

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

**J.M. 35 of 2016**

Applicant : Razia Sultana Amir, through Mr. Hassan Abidi, Advocate.

Respondent No.3 : First Dawood Investment Bank Limited, through Mr. Khalil Ahmed Siddiqui, Advocate.

Dates of hearing : 21.10.2019

**ORDER**

**YOUSUF ALI SAYEED, J** – The Applicant and the Respondents Nos. 1 and 2, who are her son and daughter-in-law respectively, were the defendants in Suit No. B-118 of 2011 filed by the Respondent No.3 under the Financial Institutions (Recovery of Finances) Ordinance 2001, which was decreed in favour of the Respondent No.3 - the Applicant having been impleaded as a mortgagor.

2. Vide this Application under Section 12 (2) CPC, the Applicant has assailed the Judgment and Decree on the ground that whilst the Applicant was abroad, unbeknown to her, the Respondent Nos. 1 and 2 had (a) wrongly obtained the title documents of the mortgaged property, (b) forged her signature on a fabricated Power of Attorney purporting to have been issued by her in favour of the Respondent No.1 (the “**POA**”), (c) had then wrongly procured registration of the POA, and (d) then proceeded to encumber the property by way of mortgage in favour of the Respondent No.3.

3. The case set up by the Applicant was that at the time when the POA had purportedly been signed and registered, she had been in Canada for purpose of completing the residency requirement as part of the process of immigration.
  
4. It was contended on the basis of the allegation as to such forgery/fabrication, that the Judgment and Decree in the Underlying Suit had been obtained through fraud and misrepresentation and ought to be set aside. It was also contended that the Applicant was an uneducated lady who could not understand read or write English, hence had then been duped by the Respondents Nos. 1 and 2 into appending her signature for purpose of institution of High Court Appeal No. 17/2016, without such allegations and grounds being disclosed.
  
5. Under the given circumstances, it is apparent that the acts alleged to have been perpetrated by the Respondents Nos. 1 and 2 relate to the POA and were not practiced during the proceedings in the Underlying Suit, but prior to its institution.
  
6. It is well settled that the scope of Section 12(2) CPC is confined to an act of fraud practiced upon the Court itself and to obtaining an order or decree through misrepresentation, and will not be attracted when the fraud or misrepresentation alleged is not in connection with the proceedings but relates to events said to have transpired prior to the initiation thereof.

7. The Applicants claim of being an uneducated lady who is unable to read and write English also does not appear borne out as she has made her own signature in the English language and verified the pleadings without there being any narration as to her inability to read and understand same and the contents having to thus be read and explained to her.
  
8. Under the circumstances, no case apparently stands made out within the scope of Section 12(2) CPC and the main Application is accordingly dismissed, along with pending miscellaneous applications.

**JUDGE**

Karachi  
Dated \_\_\_\_\_