

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, ACJ.

Civil PLA No.42 of 2020
Civil Misc. No.19 of 2020
(Filed on 27.02.2020)

Golden Star Ghee Mills

.....PETITIONER

VERSUS

National Bank of Pakistan & others

....RESPONDENTS

[On appeal from the judgment of the High Court
dated 23.01.2020 in revision petition No.131/2018]

(Application for interim relief)

FOR THE PETITIONER: Mr. Babar Ali Khan,
Advocate.

FOR THE RESPONDENTS: Nemo.

Date of hearing: 19.05.2020

JUDGMENT

Raja Saeed Akram Khan, ACJ– A decree for recovery of loan amounting to Rs.1,85,32,307/- was passed against the petitioners by the Banking Tribunal, Rawalpindi, Pakistan. The respondents/decree-holders moved for execution of the decree during pendency of which a Banking Tribunal was constituted in the Azad Kashmir, hence, the case was transferred to Banking Court, Mirpur. The jurisdictional competence of the Banking Court, Mirpur was objected by the petitioners by filing an application which stood dismissed upto this Court. A review petition filed before this Court also failed. After dismissal of the review petition, the file was returned to the Banking Court, Mirpur, which, according to the record, was inadvertently consigned to the record. However, later on the same was placed before the Court and the execution proceeding was initiated. Through order dated 12.10.2018 the learned Banking Court, Mirpur deputed Mr. Sikandar Raftaz Chaudhary, as

Court Auctioneer for auction of the pledged property of the petitioners. Dissatisfied, the petitioners filed a revision petition before the High Court which has been dismissed through the impugned order dated 23.01.2020, hence, this petition for leave to appeal.

2. Mr. Babar Ali Khan, Advocate, the learned counsel representing the petitioners seriously objected the legality of the impugned order. He submitted that due to fault of the Court the file was inadvertently consigned to record and the same was subsequently restored. He submitted that it was mandatory for the Court to issue fresh notice to the petitioners, however, no notice was issued. The learned Banking Court has illegally ordered for auction of the petitioners' property without adhering to the statutory provisions of law. He further submitted that the provisions of Code of Civil Procedure, 1908 are fully applicable to the execution proceedings in the banking matters. Under Order XXI, Rule 66(2) of the CPC before issuance of proclamation of auction of property a

notice to the decree holder and the judgment debtor is mandatory. The learned High Court has relied upon the case involving quite different proposition, which according to its peculiar facts was not applicable to the case in hand. Even otherwise, the execution proceedings were stopped and it was necessary to provide an opportunity of hearing to the petitioners. In support of his contentions, he referred to the case reported as 2007 YLR 126 and submitted that for having an authoritative judgment, leave be granted.

3. After hearing the learned counsel for the petitioner, it appears that some important legal propositions, specially, whether in view of the facts and circumstances of the instant case it was mandatory to issue notice to the petitioners/judgment debtors or not, among others, require detailed deliberation which can only be done in regular appeal. Leave to appeal is, therefore, granted. The petitioners shall deposit security of Rs.1000/- otherwise the leave granting order shall

automatically stand rescinded. The office shall proceed further according to rules.

There is also an application of interim relief. As leave has been granted and the petitioners have succeeded in making out prima facie arguable case, therefore, till disposal of the appeal the operation of the impugned order of the High Court shall remain suspended.

ACTING CHIEF JUSTICE

Mirpur,
19.05.2020