

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**CASE NO. : W.P. NO.2787-2017**

FFCL Management Staff Pension Fund Trust through its  
Secretary/Trustee

Vs.

The President of the Islamic Republic of Pakistan, Islamabad & Another

Petitioner by : Syed Hassan Ali Raza, Advocate  
Respondents by : Mr. Muhammad Jawwad Khan Lodhi, Advocate  
Mr. Attiq-ur-Rehman Siddiqui, Assistant  
Attorney General  
Date of hearing : 08.06.2022

**AAMER FAROOQ J.** Fauji Fertilizers Company Limited

(FFC) created FFCL Management Staff Pension Fund Trust (the petitioner); it invested an amount of Rs.100 million by way of term deposit with Faisal Bank Limited (respondent No.2) through letter dated 30.03.2015; the payment was made to respondent No.2 through a crossed cheque and the deposit was created for a period of six months @ 8% per annum. Pursuant to the said arrangement, a Term Deposit Receipt (TDR) bearing Certificate No.3005312000001287 dated 01.04.2015 was issued for a period of six months; the maturity date of the said Term Deposit Certificate was 30.09.2015. A further investment of Rs.200 million was made by the petitioner through letter dated 16.06.2015 and the payment, in this behalf, was made again through crossed cheque; the deposit was for a period of six months @ 7.5% per annum; consequently, Term Deposit Receipt was issued bearing No.3005312000001213 dated 17.06.2015; the maturity of the referred Certificate was 17.12.2015. On 21.09.2015, the petitioner approached respondent No.2 requesting encashment of first TDR Certificate along with profit, but nothing was done in this regard. On 10.12.2015, petitioner approached respondent

No.2 again for encashment of second TDR but again, no payment was made. Due to non-payment of the principal amount as well as profit with respect to first TDR, the petitioner approached Director, Consumer Protection Department, State Bank of Pakistan for indulgence in the matter who referred the matter to the Banking Mohtasib with the request to examine, investigate and resolve the issue. On 25.11.2015, the petitioner received payment of Rs.129,480,038.29 through letter dated 25.11.2015; no explanation was provided in the matter apparently for delay in payment. On 18.02.2016, since the amounts, under both the Term Deposit Receipts, remained outstanding along with profit, the petitioner filed a complaint before Banking Mohtasib against respondent No.2. During the pendency of the complaint, respondent No.2 made payment of remaining principal amount in the sum of Rs.170,519,961.71; resultantly, the entire principal amount stood paid and only profit on the Term Deposit Certificates in the sum of Rs.25,079,934.23 is outstanding. After hearing the counsel for the parties, Banking Mohtasib decided the matter in favour of petitioner by directing respondent No.2 to make payment vide order 11.01.2017. It is pertinent to point out that plea taken by respondent No.2, all along, is that fraud has been committed by its Branch Manager namely Asif Qayyum, Faisal Bank Limited, The Mall, Rawalpindi in connivance with others perhaps including the officials of petitioner as well. Respondent No.2 preferred representation before the President of the Islamic Republic of Pakistan/respondent No.1, which was allowed in favour of respondent No.2 vide order dated 02.05.2017 (the impugned order).

2. Learned counsel for the petitioner *inter alia* contended that reasons, which prevailed with respondent No.1, are erroneous inasmuch as Banking

Mohtasib did have the jurisdiction in the matter. By elaborating his submissions, learned counsel pointed out that under section 82(5) of Banking Companies Ordinance, 1962 (the Ordinance), Banking Mohtasib is competent to entertain complaints pertaining to disputes regarding mark up and/or non-payment thereof. It was submitted that since controversy only was about non-payment of profit due on the Term Deposits made, hence the matter falls within the domain of Banking Mohtasib. In support of his contentions, learned counsel placed reliance on case reported as 'Messrs Muslim Commercial Bank Limited through Lawful Authority Vs. Federation of Pakistan through Director (Legal-II), President's Secretariat and 2-others' (2020 CLD 829). It was further contended that reasoning, on behalf of respondent No.1 that fraud as well as question of vicarious liability, is an intricate question and cannot be resolved by Banking Mohtasib, is without substance inasmuch as under section 82(5)(a)(ii)&(iii), the question of fraud can also be examined by the Banking Mohtasib. It was pointed out that reference made to the case law in the impugned order is erroneous inasmuch as the referred cases pertain to finances and default, whereas the case of the petitioner is altogether different.

3. Learned counsel for respondent No.2, on the other hand, contended that principal amount stands paid to the petitioner and the controversy only is about payment of profit. It was submitted that matter is still being investigated, whether fraud was committed by the officials of petitioner in connivance with Branch Manager of respondent No.2 and others. It was pointed out that vicarious liability and intricate question of law could not have been examined by Banking Mohtasib but only court of competent jurisdiction. It was submitted that likewise, fraud involves specific

allegations and cannot be decided by Banking Mohtasib, which forum, does not have the jurisdiction to go into intricate questions of law and facts. In support of his contentions, learned counsel placed reliance on cases reported as 'Shafaatullah Quershi Vs. Federation of Pakistan' (PLD 2001 Supreme Court 142), 'Sultan Hassan Khan and 2-others Vs. Mst. Nasim Jahan and 17-others' (1994 SCMR 150), 'Muhammad Siddique Vs. Federation of Pakistan through Secretary of Law, Justice and Human Rights Division, Islamabad and 3-others' (2005 YLR 2859), 'United Bank Limited Vs. Federation of Pakistan and others' (PLD 2018 Lahore 322), 'Muhammad Aamir Saeed Vs. Messrs United Bank Limited through President and 2-others' (2008 CLD 1324) and 'Muhammad Moin Vs. State Bank of Pakistan and others' (2009 CLD 899).

4. Submissions made on behalf of learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The facts, leading to filing of instant petition, have already been mentioned in the preceding paragraphs hence need not be reproduced.

6. Primarily, the reasons which prevailed with respondent No.1 in allowing representation of respondent No.2, is the question of jurisdiction and involvement of intricate questions of fraud and vicarious liability.

7. The Office of Banking Mohtasib is the creation of statute; in this behalf, section 82-A of the Banking Companies Ordinance, 1962 created the Office of Banking Mohtasib. The jurisdiction of Banking Mohtasib is provided in section 82-A (3), which stipulates enquiring into complaints of banking mal-practices, perverse, arbitrary or discriminatory actions, violations of banking laws, rules, regulations or guidelines, inordinate delays or inefficiency and corruption, nepotism and other forms of mal-

administration. Under section 82-B(4), the Banking Mohtasib is competent to receive complaints from customers, borrowers, banks or from any concerned body or organization. Section 82-B(5) ibid provides more lucidly the powers and authorities, which the Banking Mohtasib, can exercise; the referred provision of law reads as follows:-

*“(5) The Banking Mohtasib shall exercise his powers and authority in the following manner:-*

*(a) In relation to all banks operating in Pakistan-The Banking Mohtasib shall be authorized to entertain complaints of the nature set out herein below:-*

*(i) Failure to act in accordance with banking laws and regulations including policy directives or guidelines issued by the State Bank from time to time.*

*Provided that if there is a dispute as to the proper interpretation of any regulations, directions or guidelines;*

*(ii) Delays or fraud in relation to the payment or collection of cheques, drafts or other banking instruments or the transfer of funds;*

*(iii) Fraudulent or unauthorized withdrawals or debit entries in accounts;*

*(iv) Complaints from exporters or importers relating to banking services and obligations including letter of credits;*

*(v) Complaints from holders of foreign currency accounts whether maintained by residents or non-resident;*

*(vi) Complaints relating to remittances to or interest rates based on the ground of a violation of an agreement or of State Bank directives;*

*(vii) Complaints relating to the payment of utility bills.*

*(b) In relation to banks in the public sector.-The Banking Mohtasib shall be authorized to entertain complaints against such banks on the following additional grounds as well:-*

*(i) Corrupt or malafide practices by bank officers;*

*(ii) Gross dereliction of duty in dealing with customers;*

*(iii) Inordinate delays in taking decisions; and*

*(c) The Banking Mohtasib shall not entertain any complaint or application which has already been disposed of by the State Bank or any Court in Pakistan”.*

Under section 82-B(5)(c), the Banking Mohtasib shall not entertain any complaint or application, which has been disposed of by State Bank or any court in Pakistan. The bare reading of section 82-B(5)(a) clearly shows that it can entertain questions of fraud as is borne out from subsection 82-B(5)(a)(ii)(iii). After holding proceedings under section 82-E of the Ordinance, the Banking Mohtasib can make recommendations for implementation. Under section 82-E (3), it does not have any jurisdiction to make direction that loans, advances or finances be given to a complainant. The reading of the Section again shows that jurisdiction, upon conclusion of the matter by the Banking Mohtasib, is only recommendatory for implementation; though non-implementations has penal and other consequences.

8. In case reported as ‘Soneri Bank Limited through Constituted Attorneys/Authorized Officers and another Vs. Messrs Pak Land Corporation (Pvt.) Limited through CEO and 4-others’ (2013 CLD 1756), the Hon’ble Sindh High Court elucidated the jurisdiction of Banking Mohtasib and the powers it enjoys. It was observed that basic jurisdiction of Banking Mohtasib is provided in section 82-A and is amplified in section 82B(5) and clearly empowers Banking Mohtasib to determine the question of fraud. In case reported as ‘Messrs Muslim Commercial Bank Limited through Lawful Authority Vs. Federation of Pakistan through Director (Legal-II), President’s Secretariat and 2-others’ (2020 CLD 829), the Division Bench of Hon’ble Sindh High Court again examined the jurisdiction of the Office of Banking Mohtasib. It was observed as follows:-

*"15. With regards the petitions where the complainants had been defrauded by the Bank's Branch Manager, Mr. Kashif Hanif learned counsel for the Petitioner Banks submitted that firstly the act of the Branch Manager to defraud the complainants was his personal act for which the Bank could not be held vicariously liable; and secondly, that the jurisdiction to determine vicarious liability vested in a civil court, not the Banking Mohtasib.*

*On the other hand, Mr. Ayaz Ali Hingoro and Mr. Shahid Ali, learned counsel for the Respondent No.3 (complainants before the Banking Mohtasib) respectively in C.P. No.D-905/2017 and C.P. No.D-6672/2017 to C.P. No.D-6675/2017 submitted that the internal investigation report of the Bank submitted before the Banking Mohtasib had clearly found the fraud to have been committed by the Branch Manager, and thus the Bank's vicarious liability stood established.*

*16. The argument that the Bank was not vicariously liable for the fraud of its employee, and the argument that the Banking Mohtasib did not have jurisdiction to hold the bank vicariously liable, are both misconceived. Firstly, it is settled law that the employer's vicarious liability extends also for the fraudulent acts of the employee if the fraud was perpetuated in 'the course of employment', and then it does not matter whether the fraud was for the employer's benefit or for the employee's own'. Secondly, the very remedy provided to a complainant against a Bank before the Banking Mohtasib proceeds on the principle of vicarious liability. That intent of the legislature is manifest in the following provisions of the BCO:*

*"82A (3) The jurisdiction of the Banking Mohtasib in relation to banking transactions shall be to -*

- (a) enquire into complaints of banking malpractices;*
- (b) perverse, arbitrary or discriminatory actions;*
- (c) violations of banking laws, rules, regulations or guidelines;*
- (d) inordinate delays or inefficiency and*
- (e) corruption, nepotism or other forms of maladministration.*

*82B (5) The Banking Mohtasib shall exercise his powers and authority in the following manner:-*

*(a) In relation to all banks operating in Pakistan. - The Banking Mohtasib shall be authorised to entertain complaints of the nature set out herein below:-*

- (i) .....*
- (ii) delays or fraud in relation to the payment or collection of cheques, drafts or other banking instruments or the transfer of funds;*
- (iii) fraudulent or unauthorised withdrawals or debit entries in accounts;"*

*17. Mr. Kashif Hanif, learned counsel for the Petitioner Banks submitted that even if the Banking Mohtasib had the jurisdiction to decide the complaints, he could not have determined the same without recording evidence; that the recording of such evidence was mandatory under subsection (4) (c) of Section 82B of the BCO;*

*and since that was not done, the Bank was deprived of an opportunity to cross-examine the complainants.*

*On the other hand, Mr. Ayaz Ali Hingoro, learned counsel for the Respondent No.3 (Kulsoom) in C.P. No.D-905/2017 submitted that when the internal investigation report of the Bank submitted before the Banking Mohtasib had found the Branch Manager guilty of the fraud, the question of recording evidence did not arise. Similarly, Mr. Shahid Ali, learned counsel for the Respondent No.3 in C.P. No.D-6672/2017 to C.P. No.D-6675/2017 submitted that the amount ordered to be returned by the Banking Mohtasib to the complainants was the same that had been determined by the Bank itself in its internal investigation report, and therefore the question of recording evidence did not arise. Mr. Ammar Athar Saeed, learned counsel for the Respondent No.3 (Yousuf Adil) in C.P. No.D-4752/2017 too submitted that the question of recording evidence never arose because the Bank had admitted before the Banking Mohtasib that it had not implemented the directives of the State Bank within the stipulated date.*

*18. Section 82B of the BCO provides that:*

*"82B (4) The Banking Mohtasib shall have the power and responsibility-*

- (a) to entertain complaints from customers, borrowers, banks or from any concerned body or organization;*
- (b) to facilitate the amicable resolution of complaints after giving hearings to the complainant and the concerned bank;*
- (c) to receive evidence on affidavit;*
- (d) to issue commission for the examination of witnesses;*
- and*
- (e) in the event that complaints cannot be resolved by consent, to give finding which shall be acted upon in the manner set out herein."*

*In our view the words 'The Banking Mohtasib shall have the power and responsibility..... to receive evidence on affidavit' in clause (c) of subsection (4) of section 82B of the BCO is not to say that that the Banking Mohtasib shall decide all and every complaint after the formal recording of evidence. Rather, the intent is to enable the Banking Mohtasib, should he so deem expedient in the circumstances of the case, to take evidence of any party or witness by way of an affidavit. Such intent is manifest when subsection (4)(c) of section 82B is read with subsection (3) of section 82D of the BCO which reads as under:*

*"82D (3). The Banking Mohtasib may adopt any procedure as he considers appropriate for investigating a complaint:*

*Provided that he shall not pass any order against a bank without first giving it a notice and an opportunity of a hearing."*

*Clause (c) was inserted in subsection (4) of section 82B of the BCO by an amendment in 2007 when subsection (3) of section 82D was already part of the BCO. Had the intent of the legislature been that complaints before the Banking Mohtasib could, in each and every case, only be decided after the formal recording of evidence,*



*subsection (3) of section 82D of the BCO would have been omitted. The interpretation of subsection (4)(c) of section 82B of the BCO being made by learned counsel for the Petitioner Banks would convert the summary nature of proceedings before the Banking Mohtasib to a trial even in cases where the record produced before the Mohtasib is sufficient to hold maladministration.*

*As discussed in para 12 above, given the findings in the Bank's own internal investigation reports and the acknowledgments made before the Banking Mohtasib, the fraud/ maladministration was accepted by the Bank, so also the fact that the Bank's employees were acting in 'the course of employment' when they committed the fraud/ maladministration. Therefore, none of the cases required the formal recording of evidence to establish fraud and vicariously liability.*

*19. Referring to those decisions of the Banking Mohtasib where he ordered the Bank to pay profit to the complainants on their deposits, Mr. Kashif Hanif submitted (a) that the Banking Mohtasib did not have jurisdiction to award profit to a complainant, which jurisdiction vested only in a civil court; and (b) that as regards the complaint of Kulsoom (C.P. No.D-905/2017), the Banking Mohtasib did not have the jurisdiction to order the Bank to convert the complainant's deposit into a TDR (term deposit).*

*Regards the first submission, that is negated by subsection (1)(c) of section 82E of the BCO which enables the Banking Mohtasib "to pay reasonable compensation to the complainant as fixed by the Banking Mohtasib"*

10. In light of above judgments of Hon'ble Sindh High Court, the inevitable conclusion is that question of fraud is neither excluded from the domain of Banking Mohtasib nor is the determination as to the vicarious liability.

11. The case law cited by learned counsel for respondent No.2 though is otherwise that vicarious liability, intricate questions of law and question of fraud can only be examined by the civil courts, which are the courts of plenary jurisdiction and not by a Tribunal/forum of a limited jurisdiction, but the same are general in nature and do not specifically apply to the Office of Banking Mohtasib (the citations are reproduced hereinabove in the submissions of learned counsel for respondent No.2).

12. In presence of specific case law on the subject and literal interpretation of the provisions of section 82-A, 82-B & 82-E of the Ordinance, it is clear

that Banking Mohtasib does have the jurisdiction to entertain complaints about fraud and non-payment of markup.

13. On the touchstone of above interpretation of law, if the facts are examined, the irresistible conclusion is that the impugned order has no legs to stand on. Admittedly, fraud has been committed involving Branch Manager of respondent No.2 along with others. It is observed that Manager was a representative/agent of respondent No.2 and his actions/inactions make respondent No.2 responsible; in other words, Faisal Bank Limited is vicariously liable for actions/inactions of Asif Qayyum, the Branch Manager.

14. The impugned order does not clearly examine the facts and the matter on the basis of section 82 *ibid* holistically including the jurisdiction/power of Banking Mohtasib to give directions hence it is only appropriate that matter be re-examined and determined by respondent No.1 in light of observations and the law mentioned hereinabove.

15. For the above reasons, instant petition is allowed and the impugned order is set aside; consequently, representation filed by respondent No.2, shall be deemed to be pending before respondent No.1 and decided in light of section 82 of the Ordinance and the interpretation rendered in the case law mentioned hereinabove.

(AAMER FAROOQ)  
JUDGE

Announced in Open Court on 25.08.2022

JUDGE

Approved for reporting

