

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

1. Gimhan Sri Sameera Katulanda,
No. 10/4, Station Road,
Navinna, Maharagama.
2. Nishan Tharaka Ranpatige,
No. 66, Kandewatte Road,
Pelawatta.
3. Alagiya Hewage Mahendra Pradeep,
No. 3/55, Steel Road, Wedagewatta,
Dangedara, Galle.

Intervenient Petitioners

1. Paduwawala Kankanamlage
Chinthaka Mohan Perera,
2. Panduwawala Kankanamlage Imeshi
Ashara, Both of No. 199,
Mandamulla, Minuwangoda.

Intervenient Petitioners

SC/APPEAL/85/2025

HC (Civil) 127/2020/MR

Vs.

Marie Bernadette Kumari Herath,
No. 20, Sky Gardens Apartments,
Buthgamuwa Road, Rajagiriya.

Plaintiff-Respondent

1. Blue Mountain Properties (Private)
Limited, No. 86, Kirulapone Avenue,
Colombo 5.

2. Blue Mountain Apartments Colombo Four (Private) Limited, No. 86, Kirulapone Avenue, Colombo 5.
 3. Sampath Bank PLC.,
No. 110, Sir James Peiris Mawatha, Colombo 2.
- And Others
- Defendant-Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Dr. Sobhitha Rajakaruna
Hon. Justice Sampath Abayakoon

Counsel: Viran Corea, P.C. with Pramod Perera and Upul Jayasuriya, P.C., with Sandamal Rajapaksha for Intervenient Petitioners.

Farzana Jameel, P.C., with Shaheeda Barrie for the 1st and 2nd Defendant-Respondents.

Palitha Kumarasinghe, P.C., with Gimeshika De Silva for the 3rd Defendant-Respondent Bank.

Faiszer Musthapa, P.C. with Meheran Careem for the Plaintiff-Respondent in SC/APPEAL/85/2025.

Nuwan Peiris for the Plaintiff-Respondent in SC/APPEAL/86/2025.

N.R. Sivendran for the Plaintiff-Respondent in SC/APPEAL/87/2025.

Shivan Cooray with Rukshan Mendis for the 5th, 8th, 13th, 16th, 17th, 24th, 39th, 40th & 52nd Defendant-Respondents.

Uditha Egalahewa, P.C., with Bhagya Herath for the 4th, 6th, 7th, 10th, 11th, 12th, 14th, 15th, 18th, 19th, 21st, 22nd, 23rd, 25th, 26th, 29th, 30th, 31st, 32nd, 33rd, 35th, 36th, 37th, 48th, 49th & 54th Defendant-Respondents.

Supported on: 15.05.2026

Written submissions filed on 22.05.2026 and 25.05.2026.

Decided on: 01.06.2026

Samayawardhena, J.

Two intervention applications have been filed seeking a variation of the consent judgment entered by this Court on 28.07.2025.

The intervention application dated 11.05.2026 was supported by Mr. Viran Corea, P.C., whilst the intervention application dated 25.09.2025 was supported by Mr. Upul Jayasuriya, P.C. The respondents to both applications opposed the reliefs sought and tendered written submissions. Hence this order.

The brief history of the matter may be stated as follows.

A number of persons invested money in the 1st and 2nd Defendant companies with the expectation of purchasing housing apartments. However, the project did not proceed as anticipated. The 1st and 2nd Defendant companies had obtained financial facilities from the 3rd Defendant Bank and had mortgaged the property in question as security. Upon the failure of the Defendant companies to repay the money due to the Bank, the Bank commenced steps to sell the mortgaged property by way of *parate* execution.

Three separate actions, namely CHC/127/2020/MR, CHC/139/2020/MR and CHC/175/2020/MR, were thereafter instituted in the Commercial High Court by certain persons who invested

money in the project seeking, *inter alia*, to prevent the Bank from proceeding with the auction. The 1st and 2nd Defendant companies and the Bank were made parties to those actions. In CHC/127/2020/MR, a further 56 investors were named as Defendants for notice.

By orders dated 22.03.2023, the Commercial High Court issued interim injunctions preventing the Bank from proceeding with the auction. The Bank filed leave to appeal applications on 06.04.2023. Leave to appeal was granted by this Court on 12.06.2025 and the appeals, namely SC/APPEAL/83/2025, SC/APPEAL/84/2025 and SC/APPEAL/85/2025, were fixed for argument on 28.07.2025.

When the appeals were taken up for argument on 28.07.2025, the parties arrived at a settlement. The terms of settlement were recorded by Court, the interim injunctions issued by the Commercial High Court were vacated and the appeals were allowed accordingly.

There is no necessity to reproduce the terms of settlement in this order. It is sufficient to observe that, pursuant to the settlement, the Bank proceeded with the auction, recovered the money due to it and the balance money was deposited in the Commercial High Court to be distributed in the manner agreed upon by the parties before this Court.

It is significant that the present intervention applications were filed after the appeals had been concluded and after the settlement had been substantially acted upon. What the intervenient parties seek is not merely permission to intervene in pending proceedings. In substance, they seek the reopening and variation of the consent judgment already entered by this Court and already substantially acted upon by the parties. I must state that any such application must necessarily be entertained with considerable caution.

In the application supported by Mr. Corea, P.C., there are three Petitioners. They too claim to be investors in the housing project.

However, they were not parties to any of the three actions pending before the Commercial High Court.

In their petition they seek, in effect, a variation of clauses 12, 13 and 14 of the settlement, by which the parties to the said three actions pending before the Commercial High Court are entitled to recover the principal sums together with legal interest subject to conditions. Mr. Corea, P.C. submitted that, if the payment of legal interest is removed from conditions 12 and 13, he would be satisfied because at least then the three Petitioners may have some prospect of recovering their principal sums after payment is made to the parties to those three actions. He states the Petitioners' names can be included into the settlement after the parties to the aforesaid cases.

We raised concerns during support stage as to how only 56 investors had been named in CHC/127/2020/MR. In response, it has now been stated that the Plaintiff in that case obtained details of certain investors from sources including the Land Registry where sale agreements had been registered. It appears that the sale agreements relied upon by the present Petitioners had not been registered.

Whether those agreements had been registered or not, I do not think that the Plaintiff in CHC/127/2020/MR was under any legal obligation to identify and make every investor a party to the action. The relief sought in that action was directed against the Defendant companies and the Bank. The Plaintiff was not seeking relief against the other investors.

More importantly, the rights now asserted by these Petitioners are not rights arising from the proceedings which culminated in the present appeals. Their complaint is that they too are investors and therefore ought to share in the benefit of the settlement reached by the parties to the litigation. However, the settlement recorded by this Court was the result of negotiations among parties who were before Court and whose respective rights and obligations formed the subject matter of the litigation. Persons who were not parties to those proceedings cannot,

after the conclusion of the litigation, seek to alter the terms of that settlement merely because they consider that the agreed distribution of the balance money following the *parate* execution may operate to their disadvantage. The position may well have been different if there had been allegations of fraud, collusion, or some other circumstance undermining the integrity of the settlement itself. No such allegation has been made in the present case.

Furthermore, these Petitioners did not seek to intervene in any of the actions pending before the Commercial High Court. Nor did they seek to intervene in these appeals at any time after 06.04.2023 when the leave to appeal applications were filed. Their application was made only after the appeals had been concluded and the settlement had been substantially implemented.

The application supported by Mr. Jayasuriya, P.C. stands on a different factual footing.

The two Petitioners represented by him are not investors in the housing project which is the subject matter of this action. They had instituted CHC/71/2020/MR against the 1st Defendant company in respect of a completely different transaction. The Bank was not a party to that case. They obtained an *ex parte* judgment and decree against the said company. They also obtained a sequestration order in respect of the same property which was sold by the Bank pursuant to the settlement in this case.

On that basis, it was submitted that they are entitled to claim a share of the proceeds realised by the auction sale.

I am unable to accept that submission.

As I have already stated, the Bank was not a party to CHC/71/2020/MR. At the time the sequestration order was obtained, the property was already subject to the mortgage in favour of the Bank. The Bank's rights

as mortgagee had arisen long before the sequestration order relied upon by these Petitioners.

In those circumstances, in terms of section 246 of the Civil Procedure Code, the sequestration order shall be understood subject to the prior mortgage. The existence of a decree and sequestration order obtained against the borrower company on a different cause of action cannot confer upon these Petitioners a superior claim to the proceeds realised by the Bank through the exercise of its statutory rights as mortgagee.

As in the case of the Petitioners represented by Mr. Corea, P.C., these Petitioners also failed to seek intervention at any stage while these matters were pending before this Court from 06.04.2023 until the appeals were concluded on 28.07.2025.

The delay on the part of both sets of intervenient parties is a matter of considerable significance. The proceedings remained pending before this Court for more than two years. No satisfactory explanation has been offered as to why no attempt was made to intervene during that period. Having remained outside the proceedings while the litigation progressed and ultimately culminated in a settlement, the intervenient parties cannot now seek to reopen the concluded proceedings after the outcome has become known.

The Bank conducted the auction in terms of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990. In terms of section 14 of that Act, once the Bank has recovered the money due to it, the balance is payable to the borrower. In the present case, that would have been the Defendant company.

Indeed, had there been no settlement and had this Court simply vacated the interim injunctions and allowed the appeals, the Bank would have proceeded with the auction, recovered the money due to it, and returned the balance money to the borrower company in terms of section 14 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990.

Thereafter, the fate of the surplus proceeds would have been a matter concerning the borrower company and those claiming against it. The intervenient parties cannot therefore seek to challenge the settlement merely because the parties who were before Court agreed on the manner in which the surplus money should be distributed.

The Court must also bear in mind the wider implications of granting the relief sought. Litigation must, at some point, attain finality. Judicial proceedings cannot be permitted to remain open indefinitely. Emphasising the importance of finality in litigation, Chief Justice Sansoni observed in *Cassim v. Government Agent, Batticaloa* (1966) 69 NLR 403 at 404 that, “*There must be finality in litigation, even if incorrect orders have to go unreversed.*” If persons who were not parties to proceedings are permitted, after the conclusion of an appeal and the implementation of a consent judgment, to seek variations of the settlement reached by the parties, the certainty, finality, and effectiveness of judicial proceedings would be seriously undermined. Settlements recorded by Court, particularly those which have already been acted upon and implemented, should not lightly be disturbed save in the most exceptional circumstances. No such exceptional circumstances have been established in the present case.

For all these reasons, I am unable to grant the relief sought by either set of intervenient parties. Accordingly, both intervention applications are dismissed, but without costs.

The dismissal of these intervention applications shall not be construed as a determination of any independent rights which the intervenient parties may claim against the Defendant company or any other party in appropriate proceedings. It remains open to them to pursue such remedies as may be available to them in law.

The Registrar is directed to transmit the original case records to the Commercial High Court without delay.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court

Sampath Abayakoon, J.

I agree.

Judge of the Supreme Court