JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

F.A.O. NO. 78 of 2021

Bank Islami Pakistan Limited

Versus

Major (R) Muhammad Inayat

Appellant by : Barrister Umar Aslam and Mr. Hunain Tariq, Advocates.
Respondent by : Sheikh Azfar Amin, Advocate.
Date of hearing : 08.10.2026

Muhammad Azam Khan, J. Through the instant appeal, filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as the "Ordinance, 2001"), the appellant, Bank Islami Pakistan Limited, has assailed the order dated 25.05.2021, passed by the learned Judge, Banking Court, Islamabad, in execution proceedings arising out of Civil Original Suit No.03 of 2010, whereby the application bearing C.M. No.278 of 2015, filed by the respondent, Major (R) Muhammad Inayat, was allowed, the sale of pledged shares effected by the appellant-Bank was set aside, and the appellant was directed to restore the pledged shares in the name of the respondent.

2. The controversy emanates from financial facilities availed by the respondent from the appellant-Bank, against which certain shares were pledged as security for repayment of the outstanding financial obligations. Upon default by the respondent, the appellant instituted recovery proceedings, culminating in a decree dated 17.10.2012 for recovery of Rs.79,603,282/-, subsequently reduced to Rs.76,075,133/- pursuant to R.F.A. No.65 of 2012. The respondent had pledged 44,000 shares of Netsol Technologies Limited and 232,000 shares of Pak Suzuki Motor Company Limited as collateral security. The appellant-Bank, claiming to have exercised its contractual and statutory rights as pledgee, sold the pledged shares on different dates between 21.11.2012 and 13.03.2013 for an aggregate consideration of Rs.23,484,896/-, which amount was adjusted towards partial satisfaction of the decretal liability. During the pendency of

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execution proceedings, the respondent filed C.M. No.278 of 2015 on 20.03.2015, challenging the legality of the aforesaid sale on the ground that the appellant-Bank could not independently dispose of the pledged shares during the subsistence of judicial execution proceedings without intervention of the competent Court. Subsequently, upon transfer of the execution proceedings from this Court to the learned Banking Court, Islamabad, consequent upon the change in pecuniary jurisdiction, the learned Banking Court, through the impugned order dated 25.05.2021, accepted the respondent's application and set aside the sale of the pledged shares. Being dissatisfied with the said determination, the appellant-Bank has invoked the appellate jurisdiction of this Court through the instant appeal.

3. Learned counsel for the appellant contended that the impugned order dated 25.05.2021, passed by the learned Banking Court, Islamabad, is contrary to the facts, circumstances and applicable provisions of law, having been passed without properly appreciating the contractual relationship between the parties, the statutory rights available to the appellant-Bank as a pledgee, and the legal consequences arising from the respondent's admitted default in repayment of the financial facilities. It was argued that the respondent had voluntarily pledged 44,000 shares of Netsol Technologies Limited and 232,000 shares of Pak Suzuki Motor Company Limited as collateral security against the financial facilities availed from the appellant-Bank and, upon his failure to discharge the outstanding financial obligations, the appellant became legally entitled to enforce the pledged securities in accordance with Section 176 of the Contract Act, 1872. Learned counsel maintained that the aforesaid provision expressly recognizes the right of a pawnee to sell pledged goods upon default by the pawnor after giving reasonable notice of the intended sale, and that such right constitutes an independent statutory remedy which does not necessarily require prior authorization from a Court. It was submitted that the learned Banking Court failed to appreciate that the mere institution of recovery proceedings or pendency of execution proceedings did not extinguish the appellant's contractual and statutory rights in respect of the pledged securities, particularly when the

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proceeds of their sale were duly adjusted towards partial satisfaction of the decretal amount. Learned counsel further argued that Section 12 of the Central Depositories Act, 1997, read with the relevant provisions of the Contract Act, 1872, recognizes the entitlement of a pledgee to enforce its security interest in book-entry securities upon default by the pledgor, and that the learned Banking Court misconstrued the legal position by treating the sale of pledged shares as an unauthorized transaction merely because judicial proceedings for recovery of the outstanding amount were pending. It was further contended that the appellant-Bank had duly communicated its intention to enforce the pledged securities through letters dated 28.08.2009 and 12.12.2009, whereas the respondent, through his communication dated 27.10.2009, had acknowledged his outstanding obligations and undertaken to make payment, besides furnishing a post-dated cheque. According to learned counsel, the respondent failed to honour his commitments despite being afforded sufficient opportunities, whereafter the appellant was justified in proceeding against the pledged securities, and the correspondence exchanged between the parties constituted sufficient intimation of the consequences of continued default. Learned counsel further submitted that the learned Banking Court failed to appreciate the distinctive nature of shares traded on a recognized stock exchange, whose market value is determined by prevailing trading conditions and fluctuates according to demand and supply, unlike immovable properties or other tangible assets. It was maintained that the pledged shares were sold on different dates between 21.11.2012 and 13.03.2013 through the prevailing market mechanism for an aggregate consideration of Rs.23,484,896/-, which amount was adjusted towards partial satisfaction of the appellant's decretal claim. It was argued that the learned Banking Court failed to identify any specific illegality, procedural irregularity, manipulation of market prices or demonstrable financial loss suffered by the respondent as a consequence of the sale transactions, nor did it determine the price at which the shares ought to have been sold or the criteria upon which the adequacy of the consideration received could have been assessed. Learned counsel emphasized that the appellant could not reasonably be

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expected to retain the pledged securities indefinitely in anticipation of a possible increase in their future market value, particularly when the respondent had already defaulted in repayment of his outstanding financial obligations. It was further contended that the respondent remained aware of the sale transactions, which had been completed by 13.03.2013, yet challenged the same through C.M. No.278 of 2015, instituted on 20.03.2015, after an unexplained and considerable lapse of time. According to learned counsel, the respondent raised the controversy only when the mortgaged properties were subsequently brought to auction during execution proceedings, with the object of obstructing and delaying recovery of the decretal amount. It was also argued that the learned Banking Court failed to consider the practical impossibility of implementing the directions contained in the impugned order, particularly when the pledged shares had already been sold in the open market several years earlier and could subsequently have passed through numerous independent transactions into the ownership of third parties. Learned counsel maintained that the original sale transactions could not practically be reversed, nor could the appellant reasonably be expected to identify and recover the securities from their subsequent holders. Consequently, the direction requiring restoration of the pledged shares in the respondent's name was asserted to be legally unsustainable and incapable of practical implementation. Learned counsel lastly submitted that the learned Banking Court had failed to properly examine the appellant's objections and the documentary material available on record, and had set aside completed commercial transactions without adequately identifying the legal basis for doing so. It was, therefore, prayed that the instant appeal be allowed, the impugned order dated 25.05.2021 be set aside, and the learned Banking Court, Islamabad, be directed to proceed expeditiously with the execution proceedings for recovery of the outstanding decreetal amount in accordance with law.

4. Conversely, learned counsel for the respondent supported the impugned order dated 25.05.2021, contending that the same has been passed by the learned Banking Court, Islamabad, upon a proper appreciation of the factual circumstances, the nature of the original decree and the statutory framework

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governing execution proceedings under the Financial Institutions (Recovery of Finances) Ordinance, 2001. It was submitted that the appellant-Bank, having instituted recovery proceedings under Section 9 of the Ordinance, 2001, and having obtained a decree in Civil Original Suit No.03 of 2010, was legally bound to seek satisfaction of the decretal amount through the procedure prescribed by law and could not independently adopt a mode of realization inconsistent with the statutory requirements governing execution of banking decrees. Learned counsel maintained that, through the judgment dated 17.10.2012, announced on 12.11.2012, the suit instituted by the appellant-Bank was decreed and expressly converted into execution proceedings under Section 19(1) of the Ordinance, 2001, with a further direction that the decretal amount be recovered in accordance with the Code of Civil Procedure, 1908, or any other applicable law, including through the sale of mortgaged properties and hypothecated stocks. It was argued that, notwithstanding the commencement of execution proceedings, the appellant-Bank unilaterally sold 44,000 shares of Netsol Technologies Limited and 232,000 shares of Pak Suzuki Motor Company Limited, pledged by the respondent as collateral security, between 21.11.2012 and 13.03.2013 for an aggregate consideration of Rs.23,484,896/-, without adopting the procedure prescribed under Section 19(3) of the Ordinance, 2001. Learned counsel emphasized that although the said provision authorizes a financial institution to sell mortgaged, pledged or hypothecated property with or without intervention of the Banking Court, such authority is expressly regulated by the statutory modes of sale, namely, public auction or invitation of sealed tenders, and cannot be construed as conferring an unrestricted discretion upon a decree-holder to dispose of secured assets through any mechanism of its own choosing. It was submitted that the appellant admittedly did not adopt either of the aforesaid modes and, therefore, the sale transactions could not acquire legal sanctity merely because the shares were traded at the prevailing market prices. Learned counsel further contended that the appellant's reliance upon Section 176 of the Contract Act, 1872, was misconceived because the said provision itself contemplates reasonable notice of the intended sale to the pawnor, whereas the

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correspondence dated 28.08.2009, 27.10.2009 and 12.12.2009, relied upon by the appellant, related to earlier negotiations concerning repayment and restructuring of the financial facilities and could not automatically be treated as reasonable notice of the actual sale transactions undertaken approximately three years thereafter. It was maintained that a general communication regarding default, repayment obligations or the possibility of legal proceedings cannot be equated with a specific and reasonable intimation of the intended disposal of pledged securities, particularly where the pledgee subsequently obtains a judicial decree and proceeds to realize the secured assets in satisfaction thereof. Learned counsel further argued that Section 12(3) of the Central Depositories Act, 1997, upon which the appellant placed considerable reliance, could not be interpreted in isolation from the statutory requirements governing enforcement of a banking decree, as the mechanism relating to the transfer of book-entry securities does not, by itself, dispense with the substantive legal conditions governing their sale. It was submitted that the appellant's interpretation would effectively permit a financial institution to circumvent the procedure prescribed under Section 19 of the Ordinance, 2001, merely by invoking its status as a pledgee, thereby rendering the statutory safeguards regulating realization of secured assets ineffective. Learned counsel also maintained that the appellant could not derive any unrestricted authority from the original decree, which contemplated recovery through legally recognized execution proceedings and did not expressly authorize unilateral disposal of the pledged shares in disregard of the applicable statutory procedure. It was further argued that the contention regarding the absence of financial loss or inadequacy of consideration was irrelevant to the fundamental question whether the sale had been conducted in accordance with law, since the mere receipt of prevailing market prices could not validate a transaction undertaken in violation of a mandatory statutory requirement. Learned counsel also controverted the objection regarding delay in challenging the sale, submitting that the respondent was entitled to question the legality of the transactions in the pending execution proceedings and that the appellant could not claim immunity from judicial scrutiny merely because the

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impugned transactions had been completed before the filing of the objections. Regarding the appellant's plea that restoration of the pledged shares had become practically impossible owing to their subsequent transfer in the securities market, learned counsel maintained that practical difficulties arising from transactions undertaken by the appellant could not retrospectively confer legality upon an otherwise unauthorized sale, nor could such difficulties, by themselves, defeat the respondent's entitlement to appropriate relief in accordance with law. It was further submitted that the learned Banking Court had neither extinguished the appellant's decretal rights nor deprived it of the security furnished by the respondent, as the impugned order expressly directed restoration of the pledged shares subject to continuation of the appellant-Bank's pledge charge, thereby preserving the Bank's security interest while requiring compliance with the legally prescribed procedure. Learned counsel lastly maintained that the learned Banking Court had examined the respective contentions of the parties, considered the relevant statutory provisions and correctly determined that the appellant had failed to adopt the procedure prescribed for the sale of pledged property in execution of a banking decree. It was, therefore, submitted that the impugned order suffers from no illegality, jurisdictional defect or material irregularity warranting interference by this Court in the exercise of appellate jurisdiction under Section 22 of the Ordinance, 2001, and the instant appeal, being devoid of merit, is liable to be dismissed.

5. We have heard learned counsel for the parties at considerable length and have carefully examined the memorandum of appeal, the impugned order dated 25.05.2021, the original judgment and decree passed in Civil Original Suit No.03 of 2010, and the material placed before us. The controversy presented for determination raises an important question concerning the relationship between the contractual rights of a financial institution holding pledged securities and the statutory obligations governing the enforcement of a decree obtained under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as the “Ordinance, 2001”). At first impression, the dispute appears to concern the sale of certain shares pledged by the respondent against financial

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facilities obtained from the appellant-Bank. Upon closer examination, however, the controversy extends beyond the mere existence of a pledge or the right of a creditor to recover an outstanding liability. It concerns the manner in which a financial institution may exercise its rights after invoking the jurisdiction of a competent Court, obtaining a decree for recovery of finances and entering the statutory process prescribed for satisfaction of that decree. The distinction is fundamental because the existence of a substantive right and the manner of its enforcement are two separate legal considerations. A creditor may possess an unquestionable entitlement to recover an outstanding debt, yet the exercise of that entitlement must conform to the procedure prescribed by law. Equally, a debtor's default cannot confer upon a financial institution an authority greater than that recognized by the governing statute. The present appeal, therefore, requires us to examine not whether the appellant-Bank was entitled to recover its outstanding financial obligations, which question had already been determined through the original decree, but whether the particular method adopted for realization of the pledged securities was consistent with the statutory framework applicable to the execution of that decree. It is in this perspective that the legality of the impugned order must be examined.

6. The factual background, insofar as relevant to the determination of the present controversy, is substantially undisputed. The appellant-Bank extended financial facilities to the respondent under Diminishing Musharakah arrangements, initially amounting to Rs.70 million, against securities furnished by the respondent. Upon the respondent's failure to discharge his financial obligations, the appellant instituted Civil Original Suit No.03 of 2010 before this Court under Section 9 of the Ordinance, 2001, seeking recovery of Rs.79,603,282/-. The respondent contested the proceedings through an application seeking leave to appear and defend the suit. After considering the respective positions of the parties, the learned Court, through its judgment dated 17.10.2012, announced on 12.11.2012, dismissed the application for leave to defend and decreed the suit in favour of the appellant-Bank for the aforesaid amount, together with costs and cost of funds at the prevailing rate fixed by the

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State Bank of Pakistan from the date of default until realization. Significantly, the Court did not leave the subsequent realization of the decretal amount to an undefined process. Rather, it expressly directed that the decree was to be executed, inter alia, through the sale of mortgaged properties and hypothecated stocks, if any, and further ordered that the suit stood converted into execution proceedings under Section 19(1) of the Ordinance, 2001. The judgment also contemplated recovery in accordance with the Code of Civil Procedure, 1908, or any other applicable law, or through such manner as the Court might consider appropriate upon the request of the decree-holder. Thus, upon pronouncement of the decree, the controversy between the parties entered a distinct legal stage. The appellant was no longer merely a financial institution asserting an unpaid contractual obligation; it had become a decree-holder seeking satisfaction of an adjudicated liability through the machinery of judicial execution. The significance of this development cannot be overlooked, for the statutory framework governing execution necessarily assumes importance when a financial institution seeks to appropriate secured assets towards satisfaction of a decree. The record further reveals that, notwithstanding the commencement of execution proceedings, the appellant-Bank proceeded to dispose of 44,000 shares of Netsol Technologies Limited and 232,000 shares of Pak Suzuki Motor Company Limited, which had been pledged by the respondent as collateral security. According to the appellant's own account, the shares were sold on different dates between 21.11.2012 and 13.03.2013, and an aggregate amount of Rs.23,484,896/- was realized and adjusted towards partial satisfaction of the decretal amount. The sale, therefore, was neither an isolated transaction occurring before the commencement of recovery proceedings nor an independent commercial arrangement unrelated to the judicial decree. It took place after the decree had been pronounced and after the original suit had expressly been converted into execution proceedings. Moreover, the appellant itself treated the proceeds as part satisfaction of the decree. This factual circumstance assumes considerable significance because the legal character of a transaction must be determined from its substance and effect rather than the

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description subsequently assigned to it by the party undertaking the transaction. Where secured assets are disposed of after the pronouncement of a recovery decree and the resulting proceeds are appropriated towards satisfaction of that decree, the transaction bears a direct and substantial relationship to the execution process. The appellant cannot, for purposes of appropriation, treat the proceeds as satisfaction of the judicial decree while, for purposes of examining the legality of the sale, seek to characterize the transaction as wholly independent of the statutory framework governing execution. The two positions cannot be reconciled without examining the precise authority under which the sale was undertaken and the conditions attached to the exercise of that authority. It is against this factual background that the respondent questioned the sale through objections instituted on 20.03.2015, contending that the appellant had disposed of the pledged securities without complying with the requirements of Section 19 of the Ordinance, 2001. The learned Banking Court accepted those objections through the impugned order dated 25.05.2021, giving rise to the present appeal.

7. The Ordinance, 2001, is a special enactment designed to provide an effective legal mechanism for the recovery of finances by financial institutions. Its object is undoubtedly to facilitate the expeditious recovery of outstanding financial obligations and to prevent unnecessary obstruction of legitimate banking claims. Nevertheless, the legislative objective of expeditious recovery does not authorize departure from the procedure expressly prescribed by the statute itself. Section 19 constitutes the principal provision governing execution of decrees and sale of secured assets, whether with or without the intervention of the Banking Court. Subsection (1) provides that, upon pronouncement of judgment and decree, the suit shall automatically stand converted into execution proceedings, without requiring a separate application or fresh notice to the judgment-debtor. The same provision contemplates that particulars of the mortgaged, pledged or hypothecated property and other assets of the judgment-debtor shall be furnished by the decree-holder for consideration of the Banking Court. Subsection (2) recognizes execution in accordance with the Code of Civil Procedure, 1908, or any other law for the time being in force, or in such manner

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as the Banking Court may consider appropriate upon the request of the decree-holder. Subsection (3), however, specifically addresses the sale of mortgaged, pledged or hypothecated property and authorizes a financial institution to sell or cause such property to be sold, with or without the intervention of the Banking Court, either by public auction or by inviting sealed tenders, and to appropriate the proceeds towards total or partial satisfaction of the decree. The provision further declares that the decree itself constitutes sufficient authority for the financial institution to effect such sale without requiring another order of the Banking Court. A combined reading of these provisions demonstrates that the legislature has sought to reconcile two important objectives: enabling financial institutions to realize their lawful dues without unnecessary procedural obstacles and ensuring that the disposal of secured assets takes place within a legally regulated framework. The power to sell without judicial intervention is, therefore, not an unrestricted power; it is a statutory facility accompanied by the conditions prescribed for its exercise.

8. The language employed in Section 19(3) is particularly significant. The legislature has expressly recognized that a financial institution may sell mortgaged, pledged or hypothecated property without first obtaining a separate order from the Banking Court. Consequently, the mere absence of judicial intervention cannot, by itself, render every such sale unlawful. To interpret the provision otherwise would deprive the words authorizing sale without intervention of their intended effect. However, the same provision specifies the modes through which the statutory power may be exercised, namely, public auction or invitation of sealed tenders. These requirements cannot be treated as incidental expressions having no legal consequence. Where the legislature confers a particular power and simultaneously prescribes the manner in which that power is to be exercised, the prescribed procedure ordinarily constitutes an integral part of the statutory authority. The power and the conditions attached to its exercise must be read together, for separating them would alter the legislative scheme. The expression permitting sale without intervention of the Banking Court cannot be isolated from the remaining language of subsection (3) and

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interpreted as authorizing disposal through any method considered commercially convenient by the financial institution. Such an interpretation would render the express reference to public auction and sealed tenders substantially ineffective. It would also permit a decree-holder to rely upon the statutory authority conferred by the decree while disregarding the procedural conditions upon which that authority is made available. In the present case, the appellant does not claim to have sold the pledged securities through sealed tenders. Nor does the material placed before us establish that the sale was conducted through a public auction satisfying the statutory requirements applicable to such a transaction. Its position is that the shares were disposed of through the stock exchange at prevailing market prices. The question, therefore, is not whether the appellant could sell the securities without obtaining a further judicial order, but whether the actual sale complied with the legally permissible mode of enforcement. The learned Banking Court approached the matter from this distinction, and its conclusion must be evaluated accordingly.

9. We are conscious of the appellant's argument that shares listed on a recognized stock exchange possess characteristics materially different from immovable property or ordinary movable assets. Their prices fluctuate according to market conditions, and transactions are ordinarily undertaken through regulated trading mechanisms. It is also understandable that a financial institution holding listed securities as collateral may consider their prompt realization commercially desirable, particularly where delay could expose the security to market volatility. These considerations, however, cannot independently determine the legality of the transaction. A distinction must be maintained between a commercially recognized method of transferring securities and a legally authorized method of enforcing pledged property in satisfaction of a judicial decree. The fact that a transaction has been executed through a recognized securities market may establish that it was undertaken through an established trading mechanism; it does not necessarily establish that every statutory condition governing the pledgee's right of sale has been satisfied. At the same time, it would be inappropriate to presume, merely from the fact that

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the shares were sold through the stock exchange, that such transactions could never qualify as a public auction within the meaning of Section 19(3). That question would depend upon the legal character of the trading mechanism and the applicable statutory and regulatory framework. What remains material in the present case is that the appellant has not demonstrated, through the record placed before us, how the particular transactions satisfied the requirements of Section 19(3), whether as a legally recognized public auction or otherwise. The burden of establishing the lawful exercise of a statutory power necessarily rests upon the party invoking that power. A general assertion that shares were sold at market prices cannot substitute for demonstrating compliance with the legal conditions governing their realization. The learned Banking Court was, therefore, justified in examining the method adopted by the appellant rather than treating the existence of a regulated securities market as conclusive proof of statutory compliance. The appellant has also placed considerable reliance upon Section 176 of the Contract Act, 1872, contending that, as a pledgee, it possessed an independent right to sell the pledged securities upon default by the respondent. The existence of such a right, in its proper legal context, cannot be disputed. Section 176 recognizes that where a pawnor defaults in payment of the debt or performance of the promise for which goods have been pledged, the pawnee may institute proceedings for recovery while retaining the pledged property as collateral security, or may sell the pledged property after giving the pawnor reasonable notice of the intended sale. The provision thus recognizes the pledgee's right of realization, but it does not confer an unqualified power to dispose of the pledged property without observing the safeguards expressly incorporated into the law. The requirement of reasonable notice is not an empty formality. It serves the substantive purpose of informing the pawnor that the security is liable to be realized and affording a reasonable opportunity to discharge the outstanding obligation or otherwise protect the proprietary interest represented by the pledged property. The pledgee's right of sale is therefore accompanied by a corresponding obligation to exercise that right in the manner recognized by law. The appellant's contention that its right under Section 176

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was absolute cannot be accepted in such unqualified terms, for the provision itself makes the exercise of the power of sale conditional upon reasonable notice. Furthermore, once the financial institution invokes the special jurisdiction established under the Ordinance, 2001, obtains a decree and seeks to appropriate the proceeds of pledged property towards satisfaction of that decree, the relationship between its contractual rights and the statutory execution framework necessarily requires consideration. The general right recognized under Section 176 cannot be invoked as a complete answer to an objection that the particular sale failed to satisfy the applicable statutory requirements. The provisions must, so far as possible, be interpreted harmoniously, preserving the substantive entitlement of the pledgee while ensuring that the conditions governing its exercise are not rendered ineffective.

10. The question of notice assumes particular importance when the chronology of the present case is examined. The appellant relies upon correspondence dated 28.08.2009, 27.10.2009 and 12.12.2009 to contend that the respondent had been sufficiently informed of the consequences of his default and that no further notice was required before the pledged shares were sold. The record, however, discloses that the correspondence relied upon by the appellant arose during a period when the parties were engaged in discussions concerning repayment and restructuring of the financial facilities. Indeed, the original judgment itself records that an offer concerning restructuring was issued on 27.10.2009 and that a subsequent communication dated 12.12.2009 called upon the respondent to accept the restructuring proposal within the specified period. It further records the respondent's assertion that the restructuring arrangement contemplated the release or sale of certain pledged shares, a matter which had already become contentious between the parties. These circumstances are relevant because the legal sufficiency of notice cannot be determined merely by identifying a communication in which the possibility of enforcement or legal action was mentioned. The Court must examine whether, viewed objectively and in its proper context, the communication amounted to reasonable notice of the intended sale contemplated by Section 176. The actual transactions were

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undertaken between 21.11.2012 and 13.03.2013, approximately three years after the correspondence relied upon by the appellant and, significantly, after the recovery suit had been decreed and converted into execution proceedings. We do not suggest that Section 176 invariably requires a fresh notice immediately before every sale or that a notice becomes legally ineffective merely because a substantial period has elapsed. The sufficiency of notice depends upon the language of the communication, the surrounding circumstances and the opportunity afforded to the pawnor to redeem the security. Nevertheless, where earlier correspondence primarily concerns restructuring arrangements, and the actual sale occurs years later following an intervening judicial decree, the financial institution must establish how that correspondence satisfied the statutory requirement of reasonable notice of the sale ultimately undertaken. In the absence of such demonstration, the mere existence of earlier communications cannot conclusively establish compliance with Section 176. The appellant's reliance upon those letters, therefore, does not independently establish the legality of the disputed transactions.

11. The reliance placed upon Section 12(3) of the Central Depositories Act, 1997, requires separate consideration. The said provision recognizes certain powers available to a pledgee in respect of book-entry securities, including the power, upon default of the pledgor, to transfer the pledged securities or any part thereof. It also preserves the powers otherwise available to the pledgee under the Contract Act, 1872. The legislative purpose of this provision must be understood in the context of securities maintained through the central depository system, where ownership and security interests are recorded and transferred electronically rather than through physical delivery of share certificates. The provision facilitates the enforcement and transfer of pledged book-entry securities within that system. However, the recognition of a power to transfer securities does not necessarily resolve every question concerning the lawful exercise of the power of sale, particularly where the transaction is undertaken after a banking decree and the proceeds are appropriated towards satisfaction thereof. A statutory power concerning the transfer of securities and a statutory

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procedure governing the realization of secured assets operate in related but distinguishable fields. The former identifies powers available to an eligible pledgee within the depository framework, whereas the latter regulates the realization of property in the execution of a banking decree. These provisions should not be interpreted as mutually destructive when a harmonious construction is reasonably available. Section 12(3) does not expressly declare that every transfer of pledged securities is exempt from the requirements of the Ordinance, 2001, nor does it contain language authorizing a financial institution to disregard otherwise applicable statutory conditions governing enforcement of a decree. Equally, the fact that the Central Depositories Act, 1997, preceded the Ordinance, 2001, does not, by itself, establish that the earlier provision stood impliedly repealed. Repeal by implication is not to be readily presumed. The proper approach is to give effect to both enactments according to their respective objects and fields of operation. On that approach, Section 12(3) recognizes the pledgee's powers in relation to book-entry securities, but its invocation does not automatically establish that a particular sale, undertaken in the course of satisfying a banking decree, complied with all applicable requirements of law. The appellant's reliance upon this provision, therefore, cannot dispense with examination of the legality of the sale under the Ordinance, 2001.

12. The appellant has further argued that the respondent failed to establish that the pledged securities were sold at an undervalue or that any identifiable financial loss was occasioned by the transactions. It is maintained that the shares were sold at prevailing stock exchange prices and that the proceeds were duly credited towards the outstanding decretal liability. This argument requires consideration, but it does not address the entire controversy. The question whether a transaction was commercially reasonable is distinct from the question whether it was legally authorized. A sale may yield a price corresponding to the prevailing market value and yet remain open to challenge if the person effecting the sale has failed to comply with a mandatory legal condition governing its exercise. Conversely, a procedural irregularity should not automatically be treated as establishing that the property was sold at an undervalue or that the

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judgment-debtor suffered a loss equivalent to the full value of the securities. These are separate questions requiring separate examination. In the present case, the respondent's principal objection was directed against the authority and procedure under which the pledged shares were sold, rather than merely against the adequacy of the consideration received. Therefore, the appellant's assertion that the securities were disposed of at market prices cannot, standing alone, answer the objection founded upon non-compliance with the statutory framework. The adjustment of Rs.23,484,896/- towards the decretal amount similarly demonstrates the financial treatment accorded to the sale proceeds, but it does not retrospectively validate the method of sale if that method was otherwise inconsistent with law. The financial benefit obtained by the judgment-debtor through reduction of the outstanding liability is a relevant consideration for the purpose of consequential accounting and relief. It is not, however, conclusive of the anterior question whether the appellant lawfully exercised its power of realization. The learned Banking Court was consequently entitled to examine the legality of the transactions notwithstanding the appellant's assertion that the shares had been sold at prevailing market prices.

13. We now turn to the appellant's contention that the direction requiring restoration of the pledged shares is incapable of practical implementation. This objection deserves serious consideration because the shares in question were listed securities which, according to the appellant, were sold through the stock exchange during 2012 and 2013. Such securities are ordinarily transferred through a system in which subsequent transactions may occur without the participation or knowledge of the original pledgee. Consequently, an order setting aside the original sale cannot automatically be assumed to restore ownership of the identical securities where intervening transfers have occurred in favour of persons who were not parties to the proceedings. The rights of bona fide third-party purchasers, the operation of the central depository system and the legal limitations upon rectification of securities records are matters which cannot be disregarded. Indeed, Section 11 of the Central Depositories Act, 1997, contains an express restriction concerning rectification of the central depository

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register and contemplates damages as a form of relief in the circumstances governed by that provision. This statutory feature makes it necessary to distinguish between a declaration concerning the legality of a pledgee's conduct and the particular consequential relief that may lawfully be granted. A finding that a financial institution failed to observe the prescribed procedure does not, by itself, establish that every subsequent transfer of the securities can be reversed or that the rights of persons who acquired them through later transactions may be disturbed without their participation. Equally, the practical difficulty of restoring securities cannot be treated as retrospectively validating a sale otherwise found to be unlawful. The legality of the appellant's conduct and the appropriate remedy for its consequences are distinct inquiries. The former concerns compliance with the statutory framework; the latter concerns the relief which may be granted consistently with the rights of affected persons and the governing securities legislation. The direction for restoration must therefore be understood and implemented subject to these legal limitations. The Banking Court, as the Court supervising execution, retains the responsibility to examine any genuine question of impossibility, third-party rights or consequential adjustment which arises in giving effect to its determination, without permitting such questions to defeat the substantive adjudication merely because the appellant has already completed the disputed transactions. It is equally necessary to emphasize that the present controversy does not involve a reconsideration of the respondent's liability under the original decree. That liability was adjudicated through the judgment dated 17.10.2012, announced on 12.11.2012, and the appellant's entitlement to seek satisfaction of the decree remains governed by the applicable law. The respondent cannot derive from the disputed sale any immunity against recovery of the outstanding decretal amount, just as the appellant cannot derive from the respondent's default an exemption from the statutory conditions governing realization of secured assets. The law does not contemplate that an irregularity in the enforcement of security should extinguish a lawful debt. Nor does it permit the creditor's substantive entitlement to recovery to be treated as sufficient justification for disregarding the manner of

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enforcement prescribed by statute. The rights of both parties must therefore be maintained within their respective legal limits. In this context, the learned Banking Court's direction that the pledged securities be restored subject to continuation of the appellant's pledge charge is significant. It indicates that the Court did not intend to release the respondent from the security arrangement or to deprive the appellant of its underlying financial claim. Rather, the order sought to restore the position concerning the pledged securities while preserving the appellant's security interest. The practical implementation of that direction may require further examination in light of the nature of book-entry securities and any intervening third-party transactions, but such questions do not alter the distinction between the appellant's continuing right to recover the decretal amount and the legality of the particular method adopted for its realization. Any consequential adjustment must also account for the amount already credited towards the decree, so that neither party receives an unwarranted financial advantage and the same liability is not satisfied twice.

14. Viewed in its entirety, the controversy illustrates an important principle governing the exercise of statutory powers by financial institutions. The law recognizes the necessity of protecting the banking system against defaults and facilitating the recovery of finances advanced in the ordinary course of commercial activity. At the same time, the law does not treat the objective of recovery as a justification for dispensing with the safeguards which the legislature has deliberately incorporated into the enforcement process. The authority to realize secured assets is not diminished by requiring compliance with those safeguards; rather, its legal legitimacy is strengthened. A financial institution that invokes the special recovery jurisdiction established under the Ordinance, 2001, obtains a decree and proceeds to appropriate secured assets towards satisfaction thereof must be able to demonstrate that the power of realization was exercised in accordance with the applicable legal requirements. The statutory framework cannot be divided into convenient portions, accepting the provisions which facilitate recovery while disregarding those which regulate the manner of enforcement. Equally, the rights of the judgment-debtor cannot be

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enlarged so as to defeat the decree or prevent lawful realization of the security. The proper judicial approach lies in preserving both the creditor's substantive entitlement and the statutory discipline governing its enforcement. In the present case, the appellant's arguments establish the existence of its security interest and its entitlement to recover the outstanding decretal amount, but they do not satisfactorily answer the objection concerning compliance with the legally prescribed procedure for the disputed sale. The questions relating to subsequent transfers, restoration of the securities and consequential accounting remain matters requiring treatment consistently with the Central Depositories Act, 1997, and the rights of persons who may have acquired interests in the securities. These considerations, taken together, provide the framework within which the legality of the impugned order and the appropriate consequential directions fall to be determined.

15. For the foregoing reasons, we are of the considered view that the appellant-Bank has failed to establish any illegality, jurisdictional defect or material irregularity in the impugned order dated 25.05.2021 warranting interference by this Court in the exercise of appellate jurisdiction under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. Although the appellant, being a decree-holder and pledgee, undoubtedly possesses the legal right to recover its outstanding decretal amount and to enforce the securities furnished by the respondent, such entitlement does not dispense with compliance with the statutory requirements governing the exercise of that right. The sale of the pledged shares, undertaken after the pronouncement of the decree and commencement of execution proceedings, has not been shown to have been effected in accordance with the prescribed legal procedure, nor has the appellant satisfactorily established compliance with the requirement of reasonable notice contemplated under Section 176 of the Contract Act, 1872. The learned Banking Court was, therefore, justified in questioning the legality of the transactions and setting aside the sale. Consequently, the instant appeal, being devoid of merit, is hereby **DISMISSED**, and the impugned order dated 25.05.2021 is maintained. However, having regard to the peculiar nature of the

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securities involved, their sale through the stock exchange and the possibility of subsequent transfers in favour of third parties, it is clarified that the direction concerning restoration of the pledged shares shall be implemented strictly in accordance with the applicable law, particularly the Central Depositories Act, 1997, without prejudicing the lawful rights of persons who were not parties to these proceedings. Should any genuine legal or practical impediment arise in effecting such restoration, the learned Banking Court shall be competent to examine the same and determine an appropriate consequential remedy in accordance with law, after affording the parties an opportunity of hearing. It is further clarified that dismissal of the instant appeal shall neither extinguish nor otherwise prejudice the appellant-Bank's right to recover the outstanding decretal amount through lawful execution proceedings, and any consequential adjustment shall duly account for the sale proceeds already credited towards the decree so as to prevent double recovery or unjust enrichment of either party. The learned Banking Court shall proceed with the execution proceedings expeditiously and strictly in accordance with law. No order as to costs.

(MUHAMMAD ASIF)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on _____ day of October, 2026.

JUDGE

JUDGE

Approved For Reporting

Sajid/--

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