follow, we find no such error in the judgment dated 04.02.2021.

35. The judgment-debtors' concern arising from confirmation of the sale of the Mortgaged Property in Liberty's favour at a price below the reserve price was addressed by the appellate court by giving Liberty an option to purchase the said property at the reserve price of Rs.227,500,000/- within one month failing which such option was to be given to the judgment-debtors. It is not disputed that on 22.04.2014 Liberty had deposited Rs.31,250,000/-, which was 25% of Liberty's bid of Rs.125,000,000/-, and upon the confirmation of the sale in Liberty's favour, the latter deposited the remaining sale consideration with the *Nazir* after which sale certificate dated 12.09.2014 with respect to the Mortgaged Property was issued in Liberty's favour. It is also not disputed that within one month of the appellate court's judgment dated 04.02.2021, Liberty further deposited Rs.102,500,000/- in the form of pay order dated 06.02.2021. In this way, Liberty paid Rs.227,500,000/- which is the same as the reserve price of the Mortgaged Property. Since the thrust of the judgment-debtors' application 23.08.2014 before the

executing court was that the sale of the Mortgaged Property in Liberty's favour at a rate below the reserve price should not have been confirmed by the executing court, this concern of the judgment-debtors stood addressed by the appellate court giving an option to Liberty to purchase the Mortgaged Property at the reserve price of Rs.227,500,000/-.

36. There was a period of almost three and a half years between the judgment and decree passed by the banking court and the auction at which Liberty had submitted an offer. The judgment-debtors did not make a higher offer during this period. That circumstance, considered together with the valuation and the public auction, weakens their assertion that the amount of Rs.227,500,000/- already paid by Liberty was not adequate for the Mortgaged Property. True, an amount of Rs.102,500,000/- had been deposited by Liberty almost seven years after the auction but it is equally true that it was on the judgment-debtors' application that the appellate court had suspended the operation of the executing court's order dated 04.10.2016. The consequence of this suspension order was that the direction contained in the executing court's order dated 04.10.2016 for handing over possession of the Mortgaged Property to Liberty could not be enforced. Furthermore, it was on the basis of this order that judgment-debtors continued to enjoy possession of the Mortgaged Property.

37. As regards the other ground (i.e. the non-issuance of prior notice to the judgment-debtors before drawing up the proclamation for the sale of the Mortgaged Property) on which the appellate court declared the confirmation of sale in Liberty's favour to be illegal, indeed, Order XXI, Rule 66(2) C.P.C. requires the proclamation of sale by public auction to be drawn up after notice to the decree-holder and the judgment-debtor. The purpose of this requirement is to ensure that both the decree-holder and the judgment-debtor are afforded notice of the proposed proclamation. The said rule makes it essential for the decree-holder and the judgment-debtor to have notice but does not require the notice to be necessarily through the process of the court. Where a judgment-debtor is well aware of the execution proceedings and participates therein as and when it takes his fancy, he cannot complain of being unaware of any of the steps taken as a prelude to the auction.

38. In our view, the appellate court failed to appreciate that the judgment-debtors, in their affidavit in support of the application dated 23.08.2014 challenging the confirmation of the Mortgaged Property's sale in Liberty's favour, had not taken a ground that the *Nazir* had violated the requirements of Order XXI, Rule 66(2) C.P.C. By not taking such a ground the judgment-debtors had acquiesced to the process leading to the auction held on 22.04.2014. It is well settled that the order of the court cannot be based on a ground not raised in the pleadings. The appellate court erred by not appreciating that the judgment-debtors were estopped from agitating the ground as to the non-issuance of a notice under Order XXI, Rule 66(2) C.P.C. in their appeal when such a ground was not taken in the application challenging the confirmation of sale. The judgment-debtors cannot readily claim that they were unaware of the execution proceedings or of the opportunity to raise objections concerning the proposed sale when they chose to remain silent after the publication of the auction notice on 09.04.2014 up until the filing of the appeal against the order dated 04.10.2016 when their review application under Order XXI, Rule 90 C.P.C. against the executing court's order dated 08.08.2014 was dismissed.

39. During the course of the arguments, learned counsel for the judgment-debtors submitted that the failure to issue notice under Order XXI, Rule 66(2) C.P.C. deprived the judgment-debtors of an opportunity to object to the contents of the proclamation. When we asked him to point out any flaw in the proclamation, he submitted that the proclamation dated 09.04.2014 does not adequately describe the property proposed to be auctioned. Paragraph I of the proclamation describes the Mortgaged Property as follows:-

> *"All that piece and parcel of Immoveable Industrial Property bearing Plot No. A/1-A/1 measuring about 1.04 Acres, along with 70.50% construction thereon i.e. covered area (ACC) 32,00 Sq. Ft. and covered area (RCC) 7200 sq. ft. Off Textile Avenue, situated at Sindh Industrial Trading Estates Area, Karachi within the territorial jurisdiction of P.S. SITE Karachi bounded as under:-*
>
> | | | |
> |---|---|---|
> | *On the North by* | : | *Plot No. A/1-A* |
> | *On the South by* | : | *Plot No. A/1-A* |
> | *On the East by* | : | *Plot No. A/1-A* |
> | *On the West by* | : | *100' Wide Road"* |

40. The above description of the property proposed to be auctioned is not deficient in any manner. All that he had to say

when asked to point out any other deficiency in the proclamation was that regardless of whether or not there was any flaw therein, the sale warranted setting aside only on the ground as to the non-issuance of the notice.

41. The mere failure to issue notice under Order XXI, Rule 66(2) C.P.C. does not, in the circumstances of this case, by itself render the sale a nullity; it is an irregularity the consequence whereof must be assessed in the context of Rule 90. Order XXI, Rule 90 C.P.C., although entitles a person whose interests are affected by the sale to apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale, but in terms of the said proviso, no sale is to 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. The substantial injury alleged by the judgment-debtors is that the Mortgaged Property might have fetched a higher price at an auction. If that were so, it is relevant that neither the judgment-debtors nor any other bidder submitted a higher offer at the auction held on 22.04.2014. It is not the judgment-debtors' case that the auction was not adequately advertised. On the record before us, the judgment-debtors identified no defect in the proclamation that affected the property's identification or the fairness of the auction, nor did they establish that the omission to issue notice caused the property to be sold at an inadequate price. Simply put, the judgment-debtors have not been able to convince us as to why the non-issuance of a notice under Order XXI, Rule 66(2) C.P.C. should result in the confirmation of sale in Liberty's favour being declared illegal or void. Since the judgment-debtors had knowledge of the auction proceedings and had an opportunity to participate in the auction proceedings, the failure to issue notice under Order XXI, Rule 66(2) C.P.C. without proof of the substantial injury as required by Rule 90 C.P.C., is not sufficient in the circumstances of the case to render the sale, a nullity. In these peculiar circumstances, we are of the view that the appellate court's judgment dated 04.02.2021 is not sustainable insofar as it declared the confirmation of the sale in Liberty's favour illegal on this ground.

42. Learned counsel for Liberty did not seriously challenge the appellate court's judgment to the extent of raising the sale price for the Mortgaged Property from Rs.125,000,000/- to Rs.227,500,000/-. Since Liberty had taken the option given to it by the appellate court and had deposited Rs.102,500,000/- within one month of the appellate court's judgment, we have no reason to interfere with the appellate court's judgment to such extent.

43. In view of the above, civil appeal No.1740/2021 is allowed in that the appellate court's judgment dated 04.02.2021 to the extent of declaring the confirmation of sale of the Mortgaged Property in favour of Liberty to be illegal due to the non-issuance of notice under Order XXI, Rule 66(2) C.P.C.is set-aside; C.P.L.A. No.917-K/2021 to the extent of challenging the appellate court's judgment dated 04.02.2021 is dismissed as time-barred, whereas the said C.P.L.A. to the extent of challenging the Review Order dated 25.06.2021 is dismissed. The judgment-debtors shall bear Liberty's costs.

Announced in open Court on 26.10.26 at Islamabad

Islamabad, the
Approved for reporting
*Abdul Rafay/**