

**IN THE HIGH COURT OF SINDH, KARACHI**

**Before: Muhammad Iqbal Kalhoro &  
Mohammad Abdur Rahman, JJ,**

**I. A. No. 96 of 2025**

Zakiruddin & others  
Vs.  
M/s. B.R.R. Gurdian Modarba & others

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1. For hearing of main case.
  2. For hearing of CMA No.1053/2025.

Appellants: Mr. Hamid Idrees, Advocate.  
Respondents No.1 : Mr. Qamar Riaz Virk, Advocate  
Respondent No. 2  
to 5 : Nemo  
Respondent No.6 : Mr. Abdul Shakoor, Advocate.  
Date of Hearing : 7 August 2025  
Date of Decision : 7 August 2025  
Date of Reasons : 15 August 2025

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**J U D G E M E N T**

**MOHAMMAD ABDUR RAHMAN, J.** Through this Appeal, maintained under Section 22 of the Financial Institutions Recovery of Finances Ordinance, 2001 (hereinafter referred to as the “Ordinance, 2001”), the Appellants impugn an order dated 16 July 2025 that was passed by the Banking Court No. 1, Karachi in Banking Suit No. 6 of 2006 dismissing an application, maintained by the Appellants, under Section 2 and 7 of the Ordinance 2001 read with Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908.

**A. Facts**

**(i) Banking Suit No. 6 of 2006**

2. M/s B.R.R. Guardian Modarba (hereinafter referred to as “BRRG Modarba”) maintained a Suit, under Section 9 of the Ordinance, 2001, bearing Banking Suit No. 6 of 2006 before the Banking Court No. 1, Karachi for the recovery of an amount of Rs. 3,355,000.

3. It is admitted, that so as to secure the financing that had been provided by BRRG Modarba to Castel (Private) Limited, a Mr. Muhammad Tariq stood as a

guarantor for Castel (Private) Limited and to further secure the financing, Plot No. 891-892, Category R, Block 2, Karachi Development Authority Scheme No. 16, Federal B. Area, Karachi admeasuring 200 square yards (hereinafter referred to as the "Mortgaged Property") was mortgaged by one Shaikh Qamaruddin in his capacity as a joint owner and as an attorney for the other recorded owners of the Mortgaged Property in favour of BRRG Modarba.

4. In Banking Suit No. 6 of 2006, the Defendant No.1 and the Defendant No. 2 were declared ex-parte, whereas the Defendant No.3 appeared and contested the suit. Banking Suit No. 6 of 2006 was, by a Judgement dated 27 August 2008 and by Decree dated 15 October 2008 passed by the Banking Court No. 1 Karachi, decreed in the sum of Rs.2,647,400 in favour of BRRG Modarba and against the Defendants. Thereafter the particulars of the judgment debtors were filed by the decree holder for recovery of the decretal amount by the attachment, auction and sale of the "Mortgaged Property" and which was implemented through Execution Application No. 70 of 2008 before the Banking Court No. 1, Karachi.

***(ii) Applications by Muhammad Arifuddin and Mst. Afsari Begum***

5. On 25 June 2014 an application under **Order XXI Rule 58(1)(2) of the Code of Civil Procedure, 1908** and an application under, **Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908** were maintained on 25 June 2014 by two individuals named **Muhammad Arifuddin** and **Mst. Afsari Begum**. Each of them claimed to be siblings of **Shaikh Qamar Uddin** and contended that the Mortgaged Property was originally owned by their mother who had since died and on whose demise each of her children came to be joint owners of the Mortgaged Property. It was submitted that when the mutation was made before the City District Government, Karachi, despite being owners of the Mortgaged Property, their names were excluded from the names of the owners of the Mortgaged Property by the City District Government Karachi and which property was thereafter fraudulently mortgaged by Shaikh Qamar Uddin in favour of BRRG Modarba to secure the financing advanced to Castel (Private) Limited.

6. The application under Order XX Rule 58(1)(2) of the Code of Civil Procedure, 1908, maintained by Muhammad Arifuddin and Mst. Afsari Begum, was dismissed by the Banking Court No. 1 Karachi by an order dated 13 July 2017 for non-prosecution, whereas the application filed under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 remained pending for adjudication and which was dismissed by the Banking Court No. 1 by an order dated 31 May 2018. Apparently, no appeal was maintained as against this order by **Muhammad Arifuddin** and **Mst. Afsari Begum**.

**(iii) Auction and Sale of the Mortgaged Property**

7. In Execution No. 70 of 2008, the Banking Court No. 1 Karachi called for a valuation report and whereafter the Mortgaged Property was put on auction on 24 September 2011, 13 March 2013, 25 June 2014 and finally on 23 January 2018. On the last of these dates, an auction purchaser i.e., Muhammad Ilyas Vohra offered the highest bid of Rs.21,100,000 for purchase of the Mortgaged Property and which was accepted and confirmed by the Banking Court No.1, Karachi on 31 May 2018.

**(iv) Satisfaction of the Decree**

8. It seems that after the auction of the Mortgaged Property, the bid amount of Rs. 21,000,000 was deposited by Mr. Muhammad Ilyas Vohra and from which amount B.R.R. Guardian Modarba was paid a sum of Rs. 7,257,238 in settlement of the Decree and whereafter B.R.R. Guardian Modarba maintained an application, under Rule 1 and 2 of Order XXI of the Code of Civil Procedure, 1908 for the satisfaction of the Decree dated 15 October 2008 passed in Banking Suit No. 6 of 2006. That application was allowed on 31 July 2018 and the Decree stood satisfied and it was directed that the balance amount was to be distributed as amongst the mortgagors in accordance with their share in the Mortgaged Property.

**(v) Applications and Appeals by the legal heirs of Mst. Afsari Begum**

9. Mr. Muhammad Shabbir Ahmed, Mr. Muhammad Rizwan, Mr. Muhamamd Zaheer, Mr. Muhammad Shahid, Mr. Muhammad Tanveer and Ms. Rizwana Naeem Akbar, each contending that they were legal heirs of Mst. Afsari Begum, on 18 July 2020, maintained an application under Order XXI Rules 58 and 59 read with Section 151 of the Code of Civil Procedure, 1908 in Execution No. 70 of 2008 putting forward the same contentions that were raised by Mst. Afsari Begum and Muhammad Arifuddin and which application had been dismissed for non-prosecution.

10. The Banking Court No. 1, Karachi by an order dated 27 July 2020 dismissed the application under Order XXI Rules 58 and 59 read with Section 151 of the Code of Civil Procedure, 1908 in Execution No. 70 of 2008 maintained by the legal heirs of Mst. Afsari Begum holding that:

- (i) the proviso to Rule 58 of Order XXI of the Code of Civil Procedure, 1908 mandated that any objections thereunder had to be maintained within a period of one year from the date of attachment of the

Mortgaged Property and as the property was attached on 29 August 2009, the application maintained was filed more than 10 years after the attachment and was as such not maintainable;

- (ii) the offer to purchase the Mortgaged Property in terms of Rule 89 of Order XXI of the Code of Civil Procedure, 1908 was also time barred

11. **1<sup>st</sup> Appeal No. 40 of 2020** was maintained, before this Court, by the legal heirs of Mst. Afsari Begum impugning the order dated 27 July 2020, passed by the Banking Court No. 1, Karachi in Execution No. 70 of 2008, dismissing the application that had been maintained by the legal heirs of Mst. Afsari Begum and which 1<sup>st</sup> Appeal was dismissed as not pressed on 6 March 2024.

(vi) **Applications and Appeals by Mst. Sultana Saleem and Mst. Parveen Begum**

12. On 16 April 2018, **Mst. Sultana Saleem** and **Mst. Parveen Begum**, also being siblings of Shaikh Qamaruddin filed an application under **Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908** and an application under **Order XXI Rule 26 of the Code of Civil Procedure, 1908** and raised the same contentions as had been raised by Muhammad Arifuddin and Mst. Afsari Begum in their applications, that the Mortgaged Property was originally owned by their mother who had since died and on whose demise each of her children came to be joint owners of the Mortgaged Property. It was submitted that when the names of the legal heirs were mutated in the record maintained by the City District Government, Karachi, the applicants names were excluded from the names of the owners of the Mortgaged Property by the City District Government Karachi and which property was thereafter fraudulently mortgaged by Shaikh Qamar Uddin in favour of BRRG Modarba to secure the financing advanced to Castel (Private) Limited.

13. The above-mentioned applications, maintained by **Mst. Sultana Saleem** and **Mst. Parveen Begum**, as well as an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 was dismissed by the Banking Court No. 1 by an order dated 31 May 2018.

14. **Mst. Sultana Saleem** and **Mst. Parveen Begum** challenged the Order dated 31 May 2018 passed by the Banking Court No. 1 in Banking Suit No. 6 of 2006 and in Execution No. 70 of 2008 dismissing their application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 and their application under Order XXI Rule 26 of the Code of Civil Procedure, 1908 before this Court in

1<sup>st</sup> Appeal No.84 of 2018 and which was on 19 November 2019 disposed of in the following terms:

" ... *After hearing learned counsel for the appellants and respondents, we have reached to the conclusion that since the appellants' counsel wants to move an application under Order XXI Rule 89 or 90 of the CPC, therefore, present appeal is disposed of accordingly. Let him file the same subject to all Just exceptions. The amount deposited with the Nazir in pursuance of the order dated 06.09.2018 may be refunded back to the depositor subject to proper verification and Identification and interim orders are recalled.*"

15. Premised on the order dated 19 November 2019 passed by this Court in 1<sup>st</sup> Appeal No.84 of 2018 **Mst. Sultana Saleem** and **Mst. Parveen Begum** filled an application under **Order XXI Rule 89 and 90 read with Section 151 of the Code of Civil Procedure, 1908** in Execution No. 70 of 2008 before the Banking Court No. 1, Karachi and which application was, by an order dated 23 June 2020, also dismissed by the Banking Court No. 1, Karachi.

16. **Mst. Sultana Saleem** and **Mst. Parveen Begum** challenged the order dated order dated 23 June 2020 passed by the Banking Court No. 1 Karachi in Execution No. 70 of 2008 dismissing their application under Order XXI Rule 89 and 90 read with Section 151 of the Code of Civil Procedure, 1908 before this Court in **1<sup>st</sup> Appeal No.35 of 2020**. However, the said appeal was dismissed as not pressed by the Hon'ble High Court of Sindh by an order dated 6 March 2024 as not pressed by Mst. Sultana Saleem and Mst. Parveen Begum with the following observations:

" ... *Learned counsel for the Appellants after arguing the matter at length concedes that he would not press this appeal but rather invoke the jurisdiction of the Banking Court by moving appropriate application including one under Order XVIII Rules 89 & 90 CPC. The appellants are at liberty to move any such application and in case such application is moved, it is expected that it would be decided in accordance with law, subject to all just legal exceptions at the earliest.*

*2. The instant appeal along with listed applications is dismissed as not pressed."*

17. Thereafter, **Mst. Sultana Saleem** and **Mst. Parveen Begum** filed another application under **Sub-Section 11 and of Section 15 and 19 of the Ordinance, 2001** in Execution Application No. 70 of 2008 and which application was dismissed by the Banking Court No.1 Karachi by an order dated 21 May 2022 with costs of Rs. 10,000. The relevant paragraph of Order dated 21 May 2022 passed by the Banking Court No. 1, Karachi is reproduced as hereinunder:

" ... *It is unreasonable to expect order by the court again and again on the same facts. The application lacks bonafide and is found to be merely a desperate attempt to frustrate the auction sale, which has already been confirmed vide order dated 31.05.2018. Finding to not maintainable and having absolutely no merits in view of referred earlier orders dated 31.05.2018 and 23.06.2020, the application is hereby dismissed with cost of Rs.10,000/- to be paid to Corporate Banking Bar Law Association."*

18. **Mst. Sultana Saleem** and **Mst. Parveen Begum** once again challenged the Order dated 21 May 2022 passed by the Banking Court No. 1, Karachi in Execution Application No. 70 of 2008 before this Court in **1<sup>st</sup> Appeal No.62 of 2022** but subsequently the said appeal was, on 6 March 2024, withdrawn by **Mst. Sultana Saleem** and **Mst. Parveen Begum** with the following observations which are reproduced as hereinunder:

*"Learned counsel for the Appellants after arguing the matter at length concedes that he would not press this appeal but rather invoke the jurisdiction of the Banking Court by moving appropriate application including one under Order XVIII Rules 89 & 90 CPC. The appellants are at liberty to move any such application and in case such application is moved, it is expected that it would be decided in accordance with law, subject to all just legal exceptions at the earliest.*

*2. The Instant appeal along with listed applications is dismissed as not pressed."*

19. Thereafter **Mst. Sultana Saleem** and, on account of Mst. Parveen Begum death, her legal heirs i.e., **Naseeruddin**, **Faizuddin** and **Mst. Ana Shaheen**, once again in Execution Application No. 70 of 2008, filed an application under **Order XXI Rule 89 and 90 of the Code of Civil Procedure, 1908 read with Sub-Section (11) and (7) of Section 15 and Section 19 of the Ordinance, 2001 further read with Section 151 of the Code of Civil Procedure, 1908**. The Banking Court No. 1 on 16 July 2025 passed an order dismissing that application holding that:

- (i) as the orders passed on similar applications had been dismissed by it on 23 June 2020 and 21 May 2022 and which were not set aside by this Court in 1<sup>st</sup> Appeal No.35 of 2020 and 1<sup>st</sup> Appeal No.62 of 2022 and as each of those appeals were dismissed as not pressed by Mst. Sultana Saleem and Mst. Parveen Begum, the issues raised therein had achieved finality and could not be pressed again;
- (ii) The Mortgaged Property was put to auction and Mr. Muhammad Ilyas Vohra had offered the highest bid of Rs.21,100,000 for purchase of the Mortgaged Property which bid had been accepted and confirmed on 31 May 2018 and as no objection within a period of 30 days from the date of auction until confirmation of no bid, it was not open, at this belated stage, for Mst. Sultana Saleem and Mst. Parveen Begum to raise these objections.

(vii) **Applications and Appeals by Muhammad Hanif**

20. One **Muhammad Hanif**, claiming to be a tenant, in the Mortgaged Property maintained an application under **Order XXI Rule 36 and 96 read with Section 151 of the Code of Civil Procedure, 1908** in Execution Application No. 70 of 2008 seeking to secure his occupation of the Mortgaged Property in terms of Sub-Section

(7) of Section 15 of the Ordinance, 2001 as being bona fide. The application was dismissed by the Banking Court No. 1, Karachi on 6 April 2020 declaring that Muhammad Hanif possession of the Mortgaged Property was not “bona fide.”

21. Muhammad Hanif choose to maintain **1<sup>st</sup> Appeal No. 34 of 2020**, as against the order dated 6 April 2020 passed by the Banking Court No. 1, Karachi on the application maintained by him under Order XXI Rule 36 and 96 read with Section 151 of the Code of Civil Procedure, 1908 in Execution Application No. 70 of 2008 and which appeal was dismissed on 6 March 2024 by this Court. Apparently, no appeal has been maintained as against that Order.

**B. Arguments on behalf of the Appellants**

22. Mr. Hamid Idrees entered appearance on behalf of the Appellants. He maintained that each of the Appellants were brothers of the Respondent No. 3 and who had admittedly executed a registered Power of Attorney in his favour and which power of attorney included a power to create a mortgage. He contended that while the Mortgaged Property was originally owned by their mother, who had since died, on her demise each of her children came to be joint owners of the Mortgaged Property, when the mutation was made before the City District Government, Karachi, a number of the legal heirs, despite being owners of the Mortgaged Property, were fraudulently excluded from being entered in the record of rights, maintained by the City District Government Karachi, as owners of the Mortgaged Property.

23. He further maintained that while each of the persons, who had maintained the application under Section 2 and 7 of the Ordinance 2001 read with Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908, names had been mutated in the record of rights maintained by the City District Government Karachi and had also registered the Power of Attorney in favour of Shaikh Qamar Uddin, they maintained this application to bring on record the fact that some of the other legal heirs names had not been entered in the record of rights and as such the mortgage that was created over the Mortgaged Property by Shaikh Qamar Uddin in favour of BRRG Modarba to secure the financing advanced to Caste (Private) Limited, was fraudulent.

24. In this regard he relied on a decision of the Lahore High Court reported as **Shahzada Akhtar v. Bank Alfiah Ltd. through Manager & 3 others**<sup>1</sup> in which it was clarified that a person who was impleaded as a party had a right to maintain an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure

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<sup>1</sup> 2013 CLD 416

1908 so as to set aside a decree passed by a Banking Court where they were owners of the property that had been mortgaged without their knowledge.

25. In addition he contended that each of the Appellants had not been impleaded as Defendants in the Banking Suit No. 6 of 2006 and in which only the attorney holder i.e., the Respondent No. 3 had been impleaded. On this basis he contended that the Appellants right to defend Banking Suit No. 6 of 2006 had been circumvented and their rights in the Mortgaged Property had been usurped. In this regard he placed reliance upon a judgment passed by the Supreme Court entitled **Mst. Rehmat Bibi and others v. Punnu Khan and others**<sup>2</sup> wherein it was stated that where an order had been passed without hearing or without issuing notice to the parties whose presence was otherwise necessary then the order passed would be a nullity in the eyes of law and no question of limitation would arise. He also relied upon a judgment entitled Government of Sindh through the **Chief Secretary and others v. Khalil Ahmed and others**<sup>3</sup> in which the judgment in **Mst. Rehmat Bibi and others v. Punnu Khan and others**<sup>4</sup> was followed. In furtherance of this proposition, he also relied upon another judgment reported as **Malik Khawaja Muhammad and 24 others v. Marduman Babar Kahol and 29 others**<sup>5</sup> in which it was held that service of a person through his attorney would not be treated as proper service if summons was not affected. He concluded by relying upon a decision reported as **Mst. Ramzanu Bibi v. Ibrahim (deceased) through L.Rs and others**<sup>6</sup> and in which it was held that where a fraudulent transaction occurred, limitation would not apply.

### **C. Arguments on behalf of the Auction Purchaser**

26. Mr. Abdul Shakoor entered appearance on behalf of Respondent No.6. i.e., the auction purchaser Mr. Muhammad Ilyas Vohra and contended that all the rights that the Appellants were pleading have since been adjudicated by the Banking Court in proceedings instituted by other siblings of the appellants and/or their legal heirs and in appeals against those orders before this Court and in the circumstances an application that was maintained under Section 2 and 7 of the Ordinance 2001 read with Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908 could not be maintained.

27. He added that there is an admission on the part of the Appellants that they had executed a Power of Attorney in favour of Respondent No.3 and which Power of Attorney included the right to mortgage the Mortgaged Property and as such they

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<sup>2</sup> 1986 SCMR 962

<sup>3</sup> 1994 SCMR 782

<sup>4</sup> 1986 SCMR 962

<sup>5</sup> 1987 SCMR 1543

<sup>6</sup> 2025 SCMR 955



could not now maintain that such rights as created thereof were fraudulent. He states that in the light of such admission no fraud or misrepresentation could be claimed by the Appellants and in the circumstances the appeal was liable to be dismissed.

**D. Order of the Court**

28. We have heard both the counsel for the Appellants and the Respondent No. 6 and perused the record.

29. A perusal of the application that has been maintained by the Appellants under under Section 2 and 7 of the Ordinance 2001 read with Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908 coupled with a perusal of the various other applications that have been considered and decided by the Banking Court No.1 Karachi in Banking Suit No. 6 of 2006 and Execution Applications No. 70 of 2008 and in various appeals that have been decided by this Court, to our mind, discloses an orchestrated attempt by the Appellants and various members of the Appellants family to frustrate the implementation of the Decree dated 15 October 2008 passed by the Banking Court No. 1 Karachi in Banking Suit No. 6 of 2006 in favour of BRRG Modarba and to prevent the transfer of the Mortgaged Property and the handing over of the possession of the Mortgaged Property in favour of the auction purchaser Mr. Muhammad Ilyas Vohra in Execution No. 70 of 2008.

30. In this regard, we have counted no less than 10 applications that have been maintained by various members of the Respondent No. 3's family in Banking Suit No. 6 of 2006 and Execution Application No. 70 of 2008 before the Banking Court No. 1, Karachi and 6 Appeals emanating from orders passed in Banking Suit No. 6 of 2006 and Execution Application No. 70 of 2008 that have been maintained before this Court, each of which reiterate the same contentions and each of which were rejected by the Banking Court No. 1, Karachi and by this Court but which issues are once against being regurgitated though a fresh application maintained by different members of the same family and which are that:

- (i) a fraud has been perpetuated as against certain members of their family whose names were not recorded as legal heirs of their mother before the City District Government Karachi when the mutation of the names of the legal heirs of the Mortgaged Property took place;
- (ii) that as a consequence of such a fraud, those legal heirs whose names were not mutated in the record of the City District Government,

Karachi were not aware that a mortgage had been created over the Mortgaged Property;

- (iii) those legal heirs, rights in the Mortgage Property have therefore been fraudulently auctioned by the Banking Court No. 1, Karachi without notice; and
- (iv) that the Appellants, each of whose names were mutated in the record of the City District Government Karachi as owners of the Mortgaged Property and who admit having executed the Power of Attorney in favour of the Respondent No. 3, were not impleaded as parties in Banking Suit No. 6 of 2006.

31. Now, there is no dispute, whatsoever, that various legal heirs of the original owner of the Mortgaged Property, had asserted such rights by maintaining applications in Banking Suit No. 6 of 2006 and in Execution Application No. 70 of 2008, before the Banking Court No. 1, Karachi and which were dismissed and against which orders, those legal heirs, choose to either not appeal or filed appeals and which appeals, where filed, were also dismissed. In certain cases, the legal heirs had died and the applications or appeals were maintained by their legal heirs and which too were dismissed. In addition, a purported "tenant" also maintained an application which was dismissed and the appeal that was preferred from that application was also dismissed.

32. Undeterred, the Appellants have now maintained another application under Section 2 and 7 of the Ordinance 2001 read with Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908. once again contending that when the names of the owners of the Mortgaged Property was being mutated into the record maintained by the City District Government, Karachi, the names of certain legal heirs who had inherited to the Mortgaged Property, had not been mutated and hence a fraud had been perpetuated as against them and which necessitated the Decree dated 15 October 2008 passed by the Banking Court No. 1 Karachi in Banking Suit No. 6 of 2006 to be set aside. The application having been dismissed by the Banking Court No. 1, Karachi on 16 July 2025, the Appellants maintain this appeal as against that order.

33. After considering the arguments of the Appellant we are unable to accept such contentions. The first contention of the Appellants, regarding the fraud committed in respect of the record of rights not being mutated in the names of certain legal heirs, is in fact a submission on behalf of legal heirs who have already unsuccessfully contested such rights. To our mind, as the Appellants have not pleaded that prejudice is being caused to them personally in this regard, they

cannot maintain an application under Section 2 and 7 of the Ordinance 2001 read with Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908 on behalf of other persons, especially those persons whose rights on this issue have already been considered by the Banking Court No. 1, Karachi and by this Court, and on which ground alone this application is not maintainable. Secondly, we note that each of the Appellants before us admittedly had their names mutated in the record of the City District Government Karachi as owners of the Mortgaged Property and at which time, they, quite clearly, would have been aware that the names of the other legal heirs i.e., their siblings were not being mutated and for them to raise such contentions at this stage reeks of mala fide as obviously they were complicit in the same fraud that they allege has been perpetuated.

34. Regarding the arguments that the Appellants were not impleaded as Defendants in Banking Suit No. 6 of 2006 the pleadings in the application read as hereinunder:

- “ ... 2. I say that accompanying application under Section 12(2) CPC R/w Section 151 CPC has been drafted and filed under my specific instructions as we have filled (filed) 12(2) application dated 08.03.2025 and thereafter our advocate got certified copies of suit on 24.05.2025 on our instruction after got same it reveals on us that excluding our sisters the property mutated on name of 7 brothers and thereafter a Power of Attorney got registered and on basis of this power the property has been mortgaged by defendant No.3 on behalf of himself and other six other brothers i.e. mortgagers including applicants and plaintiff by misrepresentation and fraud together with defendant No.3 did not make party all mortgagers including applicants. Therefore the accompanying application drafted and filled (filed). ...
5. That I say that the judgment and Decree obtained without impleaded (impleading) necessary parties i.e. all Mortgagors including applicant therefore this judgment and decree may be set aside with heavy cost (cost) as its open fraud to usurp others legal heirs share.”

A perusal of the pleadings shows that there is no mention in the Application under Section 2 and 7 of the Ordinance 2001 read with Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908 that the Appellants were not aware that the Mortgaged Property had been mortgaged by the Respondent No. 3 in favour of BRRG Modarba to secure the financing availed by the Castel (Private) Limited and which would once again prevent them from maintaining this application as there is no allegation that they were not aware of the fraud that they allege was being perpetuated as against them by the Respondent No. 3. Finally, on the basis of our findings contained hereinabove, we have no hesitation in saying that aside from the application not being maintainable, the Appellants have obviously come to this court with “unclean hands” and which would be an additional

ground to reject this Application. The Application therefore is not maintainable and must be dismissed.

35. For the foregoing reasons, we had on 7 August 2025, though a short order, dismissed this Appeal as we were of the opinion that there was no infirmity or illegality in the order dated 16 July 2025 that was passed by the Banking Court No. 1, Karachi in Banking Suit No. 6 of 2006 dismissing the application, maintained by the Appellants, under Section 2 and 7 of the Ordinance 2001 read with Sub-Section (2) of Section 12 and Section 151 of the Code of Civil Procedure, 1908 and hence this Appeal, maintained under Section 22 of the Ordinance, 2001, was not maintainable. In addition, in our short order dated 7 August 2025 we had imposed costs of Rs, 1,000,000, to be paid by the Appellants to the Respondent No. 6 within one month of the date of that order for the reasons that we were clear that the application that had been maintained by the Appellants before the Banking Court No. 1, Karachi and this Appeal was maintained to frustrate the transfer of the possession of the Mortgaged Property to the Respondent No. 6 and which has resulted in a considerable delay and cost having been incurred by the Respondent No. 6 in contesting these applications before the Banking Court No. 1, Karachi and Appeals before this Court and with directions that intimation of the payment made by the Appellant to the Respondent No. 6 should be given to the MIT-II and with further directions that in the event that the amounts were not paid by the Appellants within the time frame as mentioned hereinabove the MIT-II is to file a report in this Appeal and which will be listed before this Court for Directions and whereafter the Appellants and their counsel will be issued notice to explain such non-compliance of the order dated 7 August 2025.

**JUDGE**

**JUDGE**

**Karachi dated \_\_ August 2025.**