

Present: Syed Mansoor Ali Shah, Jamal Khan Mandokhail, Muhammad Ali Mazhar and Athar

Minallah, JJ

Mst. SAMRANA NAWAZ and others---Appellants/Petitioners

Versus

MCB BANK LTD. and others---Respondents

C.P. No. 2646-L of 2018, C.A. No. 17-L of 2019 and C.A. No. 364-L of 2020, decided on 10th May, 2024.
(Against (i) judgment dated 20.11.2018 passed in E.F.A. No.620/2011, (ii) judgment dated 20.11.2018 passed in E.F.A. No.17/2012, and (iii) judgment dated 03.02.2020 passed in E.F.A No.231782/2018 respectively by the Lahore High Court, Lahore).

(a) Civil Procedure Code (V of 1908)---

---O. XXI, R. 90, second proviso---Execution of decree---Auction sale---Application to set aside sale on ground of irregularity or fraud---Deposit of amount or furnishing of security in court---Meaning and scope of the second proviso to Rule 90 of Order XXI, C.P.C.---Deposit of the amount, which is required under the second proviso, is not to be made by the applicant along with the application but rather it is to be made on the direction of the court.

Alhamdi Begum v. NBP PLD 1976 Kar. 723; Shafique Shah v. Irshad Begum 1981 CLC 369; Rukhsana v. Muhammad Ilyas 1993 CLC 1949; Ali Match Industries v. IDB 1999 MLD 2127; Niamat Ali v. Muhammad Imran PLD 2003 Lah. 42; Sultan Mahmood v. HBFC 2006 YLR 2776 and Khursheed v. Inam-Ur-Rehman PLD 2009 Lah. 552 approved.

Habib and Company v. MCB PLD 2020 SC 227 overruled.

(b) Civil Procedure Code (V of 1908)---

---O.XXI, R. 90, second proviso---Execution of decree---Auction sale---Application to set aside sale on ground of irregularity or fraud---Deposit of amount or furnishing of security in court---Purpose of the second proviso to Rule 90 of Order XXI, C.P.C.---Evidently, the purpose of the second proviso is to discourage frivolous objections---Condition stipulated in the second proviso for entertaining the application ensures that the rule is not misused to delay the completion of the sale and expeditious conclusion of the execution proceedings, and that the objections are made only by bona fide persons on valid grounds---If upon adjudication the application is found frivolous, the amount deposited or the security furnished, as the case may be, by the applicant is to be appropriated for awarding costs to the person(s) who suffer from the delay in completing the sale due to the filing of the application---Therefore, in determining the amount required to be deposited, the executing court should consider various factors such as the decretal amount, the time elapsed since filing the execution petition, the sale amount and the applicant's previous conduct, etc., and fix an amount reflective of the costs likely to be awarded to the affected party in case of dismissal of the application.

(c) Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---

---S. 19(7)(a) & (b)---Civil Procedure Code (V of 1908), O.XXI, R.90, second proviso---Execution of decree---Auction sale---Application to set aside sale on ground of irregularity or fraud---Deposit of amount or furnishing of security in court---Effect of clauses (a) and (b) of Section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance 2001 ("Ordinance") on the provisions of Rule 90 of Order XXI, C.P.C., particularly the second proviso thereof---Clauses (a) and (b) of Section 19(7) of the Ordinance are not comprehensive provisions regarding objections to the sale of property in the execution of a decree; they do not specify who can make objections or the grounds on which objections can be made---Therefore, these clauses cannot function independently of Rule 90 of Order XXI, C.P.C., regarding objections to the sale of property in the execution of a decree---It is worth noting that since Section 141, C.P.C., does not apply to applications under Rule 90 of Order XXI, C.P.C., 11 the procedure for investigating objections made under this rule is also summary, as provided in clause (a) of Section 19(7) of the Ordinance---Latter provision merely further prescribes a period of 30 days to complete the investigation of objections through a summary procedure---Clause (b) of Section 19(7) of the Ordinance provides for imposing a penalty of up to twenty percent of the sale price of the property if objections are found by the Banking Court to be malafide or aimed at delaying the sale

of the property---This penalty amount, is to be deposited by the applicant, or its security furnished, as per the second proviso to Rule 90 of Order XXI, C.P.C., before the court entertains the application to set aside the sale--Thus, there is no conflict between the two provisions; clauses (a) and (b) of Section 19(7) of the Ordinance are only complementary to the provisions of Rule 90 of Order XXI, C.P.C., for the execution of decrees under the Ordinance---Banking Court is therefore bound to follow both the provisions in the matter of objections made to the sale of property in the execution of a decree.

Messrs Majid & Sons v. N.B.P 2002 CLD 1742 disapproved

Pakistan Industrial Credit and Investment Corporation v. Government of Pakistan 2002 CLD 1 overruled.

Muhammad Imran Malik, Advocate Supreme Court and Shahid Ikram Siddiqui, Advocate Supreme Court for the Appellants/petitioners (Through video link from Lahore).

Umar Farooq, Advocate Supreme Court, Ashar Elahi, Advocate Supreme Court, Hafeez Saeed Akhtar, Advocate Supreme Court, Muhammad Akram Gondal, Advocate Supreme Court, Muhammad Ilyas Sheikh, Advocate Supreme Court, Mrs. Kausar Iqbal Bhatti, Advocate-on-Record and Muhammad Dawood Khan, OG-II, SME Bank for Respondents (Through video link from Lahore).

Date of hearing: 7th March, 2024.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---While hearing these cases, a three-member Bench of this Court disagreed with the view earlier taken by another three-member Bench in *Habib and Company v. MCB* (PLD 2020 SC 227) regarding the meaning and scope of the second proviso to Rule 90 of Order XXI of the Code of Civil Procedure, 1908 ("C.P.C."). Consequently, the matter of interpretation of the said proviso was referred for reconsideration by a larger Bench through an order dated 16 March 2021, reported as *Samrana Nawaz v. MCB* (PLD 2021 SC 581). These cases have, therefore, been posted before this larger Bench for an authoritative pronouncement of the law on the meaning and scope of the second proviso to Rule 90 of Order XXI, C.P.C.

Divergent opinions on the meaning and scope of the second proviso to Rule 90 of Order XXI, C.P.C.

2. Since the essential question involved in the present cases is that of interpretation of the second proviso to Rule 90 of Order XXI, C.P.C., the provisions of the said Rule including the proviso under consideration ("second proviso") are cited at the outset for the convenience of reading and reference:

90. Application to set aside on ground of irregularity or fraud.---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;

Provided further that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty per cent of the sum realised at the sale, or furnishes such security, as the Court may direct.

(Emphasis added)

The two competing opinions on the meaning and scope of the second proviso are: first, that the deposit of the amount, which is required under the proviso, is not to be made by the applicant along with the application but rather it is to be made on the direction of the court; and second, that such deposit of the amount is to be made by the applicant along with the application without waiting for any direction of the court in this regard, i.e., the application at the time of its filing in the court is to be accompanied by deposit of such amount.

3. We may mention here that prior to the decision of this Court in *Habib*, the first opinion was a considered and consistent opinion of the High Courts in the country.¹ There was not even a single dissent. However, by enunciating the second opinion, *Habib* impliedly overruled all those decisions of the High Courts without referring to them and without discussing and weighing the reasons stated therein.

Some fundamental principles of statutory interpretation

4. Before we delve into interpreting the second proviso, it would be advantageous to outline some fundamental principles of statutory interpretation that will guide our analysis. We all know that the ultimate objective of interpretation is to ascertain and give effect to the legislative intent, which constitutes the major step in the

process of interpreting statutes and lies at the heart of the interpretative process. The first source from which the legislative intent is to be sought is the words of the statute; then an examination is to be made of the context and purpose of the enactment.² Therefore, in the process of interpreting a provision of law, the starting point is to read and understand the words used therein in their ordinary linguistic and grammatical meaning. Generally, such meaning is to be ascribed to them, more so when it is consistent with the context and purpose of the provision in which they are used. However, where there is a potential conflict between the ordinary meaning of words and the purpose of the provision, courts may depart from the literal meaning to advance the purpose and give effect to the legislative intent. Similarly, if the words are ambiguous and can reasonably bear more than one meaning, courts are to ascribe such meaning to them which will be consistent with the purpose of the provision. Or, if the words in their ordinary meaning lead to absurdity, courts may give them such meaning that will make the provision reasonable and consistent with the context and purpose thereof. The interpretative process, thus, combines both literal and purposive approaches to ensure that the legislative intent is ascertained and given effect.³

A literal interpretation of the second proviso to Rule 90 of Order XXI, C.P.C.

5. Guided by the above principles, we start our analysis of the second proviso by reading and understanding the words used therein in their ordinary linguistic and grammatical meaning. The provisions of the second proviso are again cited here for ease of reference:

Provided further that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty per cent of the sum realised at the sale, or furnishes such security, as the Court may direct.

(Emphasis added)

The keywords that need to be understood for determining the meaning and scope of the second proviso, as underlined, are 'entertained', 'not exceeding twenty per cent' and 'as the Court may direct'.

5.1. The word 'entertain', according to its ordinary dictionary meaning, inter alia means 'to give attention or consideration',⁴ 'to take into consideration',⁵ 'to receive and take into consideration'⁶ or 'to give judicial consideration'.⁷ In legal parlance, as observed by this Court in *Abdul Khaliq*,⁸ the word 'entertain' ordinarily means to 'adjudicate upon' or 'proceed to consider on merits'.⁹ In the context of its use in the second proviso, we find that the word 'entertain' has been used in the same ordinary legal meaning, i.e., to proceed to consider and adjudicate upon merits. It implies that the application to set aside the sale on the ground of a material irregularity or fraud shall not be adjudicated upon on its merits unless the applicant deposits such amount not exceeding twenty per cent of the sum realised at the sale, or furnishes such security, as the court may direct. It does not imply merely filing of the application by the applicant or receiving of the application by the court.

5.2. The next important words in understanding the meaning and scope of the second provision are 'not exceeding twenty per cent' and 'as the Court may direct'. Their significance is pivotal in discerning the implications of the second proviso. These words being plain expressions of English language do not require further assistance from English language dictionaries. They clearly convey their intended meanings and are self-explanatory. The words 'not exceeding twenty per cent' prescribe the upper limit of the amount that the court may direct to be deposited for entertaining the application, and the words 'as the Court may direct' signify the court's discretion to fix any amount that does not exceed the upper limit.

6. With this understanding of the keywords used therein, we find that the second proviso stipulates that upon filing the application to set aside the sale, the court will direct the applicant to deposit an amount not exceeding twenty per cent of the sum realised at the sale or furnish security for that amount, and provide the applicant with an opportunity to fulfill this requirement. Until the applicant deposits the amount or furnishes the security, the court cannot proceed to consider and adjudicate upon the merits of the application. Only when the applicant complies with this requirement within the allowed time, can the court proceed to consider the application on its merits. If the applicant fails to do so, the court is to dismiss the application without proceeding to consider and adjudicate upon its merits.

7. The bar on entertaining the application thus arises from the failure of the applicant to "deposit such amount not exceeding twenty per cent of the sum realized at the sale, or furnish such security, as the Court may direct". It becomes operative and effective only when the court first determines the amount to be deposited or the nature

of security to be furnished against that amount by the applicant. No applicant can anticipate what amount or security the court would direct him to deposit or furnish, as the case may be; nor can he be allowed to deposit the amount or furnish the security as per his own choice at the time of filing the application. The prior direction of the court to deposit a certain amount or furnish a specified security is a condition precedent (*sine qua non*) for declining to entertain and dismissing the application under the second proviso.

8. We, therefore, approve the afore-referred opinion of the High Courts¹⁰ that the deposit of the amount, which is required under the proviso, is not to be made by the applicant along with the application but rather it is to be made on the direction of the court, and agree with the same view expressed by the three-member Bench that earlier heard these cases in its order dated 16 March 2021 (*Samrana Nawaz v. MCB* PLD 2021 SC 581), thus: The expression "as the Court may direct" leaves little room to speculate whether the applicant is to deposit the 20% of the sale amount at the time of filing the objection petition or at a subsequent stage under direction of the court. The expression "such amount not exceeding twenty percent" further strengthens the position that the amount required to be deposited by the applicant is to be determined by the court which must not exceed twenty percent of the sale amount but can be less than that. An applicant cannot anticipate what the direction of the court would be in this regard and, therefore, he cannot deposit the requisite amount at the time of filing the objection petition. The mandatory requirement of the second proviso appears to become operative only once the court determines the "amount not exceeding twenty percent of the sum realised at the sale" and directs the applicant to deposit the same.

With respect, we find that the view taken in *Habib* that the second proviso "mandates every application under the provision to be accompanied by 20% of the auction price in order to be entertained" is manifestly wrong; hence, it is overruled.

Purpose of the second proviso to Rule 90 of Order XXI, C.P.C.

9. Next, we briefly discuss the purpose of the second proviso and the considerations that may guide the executing court in exercising its discretion under the second proviso to determine an appropriate amount. Evidently, the purpose of the second proviso is to discourage frivolous objections. The condition stipulated in the second proviso for entertaining the application ensures that the rule is not misused to delay the completion of the sale and expeditious conclusion of the execution proceedings, and that the objections are made only by bona fide persons on valid grounds. If upon adjudication the application is found frivolous, the amount deposited or the security furnished, as the case may be, by the applicant is to be appropriated for awarding costs to the person(s) who suffer from the delay in completing the sale due to the filing of the application. Therefore, in determining the amount required to be deposited, the executing court should consider various factors such as the decretal amount, the time elapsed since filing the execution petition, the sale amount and the applicant's previous conduct, etc., and fix an amount reflective of the costs likely to be awarded to the affected party in case of dismissal of the application. The literal meaning of the second proviso as ascertained above, which signifies the discretion of the court to determine an appropriate amount not exceeding twenty per cent of the sum realised at the sale, thus aligns with its purpose as well.

Effect of Section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance 2001 on Rule 90 of Order XXI, C.P.C.

10. There remains another legal point that needs to be discussed before going on to the facts of the present cases. It is: what is the effect of clauses (a) and (b) of Section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance 2001 ("Ordinance") on the provisions of Rule 90 of Order XXI, C.P.C., particularly of the second proviso thereof discussed above. The provisions of the said clauses are reproduced here for ready reference:

(7) Notwithstanding anything contained in the Code of Civil Procedure 1908 (Act V of 1908), or any other law for the time being in force-

(a) the Banking Court shall follow the summary procedure for purposes of investigation of claims and objections in respect of attachment or sale of any property, whether or not mortgaged, pledged or hypothecated, and shall complete such investigation within 30 days of filing of the claims or objections;

(b) if the claims or objections are found by the Banking Court to be mala fide or filed merely to delay the sale of the property, it shall impose a penalty upto twenty percent of the sale price of the property;

It is evident from reading the above provisions that they have been given an overriding effect over the provisions contained in the C.P.C. Similarly as per Section 7(2) of the Ordinance, in the exercise of its civil jurisdiction under the Ordinance, a Banking Court is to follow the procedure provided in the C.P.C. in all matters but only with respect to which the procedure has not been provided for in the Ordinance. Thus, there remains no doubt that where a particular procedure has been provided in the Ordinance to deal with a certain matter, a Banking Court cannot apply the procedure provided in the C.P.C. In other words, a Banking Court is to follow the procedure provided in the C.P.C. in so far as it is not inconsistent with the procedure provided in the Ordinance. In case of conflict between the two, the procedure provided in the Ordinance is to be preferred and followed.

11. That being so, we are to examine the substance of the provisions of Rule 90 of Order XXI, C.P.C. and Section 19(7) of the Ordinance; to see whether there is any conflict between them or the latter is only complementary to the former.

12. Rule 90 of Order XXI, C.P.C., specifies the persons eligible to make the application to set aside the sale, namely, (i) any person entitled to share in a rateable distribution of assets, and (ii) any person whose interests are affected by the sale. It also outlines the grounds for challenging the sale, which are (i) material irregularity in publishing or conducting the sale, and (ii) fraud in publishing or conducting the sale. The first proviso of the Rule restricts the vitiating effect of these grounds only to situations where the applicant has sustained substantial injury due to such irregularity or fraud. And its second proviso mandates that the entertainability of the application is conditional upon the deposit of an amount not exceeding twenty per cent of the sum realised at the sale, or the furnishing of such security, as directed by the court. On the other hand, clauses (a) and (b) of Section 19(7) of the Ordinance address two aspects: (i) the requirement for Banking Courts to follow a summary procedure for investigating objections regarding the sale of any property and completing such investigation within 30 days of filing of the objections; and (ii) the provision for imposing a penalty of upto twenty percent of the sale price of the property if objections are found mala fide or aimed at delaying the sale.

13. As evident from the above analysis, clauses (a) and (b) of Section 19(7) of the Ordinance are not comprehensive provisions regarding objections to the sale of property in the execution of a decree. They do not specify who can make objections or the grounds on which objections can be made. Therefore, these clauses cannot function independently of Rule 90 of Order XXI, C.P.C., regarding objections to the sale of property in the execution of a decree. It is worth noting that since Section 141, C.P.C., does not apply to applications under Rule 90 of Order XXI, C.P.C.,¹¹ the procedure for investigating objections made under this rule is also summary, as provided in clause (a) of Section 19(7) of the Ordinance. The latter provision merely further prescribes a period of 30 days to complete the investigation of objections through a summary procedure. Clause (b) of Section 19(7) of the Ordinance provides for imposing a penalty of up to twenty percent of the sale price of the property if objections are found by the Banking Court to be mala fide or aimed at delaying the sale of the property. This penalty amount, as discussed earlier, is to be deposited by the applicant, or its security furnished, as per the second proviso to Rule 90 of Order XXI, C.P.C., before the court entertains the application to set aside the sale. Thus, there is no conflict between the two provisions; clauses (a) and (b) of Section 19(7) of the Ordinance are only complementary to the provisions of Rule 90 of Order XXI, C.P.C., for the execution of decrees under the Ordinance. A Banking Court is therefore bound to follow both the provisions in the matter of objections made to the sale of property in the execution of a decree.

14. Our attention has been drawn to a Lahore High Court Division Bench judgment in Messrs Majid & Sons¹² wherein, while relying upon a judgment of this Court in PICIC,¹³ it has been held that due to the non-obstante clause of Section 18(6) of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act 1997 (the predecessor provision of Section 19(7) of the Ordinance), the provisions of Rule 90 of Order XXI, C.P.C., are excluded. In PICIC, a three-member Bench of this Court had held that objections in respect of the sale of a property could be filed under the provisions of Section 18(6) of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act 1997, and not under the C.P.C., because of the non-obstante clause of this subsection. With respect, we note that in PICIC, a three-member Bench of this Court

failed to appreciate that the detailed provisions on the matter of objections in respect of sale of a property in execution of a decree are contained in Rule 90 of Order XXI, C.P.C., whereas the provisions of Section 18(6) of the 1997 Act (now Section 19(7) of the Ordinance) only covers two things and are thus merely complementary to them, as discussed above. Therefore, the decision on this point in PICIC suffers from patent illegality and is hereby overruled. Consequently, the Division Bench judgment of the Lahore High Court in *Messrs Majid and Sons* is also disapproved.

15. Having decided the questions of law, we now proceed to examine the facts of the present cases and decide them in light of the legal position stated above.

Facts of and decision on C.P. 2646-L/2018

16. On 21 July 2009, the respondent, MCB, instituted a suit against the petitioner, Samrana Nawaz, seeking recovery of a sum of Rs.69,34,793.00. The Banking Court decreed the suit on 6 April 2010 and converted it into execution proceedings for further action. In the execution proceedings, the property of the petitioner was sold through a public auction. The appellant filed objections to this sale under Rule 90 of Order XXI, C.P.C. The Banking Court dismissed the appellant's objection petition, on 14 June 2011, on merits. The petitioner appealed this decision, but the Lahore High Court dismissed the appeal by a judgment dated 20 November 2018 ("impugned judgment"). The sole ground on which the High Court dismissed the petitioner's appeal and upheld the Banking Court's order was that since the petitioner had not deposited twenty percent of the sum realized at the sale at the time of filing the objection petition, her objection petition was not entertainable. Hence, this petition for leave to appeal is filed by the petitioner.

17. The deposit of the amount required under the second proviso, as held above, is not mandated to be made by the applicant along with the application; rather, it is to be made upon the direction of the court. In the present case, the Banking Court neither determined the specific amount to be deposited by the petitioner under the second proviso nor did it direct the petitioner to make any deposit. Therefore, the High Court could not legally dismiss the petitioner's appeal and uphold the Banking Court's order on the ground of non-deposit of twenty percent of the sum realized at the sale by the petitioner at the time of filing her objection petition. Instead, the proper course for the High Court was to ensure compliance with the requirement of the second proviso before considering her appeal on its merits by determining an appropriate amount to be deposited by the petitioner under the second proviso and allowing the petitioner an opportunity to deposit the same with the executing court, i.e., the Banking Court.

18. Therefore, the present petition is converted into an appeal, and the same is allowed. The impugned judgment is set aside. The petitioner's appeal before the High Court shall be deemed pending. The High Court shall, before considering the appeal on its merits, determine an appropriate amount to be deposited by the petitioner under the second proviso and allow the petitioner an opportunity to deposit the same with the executing court. If the petitioner deposits the amount determined by the High Court, her appeal shall be decided on its merits; otherwise, the same may be dismissed by upholding the order of the Banking Court on this ground alone.

Facts of and decision on C.A. 17-L/2019

19. On 21 July 2009, the respondent, MCB, instituted a suit against the appellant, Samrana Nawaz, seeking recovery of a sum of Rs.67,48,254.54. The Banking Court decreed the suit on 6 April 2010 and converted it into execution proceedings for further action. In the execution proceedings, four properties of the appellant were sold through public auction. The appellant filed objections to this sale under Rule 90 of Order XXI, C.P.C. The Banking Court allowed the appellant's objection petition on 9 January 2012 and set aside the sale. The respondent appealed this decision, and the Lahore High Court accepted the appeal by a judgment dated 20 November 2018 ("impugned judgment"). The sole ground on which the High Court accepted the respondent's appeal was that since the appellant had not deposited twenty percent of the sum realized at the sale at the time of filing the objection petition, her objection petition was not entertainable. Hence, this appeal is filed by the appellant.

20. As stated above, the deposit of the amount, which is required under the second proviso, is not to be made by the applicant along with the application but rather it is to be made on the direction of the court. In the present case, the Banking Court neither determined the specific amount to be deposited by the appellant under the

second proviso nor did it direct the appellant to make any deposit. Additionally, the respondent failed to raise this crucial point before the Banking Court when it proceeded to entertain the appellant's objection petition. It was imperative for the Banking Court to adhere to the requirement of the second proviso before proceeding to consider and adjudicate upon the merits of the appellant's objection petition. However, it failed in its duty in this regard.

21. The purpose behind requiring the deposit of a certain amount under the second proviso, as mentioned earlier, is to deter frivolous objections and to appropriate the deposited amount for awarding costs to those affected by the delay caused by such objections. In the present case, the appellant's objections were found valid, not frivolous, upon adjudication by the Banking Court. Since the appellant's objection petition was granted by the court, there was no occasion to compensate the respondent for filing a frivolous application by the appellant to delay the sale. Had the appellant's objection petition been dismissed by the Banking Court and the appellant appealed to the High Court, we would have asked the High Court to comply with the requirement of the second proviso before considering her appeal on its merits. However, in the scenario where the executing court had accepted the appellant's objection petition and it was the respondent who appealed, we find that the impugned judgment passed by the High Court is not legally sustainable.

22. Therefore, the present appeal is allowed, and the impugned judgment is set aside. The respondent's appeal before the High Court shall be deemed pending, and the High Court shall decide it on its merits, excluding the ground of non-deposit of the amount by the appellant under the second proviso.

Facts of and decision on C.A. 364-L/2020

23. The respondent, Bank of Punjab, instituted a suit against the appellants, Khalid Mujeeb Pervaiz and others, seeking recovery of a sum of Rs.144,802,140. A Single Bench of the Lahore High Court, exercising its jurisdiction as a Banking Court under the Ordinance, decreed the suit on 27 October 2014 to the extent of Rs.114,792,163.97 and converted it into execution proceedings for further action. In the execution proceedings, several properties of the appellants were sold through public auction. The appellants filed objections to this sale under Rule 90 of Order XXI, C.P.C. However, by its order dated 9 May 2018, the Banking Court, i.e., the Single Bench of the High Court, dismissed the objection petition on the sole ground that the appellants had not deposited twenty percent of the sum realized at the sale along with their objection petition. The appellants appealed before the Division Bench of the High Court, but it was dismissed and the order of the Banking Court was upheld by a judgment dated 3 February 2020 ("impugned judgment") on the same ground. Hence, this appeal is filed by the appellant, with leave of the Court, which was granted to consider the question: "whether a 20% deposit of the auction price is obligatory for an objector without an order requiring the same being passed by the Banking Court in terms of the second proviso to Rule 90 of Order XXI, C.P.C."

24. Since we have held above that the deposit of the amount required under the second proviso to Rule 90 of Order XXI, C.P.C., is not obligatory for the applicant to make along with the application but rather it is to be made on the direction of the court, the Banking Court committed a legal error in dismissing the appellants' objection petition on the ground of non-deposit of twenty percent of the sum realized at the sale along with their objection petition. Further, the Division Bench, by dismissing the appellants' appeal, failed to correct that legal error in its appellate jurisdiction.

25. Therefore, the present appeal is allowed. The impugned judgment is set aside, and the appellants' appeal made before the Division Bench is accepted. Consequently, the order of the Banking Court, i.e., the Single Bench of the High Court, is also set aside. The appellants' objection petition shall be deemed pending. The Banking Court shall, before considering the objection petition on its merits, determine an appropriate amount to be deposited by the appellants under the second proviso to Rule 90 of Order XXI, C.P.C., and allow the appellants an opportunity to deposit the same. If the appellants deposit the amount determined by the Banking Court, their objection petition shall be decided on its merits; otherwise, the same shall not be entertained and shall be dismissed on this ground alone.

MWA/S-18/SC Order accordingly.