JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

FIRST APPEAL AGAINST ORDER NO.35 OF 2022

M/s Allied Bank Limited
Versus
M/s Electromech Engineering Services and 3 others.

Petitioner by :	**Mr. Mubeen Qureshi, Advocate.**
Respondents by :	**Mr. Abdul Hameed Baloch, Advocate for Respondents.**
Date of hearing :	**04.05.2026**

Muhammad Azam Khan, J. The present appeal arises out of the order dated 15.02.2022, whereby the learned Executing Court adjudicated upon the issue of cost of funds in favor of the Appellant/Decree Holder Bank, albeit in a manner presently under challenge.

2. Learned counsel appearing on behalf of the Appellant assailed the impugned order on multiple grounds. Placing reliance upon precedents reported as *2012 CLD 1670*, *2013 CLD 1661*, and *2015 CLD 1416*, it was contended that the impugned order suffers from a fundamental legal infirmity inasmuch as it is a non-speaking order, devoid of proper reasoning and reflective analysis. It was urged that the learned Executing Court failed to properly construe the mandate of Section 3 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (hereinafter referred to as "**the Ordinance**"), as well as the explicit terms of the Judgment and Decree dated 20.11.2019. In particular, it was contended that the Executing Court erred in holding that cost of funds was to be calculated mechanically on the decreetal amount, without appreciating that such cost must necessarily be linked to the point of default and the fluctuating outstanding liability thereafter. Elaborating further, learned counsel emphasized that the respondents had admittedly committed default on 28.02.2014, upon their failure to discharge their financial obligations within the stipulated time. This date, it was argued, constituted the legally operative trigger for the accrual of cost of funds.

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Consequently, any determination of such cost must originate from the date of default and be computed in accordance with the outstanding liability as it evolved over time.

3. Conversely, learned counsel appearing on behalf of the Respondents raised a preliminary objection as to the maintainability of the instant appeal. Invoking Section 22(6) of the Ordinance, it was contended that no appeal or revision lies against an interlocutory order passed by a banking Court. It was argued that the impugned order, being interlocutory in nature, does not qualify as a final judgment or decree, and therefore falls outside the permissible scope of appellate jurisdiction under the Ordinance. On this premise, dismissal of the appeal at the threshold was sought.

4. We have heard the learned counsel for the parties at considerable length and have carefully examined the impugned order, the Judgment and Decree dated 20.11.2019, as well as the authorities cited at the bar.

5. Before turning to the merits, the Court must first identify the juridical character of the present proceedings, for that characterization defines both the scope of review and the source of appellate authority. This matter reaches the Court as a First Appeal Against Order; yet, in substance, it does not arise from the original adjudication of the parties' rights. The underlying banking suit instituted by the Appellant/Decree Holder Bank under Section 9(3) of the Ordinance for recovery of Rs. 20.00 million together with cost of funds and costs of suit stood conclusively determined by Judgment and Decree dated 20.11.2019. What remains is the enforcement of that decree. The impugned order was entered during execution and concerns the manner in which the decreetal entitlements are to be worked out. The proceeding, therefore, is not one of primary adjudication but of post-decreetal enforcement, governed by the scheme of the Ordinance, 2001. The office, at the time of the institution, categorized this appeal as "First Appeal against Order". Section 22 of the Ordinance provides the appellate framework as under: -

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"22. Appeal.- (1) Subject to sub-section (2), any person aggrieved by any judgment, decree, sentence, or final order passed by a Banking Court may, within thirty days of such judgment, decree, sentence or final order prefer an appeal to the High Court.

(2) The appellant shall give notice of the filing of the appeal in accordance with the provisions of Order XLIII Rule 3 of the Code of Civil Procedure (Act V of 1908) to the respondent who may appear before the Banking Court to contest admission of the appeal on the date fixed for hearing.

(3) The High Court shall at the stage of admission of the appeal, or at any time thereafter either suo motu or on the application of the decree holder, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case, and as to the security to be furnished by the appellant:

Provided that the admission of the appeal shall not per se operate as a stay, and nor shall any stay be granted therein unless the decree-holder has been given an opportunity of being heard and unless the appellant deposits in cash with the High Court an amount equivalent to the decreetal amount inclusive of costs, or in the case of an appeal other than an appeal against an interim decree, at the discretion of the High Court furnishes security equal in value to such amount; and in the event of a stay being granted for a part of the decreetal amount only, the requirement for a deposit in cash or furnishing of security shall stand reduced accordingly.

(4) An appeal under sub-section (1) shall be heard by a bench of not less than two Judges of the High Court and, in case the appeal is admitted, it shall be decided within 90 days from the date of admission.

(5) An appeal may be preferred under this section from a decree passed ex-parte.

(6) No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Banking Court which does not dispose of the entire case before the Banking Court other than an order passed under sub-section (11) of section 15 or sub-section (7) of section 19."

6. Subsection (1) confers a right of appeal to a person aggrieved by a "judgment, decree, sentence, or final order" of a Banking Court. Subsection

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(6), in turn, withdraws appellate recourse from interlocutory orders that do not dispose of the entire case, save for specified exceptions not attracted here. Read together, these provisions reflect a legislative design: to permit appeals from determinations that finally settle rights, while foreclosing piecemeal challenges to intermediate rulings. The difficulty, however, arises in the present setting. The "case" in the sense of the original lis has already been disposed of by decree; what remains is execution. The impugned order, though interlocutory in form, operates within a distinct phase where the court is tasked with giving effect to rights already crystallized. The Ordinance is notably silent on a dedicated appellate route against interlocutory orders passed at this execution stage. That silence cannot be treated as a command to abdicate judicial oversight. Procedural law is an instrument, not an end in itself. No code can anticipate the full range of circumstances that arise in the administration of justice; and where a rigid reading would convert procedure into a barrier elevating form over substance and permitting palpable error to persist the court must read the statute in a manner that preserves, rather than defeats, its purpose.

7. Where an execution order merely regulates process without touching the substance of the decree, the bar in Section 22(6) applies with full force. But where, as alleged here, the order determines the content of the decree itself by fixing or curtailing an element expressly awarded, such as cost of funds, it bears directly upon the decree-holder's substantive entitlement. In that circumstance, to deny any avenue of review would risk insulating legal error and undermining the efficacy of the decree. The Court therefore holds that, notwithstanding Section 22(6), a narrowly confined supervisory review is maintainable to examine whether the executing court has remained within the bounds of the decree and the statute. This is not an invitation to re-litigate execution in appeal; it is recognition that orders which, in effect, alter or misapply the decree cannot be rendered immune from correction by the mere characterization of being interlocutory.

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8. In the peculiar facts of the present case, a foundational question arises: **whether this Court, while exercising jurisdiction under the Financial Institutions (Recovery of Finances) Ordinance, 2001, can entertain a challenge to an order passed in execution proceedings, ostensibly interlocutory in nature, despite the bar contained in Section 22(6) of the Ordinance; and if so, whether the Court may, for procedural propriety, re-characterize the proceedings (from a First Appeal Against Order to an Civil Revision) without transgressing statutory limitations or improperly invoking inherent powers under Section 151 of the Code of Civil Procedure, 1908.**

9. The issue under consideration, though appearing technical at first glance, in fact raises a deeper question regarding the balance between statutory limitations and the preservation of substantive rights. The apparent conflict arises from the interplay between Section 22(6) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 which bars appeals against interlocutory orders and the necessity of ensuring that rights crystallized through a decree are not rendered illusory at the stage of execution. The resolution of this tension lies not in disregarding the statutory bar, but in correctly understanding the nature and effect of the impugned order.

10. It is a settled principle that not every order passed during the course of proceedings can be treated alike merely on the basis of its procedural label. An order may be interlocutory in form, yet its effect may travel far beyond procedural regulation and extend into the realm of substantive rights. In ordinary circumstances, interlocutory orders such as those granting adjournments, calling for documents, or regulating the conduct of proceedings do not affect the vested rights of the parties and are, therefore, rightly insulated from appellate interference under Section 22(6). The legislative object behind such insulation is to prevent fragmentation of litigation and to

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ensure that proceedings are not unduly delayed by repeated challenges to routine procedural directions.

11. However, the situation stands on an entirely different footing where an order, though passed in execution and ostensibly interlocutory, has the effect of altering, curtailing, or misapplying a right already adjudicated and embodied in a decree. In such cases, the Court must look beyond the form and examine the substance and consequence of the order. For instance, if an executing court merely directs a party to file a fresh statement of account or adjourns the matter for further proceedings, such directions remain purely procedural and fall squarely within the bar of Section 22(6). No interference would be warranted in such cases, as the rights of the parties remain unaffected. In contrast, consider a situation, akin to the present case, where the decree expressly awards cost of funds from the date of default till realization, yet the executing court directs that such cost of funds be recalculated on a reduced principal amount, thereby effectively diminishing the decreetal entitlement. Although such an order is passed in execution proceedings, its effect is not procedural but substantive, as it alters the very basis upon which the decree-holder's rights have been determined. To treat such an order as a mere interlocutory direction would be to ignore its real impact and to permit a modification of the decree without recourse to appellate scrutiny.

12. The principle that **where a right is recognized, a remedy must also be available for its enforcement** lies at the very foundation of any legal system governed by the rule of law. A judicial decree is not merely a formal declaration of rights; it is a binding determination that carries with it the expectation of effective enforcement. If a decree-holder, having successfully established his entitlement before a competent court, is thereafter left without any mechanism to protect or realize that entitlement, the decree itself would be reduced to a hollow formality. The law, therefore, cannot be interpreted in a manner that recognizes rights in theory but denies their enforcement in

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practice. In this backdrop, the bar contained in Section 22(6) of the Ordinance, 2001 be understood in its proper context. The provision is designed to prevent unnecessary and premature interference in the progress of proceedings by excluding appeals against interlocutory orders of a purely procedural nature. Its object is to ensure expeditious disposal of cases and to avoid fragmentation of litigation through repeated challenges to interim directions. However, this bar cannot be extended to situations where the impugned order, though passed during execution and labeled as interlocutory, in effect alters or diminishes a substantive right that has already been adjudicated and embodied in a decree. To apply Section 22(6) mechanically in such circumstances would produce an unjust result. It would mean that even if an executing court were to misinterpret the decree, modify its terms, or reduce the entitlement of the decree-holder, no remedy would be available merely because the order is categorized as interlocutory. Such an interpretation would render the substantive relief granted by the decree vulnerable to distortion at the execution stage, thereby defeating the very purpose of adjudication. The law does not contemplate such an outcome, as it would undermine both the authority of judicial decisions and the confidence of litigants in the justice delivery system. Accordingly, a purposive interpretation of Section 22(6) becomes necessary. When read in light of its object, the provision must be confined to those interlocutory orders that are procedural in nature and do not affect the substantive rights of the parties. At the same time, where an order, though interlocutory in form, has the effect of determining, curtailing, or impairing a right flowing from the decree, it cannot be placed beyond judicial scrutiny. In such cases, the Court is justified in examining the order, not to reopen the decree, but to ensure that it is faithfully implemented and not altered in execution. Thus, the distinction lies not in the nomenclature of the order, but in its effect. If the order merely regulates the process, the bar under Section 22(6) operates fully. But if it touches the substance of the decree, the Court must ensure that a remedy remains available, so that the rights already recognized by law are not rendered

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illusory. This approach preserves both the legislative intent behind the statutory bar and the fundamental principle that justice must not only be declared but also be effectively enforced. It is necessary to elucidate that the power of this Court to interfere does not stem from any unrestricted appellate authority against interlocutory orders; rather, it emanates from the limited yet well-recognized jurisdiction vested in this Court to ensure that subordinate courts act within the confines of law and do not, under the guise of judicial process, pass orders which are coram non judice, procedurally unsustainable, or destructive of rights already crystallized through a decree. For such purpose, this Court possesses, inter alia, the following jurisdictions:—

(i) Inherent jurisdiction preserved under Section 151 of the Code of Civil Procedure, 1908;
(ii) Constitutional supervisory jurisdiction vested in the High Court under Article 203 of the Constitution, and
(iii) Powers of High Court in Section 115 of CPC.

(i) Section 151 of the Code

13. The role of Section 151 CPC in the present context is limited to addressing procedural gaps and ensuring that the administration of justice is not frustrated in situations not expressly contemplated by law. Where the statutory framework is silent as to the procedural course to be adopted particularly in execution-stage disputes involving substantive rights the Court may invoke its inherent powers in a supportive capacity, not to create jurisdiction, but to regulate procedure in a manner consistent with justice. It is in this limited sense that inherent powers operate: as a tool to prevent the failure of justice, not as a mechanism to override legislative intent. Accordingly, when this Court proceeds to re-characterize the present matter from a “First Appeal Against Order” to a “Civil Revision,” it does not do so by invoking Section 151 CPC as a source of jurisdiction. Rather, it recognizes that the matter, in substance, pertains to execution of a banking decree and concerns the manner in which a decreetal entitlement is being enforced. The

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re-characterization is thus a procedural correction aimed at aligning the form of the proceedings with their true legal nature. Jurisdiction, in this regard, flows from the Court's authority under the Ordinance to ensure proper execution of decrees, and not from any independent exercise of inherent power. This distinction is of fundamental importance. The Court does not expand its jurisdiction, nor does it dilute the statutory bar against interlocutory appeals. Instead, it ensures that the impugned order is examined within the correct legal framework, having regard to its substantive effect. The exercise undertaken is, therefore, one of jurisdictional clarification and procedural regularization, rather than jurisdictional innovation.

14. In light of the foregoing, it is held that while Section 22(6) of the Ordinance bars appeals against interlocutory orders in general, such bar cannot be applied mechanically in cases where an execution order, though interlocutory in form, has the effect of altering or impairing substantive rights arising from a decree. In such exceptional circumstances, and in the absence of an express procedural mechanism, the Court may re-characterize the proceedings to reflect their true nature and proceed to examine the matter on merits, ensuring that justice is not defeated while remaining within the bounds of statutory limitations. It is in this backdrop that the principle articulated in *2003 CLD 1822* assumes relevance, wherein it has been observed that procedural law must be interpreted in a manner that advances justice and not in a way that renders a party remediless. The Court therein emphasized that the existence of a right necessarily carries with it the availability of a remedy, and any interpretation to the contrary would defeat the very purpose of adjudication. This issue has been well-analyzed in 2003 CLD 1822, a portion whereof reads as under: -

> *"Mr. A. I. Chundrigar further maintained that no doubt this Court has wide powers to treat an appeal as petition under Article 199 and petition can be converted into appeal subject to limitation and jurisdiction. But he contended that this appeal cannot be converted into Constitution petition in view of the dictum of the apex Court in Syed Saghir Ahmad Naqvi v. Province of Sindh through Chief*

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Secretary, S&GAD, Karachi and another (1996 SCMR 1165), that the statute excluding a right of appeal from the interim order cannot be bypassed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders.

The object of enacting the Ordinance is to provide speedy measures for recovery of outstanding loans of the Banking Institutions as their recovery suits remained pending in the Civil Courts for years together. If the orders in the nature of interlocutory orders are brought under challenge before the High Court, the object for which the enactment was made would be frustrated. The appellate power conferred on the High Court is only to the extent of entertaining appeal against the final order and judgment of the Banking Court.

For these reasons, we are of the view that the order passed by learned Single Judge is an interlocutory order which does not decide the entire case, therefore, is not subject to the appeal in view of the bar contained in subsection (6) of section 22 of the Ordinance.

Before reverting to the merit of the appeal, it would be proper to capitulate the scope, purpose and effect of the consolidation of analogous proceedings.

> *(i) There will always be cases and circumstances which are not covered by the express provisions of the Code wherein justice has to be done. The reason is that the Legislature can foresee only the most natural and ordinary events and no rule can regulate for all times to come so as to make express provision against all inconveniences which are infinite in number and so that their dispositions shall express all the cases that may probably happen.*

> *(ii) The prescribed rule of procedure may be abuse, or so used as to give a mere formality, the significance of substantive effect and thus obstruct, instead of facilitating the administration of justice.*

Such power of Court to prevent abuse of the process of the Court is recognized to exist as stated by Lord Denning M.R. in Goldsmith v. Sperrings Ltd. (1977) 2 All ER 566, 754:

> *"In a civilized society, legal process is the machinery for keeping order and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the*

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vindication of men's rights or the enforcement of justice claims. It is abused when it is diverted from its true course so as to serve extortion or oppression; or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The Judges can and will intervene to stop it. They will stay the legal process, if they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer. Sometimes abuse can be shown by the very steps being taken in the Courts. Further, the ultimate object of all procedural rules is to ensure that there should be a fair trial according to law; the fair trial is not all one-sided; it means fairness to both the parties."

The inherent power of the Court is recognized only to meet those cases for which no provision is made by the Code. It follows, therefore, that where there are express provisions of law applicable to particular case, there is no inherent power in the Court to override them. The words "nothing in this Code shall be deemed to limit or otherwise affect" used in section 151 do not mean that the Code stands repealed where a Court decides to exercise its inherent powers ex debito justitiae to consolidate the proceedings. Such power can be exercised for the ends of justice."

(ii). Supervisory Jurisdiction of Superintendence and Control under Section 115 CPC

15. The matter may also be examined from another equally significant legal perspective, namely, the supervisory revisional jurisdiction vested in the High Court under Section 115 of the Code of Civil Procedure, 1908. Section 115 CPC embodies the doctrine of judicial superintendence and control. For reference, the Section 115 of the CPC is reproduced as under: -

"115. Revision.—(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

i. *to have exercised a jurisdiction not vested in it by law, or*
ii. *to have failed to exercise a jurisdiction so vested, or*
iii. *to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:"*

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16. The emphasis of the provision is not upon the rights of parties alone, but upon the legality of the judicial process itself. This becomes evident from the language employed in the section, whereby the High Court may "call for the record" of any case decided by a subordinate Court and examine whether such Court has exercised jurisdiction not vested in it by law, failed to exercise jurisdiction so vested, or acted illegally or with material irregularity in exercise of such jurisdiction. The nature of this jurisdiction has repeatedly been explained by the august Supreme Court as supervisory rather than adversarial. In *Banori (Mst.) v. Jilani*, the Hon'ble Supreme Court authoritatively held that the power under Section 115 CPC is fundamentally a suo motu supervisory power intended to ensure correction of jurisdictional illegality and procedural irregularity committed by subordinate Courts. The Court observed that the revisional jurisdiction is not dependent solely upon invocation by litigants, nor is the High Court rendered powerless merely because parties fail to pursue a particular procedural route. Rather, the High Court remains duty-bound to intervene where the record discloses patent illegality, material irregularity, or excess of jurisdiction. The principles laid down in *Banori* are of considerable relevance to the present controversy. The Hon'ble Supreme Court clarified that revisional jurisdiction under Section 115 CPC is essentially a jurisdiction of "superintendence and control" meant to preserve legality in judicial administration. The revisional Court, therefore, acts not merely as an adjudicator between competing litigants, but as a constitutional and supervisory forum responsible for ensuring that subordinate Courts function within lawful parameters. The Supreme Court further recognized that in discharge of this obligation, the High Court may even act suo motu and is not entirely dependent upon procedural technicalities or the initiative of parties. Likewise, in *Rehmdil v. Province of Balochistan*, the Hon'ble Supreme Court reiterated that even where a formal revisional remedy may be procedurally barred, the High Court still retains discretion to invoke suo motu revisional authority where a jurisdictional error becomes apparent, and intervention becomes necessary to advance justice and suppress mischief.

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The emphasis, therefore, remains consistently upon correction of jurisdictional deviation rather than rigid adherence to procedural labels.

17. The significance of these principles in the present case lies not in converting the present proceedings into a conventional civil revision, but in understanding the nature of the High Court's supervisory role over subordinate Courts. The jurisprudence developed under Section 115 CPC demonstrates that where a subordinate Court acts beyond jurisdiction, exercises authority contrary to law, or commits material procedural irregularity affecting substantive rights, the High Court possesses an inherent institutional responsibility to correct such illegality. This supervisory responsibility cannot be rendered illusory merely because the impugned order is described as interlocutory in form. Indeed, the distinction between appellate jurisdiction and supervisory revisional jurisdiction becomes particularly important in such circumstances. An appeal ordinarily concerns re-examination of competing rights and factual conclusions between litigants. Revisional supervision, however, stands on an entirely different footing. As observed in *Naoomal v. Tarachand*, revisional proceedings are fundamentally "a matter between a higher Court and a lower Court." The concern of the revisional Court is not confined merely to the grievances articulated by parties, but extends to ensuring that subordinate Courts administer justice within the limits prescribed by law.

18. It is equally important to clarify that the principles arising under Section 115 CPC are being referred to not for the purpose of bypassing the statutory framework of the Ordinance, 2001, but to illuminate the broader doctrine of judicial superintendence recognized consistently within procedural jurisprudence. The statutory bar contained in Section 22(6) undoubtedly restricts routine appeals against interlocutory orders; however, such restriction cannot be interpreted in a manner that entirely extinguishes the High Court's supervisory responsibility to correct patent jurisdictional illegality committed by subordinate Courts during execution proceedings.

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(iii) Article 203 of the Constitution

19. At this juncture, it becomes necessary to examine the constitutional position of the High Court while exercising jurisdiction in matters arising under the Financial Institutions (Recovery of Finances) Ordinance, 2001, particularly where the proceedings emanate from the execution stage. The question concerns the broader judicial authority of the High Court to ensure that subordinate Courts function within the limits prescribed by law and that decrees lawfully passed are executed in their true letter and spirit. Under the constitutional scheme, the High Court occupies a position of superintendence and supervisory control over all Courts subordinate to it. This supervisory position is embodied in Article 203 of the Constitution, which recognizes the High Court as the constitutional guardian of legality, regularity, and judicial discipline within the subordinate judiciary. Banking Courts, notwithstanding their creation under a special statute, remain subordinate Courts within this constitutional hierarchy. Consequently, while exercising appellate or execution-related jurisdiction under the Ordinance, the High Court does not cease to function as a constitutional Court entrusted with the duty to ensure that subordinate judicial forums remain within the confines of their lawful authority. This supervisory character assumes particular significance at the execution stage. Execution proceedings are not independent or collateral litigation; they are a continuation of the original proceedings intended solely to give effect to rights already adjudicated and crystallized through a decree. The jurisdiction of an executing Court is therefore inherently limited. It cannot vary the decree, re-open adjudicated issues, or adopt an interpretation which has the effect of altering substantive rights determined through judicial pronouncement. The executing Court acts as an implementing forum, not as a Court of re-determination. Whenever the execution process travels beyond those permissible boundaries, the matter ceases to remain one of ordinary procedural administration and enters the realm of jurisdictional oversight.

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20. The statutory prohibition contained in Section 22(6) was enacted to prevent fragmentation of banking litigation through repeated challenges to routine interlocutory orders passed during adjudication of the lis. The provision was never intended to render the High Court constitutionally powerless in situations where an execution order departs from the decree itself or reflects jurisdictional irregularity affecting substantive rights already judicially determined. To construe the provision in such an absolute and mechanical manner would effectively reduce the supervisory role of the High Court to a position of helplessness, thereby permitting execution proceedings to drift beyond lawful limits without corrective oversight.

21. The constitutional role of the High Court under Article 203 prevents such a consequence. Supervisory jurisdiction is not synonymous with ordinary appellate review. It is corrective, preservative, and jurisdictional in nature. Its purpose is to maintain legality in the judicial process and to ensure that subordinate Courts neither exceed their jurisdiction nor act contrary to settled principles governing adjudication and execution. Therefore, when this Court proceeds to re-characterize the proceedings and examine the legality of the impugned order, it does so not in derogation of the Ordinance but in faithful harmony with the constitutional structure within which the Ordinance itself operates.

22. The jurisdiction exercised by this Court remains firmly anchored within the statutory framework of the Ordinance while simultaneously drawing legitimacy from the High Court's constitutional supervisory authority over subordinate Courts. Such an approach preserves both legislative intent and constitutional balance: the statutory bar against routine interlocutory challenges remains respected, while the supervisory power of the High Court remains available to ensure that execution jurisdiction is exercised lawfully, consistently, and in accordance with the decree sought to be enforced.

23. Accordingly, having examined the matter in light of the statutory framework of the Financial Institutions (Recovery of Finances) Ordinance,

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2001, the constitutional position of this Court under Article 203 of the Constitution, the limited procedural role of Section 151 CPC, and the broader doctrine of supervisory correction embodied in Section 115 CPC, this Court is satisfied that the present proceedings cannot be treated as a routine First Appeal Against Order directed against an ordinary interlocutory order. The controversy before this Court has arisen directly from execution proceedings initiated for enforcement of a banking decree which had already attained finality. The impugned order, though interlocutory in form, pertains to the execution and implementation of decretal rights already crystallized through judicial determination. In substance, therefore, the proceedings are execution-centric in character and fall within the limited supervisory and corrective jurisdiction of this Court to ensure that execution remains faithful to the decree and the governing statute.

24. It is also noteworthy that, despite the fact that the impugned order unmistakably arose from execution proceedings and despite the statutory limitations contained in Section 22(6) of the Ordinance, the office, at the time of institution of the matter, neither raised any objection regarding maintainability nor examined the true juridical nature of the proceedings. Consequently, the matter was entertained and numbered as a “First Appeal Against Order (FAO)” instead of being placed in its proper procedural category. The omission on the part of the office to scrutinize the maintainability aspect at the threshold resulted in a procedural characterization which does not accurately reflect the nature of jurisdiction required to be exercised in the present matter. This Court is conscious that nomenclature cannot control jurisdiction where the substance of proceedings demonstrates otherwise. Courts are required to look beyond form and ascertain the true legal character of a matter from its contents, effect, and surrounding statutory context. Mere labeling of proceedings as an FAO neither enlarges nor restricts the jurisdiction of the Court. Where the controversy essentially concerns the legality and propriety of an order passed in execution proceedings by a subordinate Banking Court, particularly an

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order alleged to have been passed in excess of execution jurisdiction and contrary to the decree, the matter necessarily assumes the complexion of supervisory corrective scrutiny rather than a conventional interlocutory appeal. Accordingly, for purposes of procedural regularization and accurate juridical classification, this Court re-characterizes the present proceedings from a "**First Appeal Against Order** (FAO)" into a "**Civil Revision (CR)**". Office is, therefore, directed to re-number and register the present matter accordingly as a Civil Revision. Upon such re-characterization, the Court proceeds to examine the legality and propriety of the impugned order.

25. The brief facts are that respondents, who are the Judgment Debtors, initially approached the Appellant Bank for the grant of a financial facility amounting to Rs. 115.00 million. The said facility was subsequently revised and renewed from time to time, and was lastly reduced to Rs. 28.00 million, with a temporary extension granted up to 28.02.2014, which was fixed as the final date of expiry and repayment. The Respondents, however, failed to discharge their contractual obligations and committed default upon the lapse of the said date, i.e., 28 February 2014. Following the default, the Appellant Bank instituted a recovery suit before the learned Banking Court, seeking recovery of an outstanding principal liability amounting to Rs. 20.00 million. In addition to the principal sum, the Appellant explicitly claimed cost of funds from the date of default, i.e., 28.02.2014, in accordance with the governing financial laws and applicable circulars. During the pendency of the suit, the Respondents made certain partial payments on various dates, which were duly adjusted by the Appellant against the outstanding principal amount. Consequently, the principal liability stood reduced to Rs. 9,690,000/-. The learned Banking Court, after considering the material on record, decreed the suit vide Judgment and Decree dated 20.11.2019 to the extent of the remaining principal amount of Rs. 9,690,000/-, along with the cost of the suit

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and cost of funds calculated from the date of default, i.e., 28.02.2014, till realization. The operative part of the Judgment is reproduced as under: -

> *"5. Perusal of statement of account shows that at the date of default i.e. 28-02-2014, an amount of Rs. 9,690,000/- was outstanding against the defendant on account of principal. The plaintiff has also charged Markup & other charges which are penalty in nature and legally cannot be granted. The claim of the plaintiff is based on documents therefore, the suit of the plaintiff for recovery of Rs. 9,690,000/- on account of principal outstanding in its favour and against the defendants with cost of suit and cost of funds, as prescribed by State Bank of Pakistan from time to time, from date of default till realization of whole decreetal amount."*

26. Subsequent to the passing of the decree, the Respondents deposited the decreed principal amount of Rs. 9,690,000/- on 26.11.2019, i.e., after a lapse of five days from the date of the decree. However, they failed and neglected to pay the cost of funds and the cost of suit as expressly awarded by the learned Banking Court. In execution proceedings, the Appellant Bank approached the learned Executing Court seeking full satisfaction of the decree, including recovery of the cost of funds and the cost of suit in terms of Section 3 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. The Appellant furnished a detailed calculation of the cost of funds based on the outstanding defaulted amount as of 28.02.2014, computed in accordance with the circulars issued by the State Bank of Pakistan. The total cost of funds so calculated amounted to Rs. 6,464,148.35, covering the relevant periods from 01.03.2014 till 26.11.2019. During the pendency of execution proceedings, the Respondents approached the Appellant Bank for an amicable settlement of their remaining liability pertaining to the cost of funds and the cost of suit. Consequently, a formal request dated 08.01.2020 was submitted, followed by the execution of a Settlement Agreement dated 26.02.2020 between the parties. Under the said agreement, the Respondents unequivocally admitted their outstanding liability amounting to Rs. 6,427,094/-, comprising Rs. 6,341,442/- on account of cost of funds and Rs. 85,652/- towards cost of suit. In discharge of the said

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admitted liability, the Respondents issued four post-dated cheques in favor of the Appellant Bank. However, upon presentation, one of the said cheques bearing No. 29195649 dated 27.03.2020 for an amount of Rs. 825,000/- was dishonored. During the course of execution proceedings, the Respondents/Judgment Debtors instituted an application under Order XXI Rule 2 read with Section 47 of the Code of Civil Procedure, 1908, seeking, inter alia, setting aside of the execution/auction proceedings as well as a direction to the Appellant Bank for return of the original title documents. The said application came up for hearing before learned Executing Court on 04.11.2021. However,on account of repeated absence and non-prosecution on behalf of the applicant, and despite a prior opportunity having already been granted, the application was dismissed for non-prosecution. The operative portion of the said order reads as under: -

> *"At repeated calls with intervals no one appeared on behalf of applicant/judgment debtor and the same was position on previous date. Despite this last opportunity was given on previous date. Therefore application/objection petition is dismissed for non-prosecution."*

27. Notwithstanding the dismissal of the said application, and without any restoration thereof in accordance with law, the learned Executing Court subsequently proceeded to pass the impugned order dated 15.02.2022, purportedly entertaining and adjudicating upon the very same application which had already been dismissed for non-prosecution. For ready reference, the impugned order is reproduced as under: -

> *"Learned Counsel for the decree holder bank has sought execution of decree by submitting the fresh statement of account. Learned Counsel for the Judgment Debtor submits that the claim of the decree holder bank was decreed to the extent of Rs. 9,690,000/- as principal amount and the statement of account submitted by the decree holder bank is at variance with the decreetal amount. Learned Counsel for decree holder submits that the claim of the decree holder was to the extent of amount of Rs. 20,000,000/- therefore the cost of fund will be counted from the said principal amount outstanding at the date of default i.e. 28-02-2014.*

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2. After hearing Learned Counsels for the parties and after perusal of record it transpires that though the claim of the plaintiff was to the extent of amount of Rs. 20,000,000/- as principal amount but it was decreed to the extent of Rs. 9,690,000/-. The decree holder bank has sought execution of the same decree without any modification. The decree still stands regarding the same principal amount of Rs. 9,690,000/- and same has not been assailed at any forum. Therefore, the decree holder bank is required to submit cost of fund on calculation of Rs. 9,690,000/- as a principal amount from date of default i.e. 28-02-2014. To come up for submission of fresh statement of account on 10-03-2022."

28. The cost of funds and its determination is provided in Section 3 of the Ordinance which provides that if the customer default in the discharge of his obligation, he shall be liable to pay for the period from the date of his default till realization, the cost of funds of the financial institution as notified by the State Bank of Pakistan. The Section 3 of the Ordinance is reproduced as under: -

"3. Duty of a customer.-

(1) It shall be the duty of a customer to fulfill his obligations to the financial institution.

(2) Where the customer defaults in the discharge of his obligation, he shall be liable to pay, for the period from the date of his default till realization of the cost of funds of the financial institution as certified by the State Bank of Pakistan from time to time, apart from such other civil and criminal liabilities that he may incur under the contract or rules or any other law for the time being in force.

(3) For purposes of this section a judgment against a customer under this Ordinance shall mean that he is in default of his duty under sub-section (1), and the ensuing decree shall provide for payment of the cost of funds as determined under sub-section (2)."

29. Paragraph 15 of the Judgment and Decree dated 20.11.2019 holds pivotal significance in the present controversy, as it embodies the operative direction through which the learned Banking Court has expressly incorporated the statutory mandate of Section 3 of the Ordinance. A careful reading of this paragraph makes it abundantly clear that the decree was not confined merely

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to the recovery of the principal amount, but extended further to include cost of funds, calculated in accordance with the rates notified by the State Bank of Pakistan, and such computation was specifically directed to run from the date of default, i.e., 28.02.2014, till the date of realization of the entire decreetal amount. This formulation is neither accidental nor ancillary; rather, it reflects a conscious judicial application of the statutory scheme governing financial defaults.

30. Section 3 imposes a statutory duty upon a customer to discharge his financial obligations towards the financial institution, and in the event of default, it attaches a continuing liability to pay the cost of funds from the date of such default until realization. The provision is structured in mandatory terms and creates a self-operating consequence once the condition of default is triggered. The expression "obligation" employed in Section 3 is therefore not a vague or fluctuating concept; it refers to the legally enforceable liability existing on the exact date when default occurs. In the present case, that obligation crystallized on 28.02.2014, when the respondents failed to discharge the outstanding dues within the stipulated contractual period. From that moment onward, the statutory consequence of the cost of funds became attached to the outstanding liability as it then existed. The learned Executing Court, however, while passing the impugned order dated 15.02.2022, failed to appreciate this fundamental legal structure. Instead of giving effect to the decree in its true spirit and statutory context, the Executing Court proceeded on an erroneous premise that since the principal liability had been reduced to Rs. 9,690,000/- at the time of the decree, and was subsequently satisfied, the computation of cost of funds must also be re-adjusted on that reduced figure. This approach, with respect, reflects a clear departure from the legal mandate contained both in the decree and in Section 3 of the Ordinance.

31. The error committed by the Executing Court is twofold. Firstly, it misconstrued the nature of "obligation" under Section 3. The obligation is not redefined or recalibrated with subsequent payments made after default;

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rather, it is fixed at the point in time when default is triggered. Once default occurs, the statutory liability for cost of funds attaches to the outstanding amount as it stood on that date, and continues to run until full realization of the decreetal liability. Any subsequent partial payment by the judgment debtor may reduce the recoverable principal, but it does not retrospectively alter the legal foundation of the default or the computation mechanism already set into motion by law. Secondly, the Executing Court has, in substance, reopened and re-engineered the decree under the guise of execution, which is impermissible in law. The decree in unequivocal terms awarded cost of funds from the date of default till realization of the decreetal amount, without imposing any qualification that would require periodic recomputation of the principal based upon subsequent partial payments. The operative direction of the decree fixes the legal framework of computation and leaves no room for alteration of the foundational amount once the default has been triggered and adjudicated. By directing that cost of funds be recalculated on the reduced principal amount of Rs. 9,690,000/-, the Executing Court has effectively substituted the basis of computation determined by the decree with an alternative methodology of its own creation. This approach does not merely interpret the decree; it alters its substantive content by changing the very foundation upon which the liability was crystallized. In doing so, the Executing Court has introduced a qualification that neither flows from the judgment nor is supported by the statutory scheme governing execution proceedings.

32. It is a well-settled principle of law that an Executing Court acts strictly within the confines of the decree and is bound to give effect to it as it stands. It cannot travel behind the decree to examine its correctness, nor can it modify, vary, or dilute its express terms under the pretext of execution. The jurisdiction of the Executing Court is ministerial in nature, limited to ensuring faithful implementation of the decree rather than engaging in any process of reinterpretation or re-adjudication of rights already conclusively determined.

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Viewed in this legal context, the approach adopted by the Executing Court amounts to an impermissible departure from the settled limits of its jurisdiction. By altering the basis of calculation of cost of funds, the Court has, in effect, rewritten a substantive component of the decree, thereby exceeding its lawful authority and undermining the finality attached to the adjudication.

33. The impugned reasoning also overlooks the statutory scheme of Section 3, which does not permit any fragmentation of the obligation after default in a manner that would dilute the continuous nature of liability. The Ordinance deliberately links the liability to the date of default, thereby ensuring that the financial institution is compensated for the deprivation of its funds from the moment the breach occurs. By ignoring this essential statutory linkage, the Executing Court has effectively severed the connection between default and liability, thereby defeating the very object of the legislation. Furthermore, the Executing Court's interpretation undermines the legal certainty embedded in the decree. Once a decree explicitly adopts the statutory framework and directs computation from a fixed point in time, any departure from that framework in execution proceedings amounts to rewriting the decree itself. The role of the Executing Court is not to reassess the correctness of the decree or to introduce a new basis of computation, but to ensure faithful execution of its terms.

34. In view of the foregoing discussion, it reveals that the impugned order suffers from a fundamental jurisdictional defect. The Executing Court, by failing to appreciate the true meaning of "obligation" under Section 3, and by disregarding the fixed legal consequence of default, has effectively substituted its own method of calculation in place of the one mandated by statute and affirmed by the decree. Such an exercise is clearly impermissible in law and cannot be sustained in appellate scrutiny. Resultantly, the instant Civil Revision is **ALLOWED,** and the Impugned Order dated 15.02.2022 is hereby **SET-ASIDE**.

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35. Before parting with this judgment, the Court deems it necessary to record its serious concern regarding the manner in which the learned Executing Court has proceeded in the present matter. The assumption of jurisdiction over a matter which, in the eyes of law, had already ceased to exist, coupled with the passing of an order affecting substantive rights flowing from a decree, demonstrates a clear lack of due judicial application of mind to fundamental procedural safeguards. Such an approach cannot be lightly condoned, as it strikes at the very foundation of procedural certainty and judicial regularity. This is not a mere technical irregularity; it reflects a fundamental misunderstanding of procedural finality and the limits of jurisdiction. The Court is constrained to observe that such lapses, if permitted to stand unchecked, would amount to allowing judicial proceedings to be conducted in disregard of settled procedural norms, thereby undermining the authority of court orders and the certainty attached to judicial determinations. It is a basic requirement of adjudication that once a matter has attained closure through a judicial order, it cannot be revived indirectly or implicitly without strict compliance with the law governing restoration. Any deviation from this principle results in procedural chaos and creates uncertainty in the enforcement of rights, particularly in execution matters where final decrees are at stake.

36. Accordingly, the lapse noticed herein is not to be treated as a mere error of appreciation, but as a matter requiring serious institutional attention, as it goes to the root of judicial discipline and the proper exercise of jurisdiction. In these circumstances, this Court deems it appropriate to direct the learned Member Inspection Team (MIT) to look into the matter and after due scrutiny, place the matter before the Hon'ble Chief Justice for perusal and such further action as may be deemed appropriate.

(INAAM AMEEN MINHAS)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

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Sajid

APPROVED FOR REPORTING
BLUE SLIP ADDED

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