

**2013 CLD 1**

**Lahore**

**Before Umar Ata Bandial, J**

**REGISTRAR OF COMPANIES, PAKISTAN through Joint Registrar of Companies---Applicant**

**Versus**

**TAJ COMPANY LTD. and 8 others---Respondents**

C.M. No.334-L of 2004 in civil original No. 45 of 1990, decided on 29th September, 2011. Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)--- ' .----Ss. 19 & 22--Execution proceedings---Mortgaged property at place "K" attached by Banking Court at place "L"--Objection petition by another decree holder- Bank that such property could not be attached as same was purchased by objector at reserve price fixed in failed auction thereof by Banking Court at place 'K' in satisfaction of its decree obtained against deceased principal debtor and mortgagor---Validity--- Objector-Bank had filed recovery suit against principal debtor and mortgagor of property at place 'K' in court at place "K" after its attachment by court at place 'T/' in execution proceedings--- Deceased principal debtor in his statement made to court at place "L" claimed to be owner of three properties including property dt place "K", which he got registered in names of his family members---Mortgagee

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**2 CORPORATE LAW DECISIONS [Vol. XII and objector of such properties was same objector-Bank--- In absence of proof on record of the means of mortgagor (wife of principal debtor) to acquire ownership of two of properties including property at place "K", principal debtor appeared to have been laundering and re~cycling embezzled monies belonging to his company under liquidation before court at place "L"--- Objector-Bank had strong \_financial links with deceased principal debtor and had advanced him loan---Objector Bank had knowledge about present execution proceedings---Objector-Bank, though claimed equitable mortgages in its favour regarding other two properties and displayed same collusive protection in relation thereto, but had not challenged order of court at place 'T' allowing sale thereof--Such inaction of objector-Bank would show its plea to be defective and bogus---Fraudulent and collusive action to avoid process of court at place 'T/' by resort to a collusive and artmcial sale in execution of a collusive decree could not receive protection of immunities and exceptions created for honest transactions entered by genuine and bona \_fide parties--Neither principal debtor nor his mortgagor wife nor objector-Bank were bona, \_fide parties to a genuine and honest execution sale by court at place '7{"---Principal debtor, his wife~mortgagor and objector-Bank had colluded to create an obstruction to enforcement of attachment order passed by court at place "L"---High Court at place 'TJ' dismissed such objection petition in circumstances. Ipp. 5, 6, 7)A, B, C}D&E ~ Union Leasing Limited v. Pakistan Industrial Credit and Investment Corporation Ltd. through Deputy Managing Director and 8 others 2005 CLD 958; United Bank Limited v. P.I.C.I.C. and others 1992 SCMR 1731; Mana and 4 others v. Hussain Bakhsh and 5 others 1993 CLC 1400: Industrial Development Bank of Pakistan through Deputy Chief Manager V. Saadi Asmatullah and others 1999 SCMR 2874 and Orix Leasing Pakistan Ltd, v. Sunshine Cloth Limited 2001\* PTD 3146 ref. ' Ms. Qubra Gillani for Applicant. Shehram Sarwar Chaudhry for O/L of Respondent Company.**

**Syed Zafar Ali Shah, O/ L along with Akram Rathor, General Manager, Taj Company. CU) 2013] Registrar of Companies, Pakistan v. Tcy Co. Ltd. 3 (Umar Ata Bandial, J)**

**ORDER**

C.M. No.334-L of 2004 UMAR ATA BANDIAL, J.-This objection application by Allied Bank Ltd {"Objector Bank'9 is filed in C.M. No. 1018 of 2002 in execution report No.202 submitted in the main petition. The application seeks recall of attachment order dated 1-12-2003 ,passed in respect of property owned by Mrs, Zahida Pervez, the widow of late Ashraf Pervez, ex- Director of Taj Company comprising House No.56, Street No.19, Phase-5, DHA, Karachi ("Karachi property"). The application is opposed by the learned counsel for the official liquidator.

2. The Objector bank purchased the Karachi property as decree holder in execution proceedings from the learned Banking Court, Karachi at the reserve price fixed in the failed auction thereof by the said learned (court. The learned counsel for the objector bank submits that on 6~11~1989 it extended finance to Messrs Achee Enterprises Ltd. of which Mr. Ashraf Parvez was Chief Executive. The Karachi property was equitably mortgaged to the objector bank by its owner on 26-5-1988 to secure the said finance. A recovery suit filed on 30~9-1997 by the objector bank resulted in a decree dated 26-5-1998 by the learned Banking Court for the amount of Rs.10.144 million passed in favour of the objector bank. The auction of the Karachi \_property failed on 20-4-1999 in the execution proceedings under the decree. Thereupon without a second auction, the objector bank itself purchased the said property at the reserve price on 9-12»1999. Sale certificate dated. 17-10-2002 was issued by the learned Banking Court Karachi, followed by a sale deed made in favour of the objector bank on 18-9-2003. 3. It is firstly, contended that the Karachi property could not be attached by this Court on 12»1-1995 as it was mortgaged to the objector bank in 1988. Reference is made ton Union Leasing Limited u. Pakistan Industrial Credit and Lvestment Corporation Ltd. throuqh Deputy Managing Director and 8 others (2005 CLD 958), United Bank Limited v. P.I.C.I.C. and others (1992 SCMR 1731) and Mana and 4 others v. Hussain Bakhsh and 5 others (1993 CLC 1400). He contends that the attachment order dated 12-1-1995 of the Karachi property by this Court passed in C.M. No.14-L of 1995 is ineffective unless it is properly executed in the relevant` records pertaining to attached properties in the modes prescribed under the C.P.C. cu: ~ L

4 CORPORATE LAW DECISIONS [Vol. XII In this respect he submits that Order XXI, Rule 54. C.P.C. has not been complied. Secondly, learned counsel for the objector bank submits that the judgment of this Court against the delinquent director is a money decree which is being presently executed in exercise of powers under the C.P.C. The attachment of the Karachi property is not permissible under the C.P.C; Thirdly, the learned counsel for the objector states that there is no evidence available with the official liquidator to trace the funds of Taj Company to the Karachi property. Fourthly, learned counsel, for the objector bank has contended that its title to the Karachi property arises under a bona fide purchase made in execution proceedings of a decree passed by a competent court. Fifthly, leamed counsel for the objector bank has urged that the Company Court does not have jurisdiction to annul and over-ride the security of secured creditors-4. Finally. learned counsel relies on United Bank Lirnited v. P.I.C.I.C. and others (1992 SCMR 1731), Industrial Development Bank of Pakistan throng Deputy Chief Manager v. Saudi Asmatullah and others (1999 SCMR 2874) and Orix Leasing Pakistan Ltd. v. Sunshine Cloth Limited (2001 PTD 3146) to submit that a secured creditor can realize his security outside of the process of winding up. Learned counsel for the Taj Company has rebutted the foregoing proposition by stating that principle of law laid dovm by the Hon'ble Supreme Court does not apply to fraudulent and collusive transactions.

5. Learned official liquidator submits that the version presented by the objector bank is factually deficient and also incorrect. The Karachi property in question was acquired by Ashraf Pervez

deceased, delinquent Director of Taj Company Ltd. He was convicted and sentenced to imprisonment for committing serious acts of fraud, embezzlement, and misappropriation of his employer company's assets. In his statement recorded and signed before this Court on 20-2-1991 in the present C.O. No.45-1990 the said Ashraf Parvez deposed that he owns the subject Karachi property, House No.56, Street No.19, Phase-5 DHA, Karachi. From the record it is clear that the Karachi property was mortgaged to the objector bank for securing a loan to Messrs Achee Enterprises. More importantly he admitted that Taj Company Ltd. had invested funds in the operations of Messrs Achee Enterprises. In the same statement Ashraf Parvez also admitted ownership of two other properties. One of these in Faisalabad was also registered in the name of his wife Zahida Mn 2013] Registrar of Companies, Pakistan v. Taj Co. Ltd. 5 (Umar Ata Bandial, J) Ashraf as in the present case and the third property situated in Lahore bore the title of his son, Atif Salman. An objection to the attachment and sale of the said two properties was also raised by the objector bank ABL on the ground of absence of title of the delinquent ex-director in the said properties. But that objection was rejected by this Court and sale of the said properties was concluded vide orders of the Court dated 11-2-2005, 2-2-2007 and 19-1-2004. Neither of those Court sales has been challenged by the objector bank.

6. Learned counsel for the official liquidator has explained that the subject Karachi property stood attached by order of this Court on 12-1-1995 passed in C.M. 14-L of 1995. The warrant of attachment was implemented by the Court on 23-2-1995. The owner of the property Mrs. Zahida Ashraf was brought on record as heir of Ashraf Pervez, deceased ex-director on 27-1-1997. On the other hand, he

submits that the suit for recovery by the Objector bank before the learned Banking Court at Karachi was filed on 30-9-1997 against Messrs Achee Enterprises and the aforesaid widow of the delinquent director. The filing date of the suit is after the issuance of warrant of attachment of the Karachi property by this Court as well as the impleadment of the said widow, owner of the Karachi Property, in the proceedings before this Court. He contends that after the passing of the attachment order, sale of the Karachi property whether by auction or negotiation could not take place without permission of the Court. Accordingly, order of auction of the Karachi property by the learned Banking Court at Karachi on 20-4-1999 was secured by collusion of the parties before the learned Banking Court. He submits likewise the sale deed recorded in favour of the objector bank on 18-9-2003 is equally illegal and collusive.

7. Heard. It is noted that for each of the three properties that are claimed by Ashraf Pervez in his statement before this Court on 20-2-1991 to be owned by him, the title actually stood registered not in his own name but in the names of his family members. In other words, properties situated at Karachi, Lahore and Faisalabad were owned by him in "benami" names. Most significantly in all the three properties, the objector bank has claimed to be its mortgagee and brought objections against their public sale. It does not seem a coincidence that each of the three benami properties of Ashraf Parvez have a common mortgagee and objector. In the absence of any proof on record of the means of Mrs. on

6 CORPORATE LAW DECISIONS [Vol. XII Zahida Ashraf to acquire ownership of two of the said properties it appears that her husband, the delinquent director, was laundering and re-cycling embezzled monies

belonging to Taj Company Ltd. In the circumstances, the failure by the objector bank or the benami owner of the Karachi property to make out a case for recall of attachment order of the said property dated 12-1-1995 by this Court before proceeding to obtain the hurried execution sale thereof in favour of the objector bank is fatal to the objection now being raised.

8. The objector bank had strong financial links with the delinquent director. According to the statement of Ashraf Parvez recorded in Court Messrs Achee Enterprises Ltd., customer of the objector bank took money as investment from Taj Company Ltd. The proceedings in the present petition involving Ashraf Parvez were well within the knowledge of the objector bank. Notwithstanding the equitable mortgages in its favour of the Lahore property and Faisalabad property claimed by the objector bank no proceedings were taken by it against the order of this Court allowing sale of such properties. Such inaction indicates admission of a defective and bogus plea by the objector bank.

9. The facts that have unfolded before the Court regarding the Karachi property are very clear. The property was claimed by the delinquent Director Ashraf Pervez in his statement before this Court on 20-2-1991. The said person is the Chief Executive of Achee Enterprises Ltd, which obtained loan from the objector bank. The recovery suit was filed by the objector bank after the warrant of attachment of the Karachi property was ordered by this Court on 12-1-1995 and was implemented on 23-2-1995 in Karachi. In any event, the purchase of the mortgaged Karachi property by the Objector bank after its first failed auction indicates a ploy to create a quick hurdle in the liquidation of the said property in the present proceedings.

10. The objector bank displayed the same, collusive protection in relation to the Faisalabad property, and the Lahore property by raising objections on their public sales. No appeals were filed by the objector bank against the rejection of its objections in relation to the Faisalabad and Lahore properties. The present objection is meant to protect a similar claim in relation to the Karachi property on the basis of an allegation that the proceedings of this Court against the management of Taj Company were not known to the objector CID 20131 Companies Ordinance 1984 & Metro Cash & Carry 7 Pakistan (Pvt) Ltd, etc.: In the matter of (Saijad Ali Shah, J) bank. It is a pretentious plea that the objector bank was unaware that the Chief Executive of a customer of the objector bank in several secured finance transaction had been arrested in a major financial scandal and had made statement in Court. Denial of knowledge in the above circumstances reflects a frivolous and fanciful approach exposing a fake plea. It is obvious that the objector bank acquired title as owners of the Karachi property in order to avoid the present execution proceedings for realization against the Karachi property.

11. The legal objections raised by the learned counsel for the objector bank are all based on the premise that its claimed mortgage of the Karachi property is bona fide and subsequent execution sale of the same to the objector bank is without knowledge of the proceedings before this Court against Ashraf Parvez, 'the delinquent director of Taj Company Ltd. This premise is false and fictitious and therefore none of the legal objections taken have relevance let alone force in the circumstances of the case. Fraudulent and collusive action to avoid the process of this Court by resort to a collusive and artificial sale in execution of a collusive decree cannot receive protection of the immunities and exceptions created for honest transactions entered by genuine and bona fide parties. Neither Ashraf Parvez nor his mortgagor wife Mrs. Zahida Parvez nor the mortgagee objector bank are bona fide parties to a genuine and honest execution sale. In fact they colluded in the said transaction to create a screen and an obstruction to the enforcement of this Court's attachment order dated 12-1-1995. Their illegal design is entirely void in effect.

12. Objection C.M. dismissed. SAK/A-35/L . Application dismissed.