

IN THE HIGH COURT OF SINDH, KARACHI

Before Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Muhammad Karim Khan Agha

C.P. No. D-182 of 2013.
Mujeeb ur Rehman & another

V.

State Bank of Pakistan & others.

C.P. No.D-57 of 2013
Mujeeb ur Rehman & another

V.

Muslim Commercial Bank & others.

Date of hearing	29-02-2016
Date of Judgment	03-03-2016
Petitioners:	Through Mr. Syed Wasi Haider Jafri Advocate
Respondents:	Through Mr. Muhammad Noman Jamali Advocate for respondent No.4

JUDGMENT

Muhammad Karim Khan Agha, J. By this common order, we intend to dispose of two petitions filed on behalf of the petitioners being CP.No.182/12 and 57/13.

2. The brief facts of the case are that all three of the petitioners namely; Mujeeb ur Rehman, Habib Khan and Akram Ali are employees of Muslim Commercial Bank (M.C.B) who each carried out an independent and separate

transaction allegedly on the request of Mrs. Sajida Naqvi which apparently were fraudulent transactions which lead to her husband Mr. Adnan Naqvi Riaz suffering loss. This in turn led to Mr. Adnan Naqvi Riaz making a complaint against the petitioners to M.C.B and to the Banking Mohtasib Pakistan (respondent No.2) against M.C.B.

3. The respondent No.2 on receipt of the complaint against M.C.B. by Mr. Adnan Naqvi Riaz after inquiry into the same passed an order dated 04.04.2012 upholding Mr. Naqvi's complaint against M.C.B. and held M.C.B. liable for the fraudulent/illegal transactions and to refund their total value to the complainant Mr. Adnan Naqvi Riaz.

4. M.C.B. appealed the order of the Banking Mohtasib Pakistan (respondent No.2) to the Governor State Bank of Pakistan (Respondent No.1) who by order dated 24.10.2012 upheld the order of the Banking Mohtasib (respondent No.2).

5. The petitioners were each requested by M.C.B. to refund the amount of the loss which was caused by each of them to M.C.B. and which formed a part of the complaint against M.C.B. by Mr. Naqvi to the Banking Mohtasib (respondent No.2).

6. The Petitioners wrote to the Governor State Bank of Pakistan by letter dated 13.12.2012 seeking a review against the Governor's order dated 24.10.2012. By letter dated 07-01-2013, the State Bank of Pakistan informed the petitioners that the request for a review of the Governor's order was not maintainable as none of them were party to the case.

7. It is also relevant that Mr. Naqvi had lodged an FIR No.13/2011 under sections 419/420/468/471/34 P.P.C. registered at Police Station FIA, SBC, Karachi against the petitioners and another and the matter was taken-up for

cognizance by the Special Court dealing with offences in respect of Banks. All the petitioners are now on pre-arrest bail in the case.

8. In essence the petitioners have prayed as under:-

P R A Y E R S

- a. Set aside the impugned judgments dated 07.01.2013, 24.10.2012 and 04.04.2012 respectively passed by the learned respondents No.1 and 2 as the same are illegal, mala fide, ultra vires and without lawful authority, null and void having no effect whatsoever.
- b. Suspend the implementation of the impugned orders dated 07.01.2013, 24.10.2012 and 04.04.2012 passed by learned respondents No.1 and 2 respectively pending disposal of the above petition.
- c. Restrain the respondents No.1 and 3, their employees, agents, factors and all persons claiming through or under them from taking any action against the petitioners as per impugned orders dated 07.01.2013, 24.10.2012 and 04.04.2012 respectively;

9. The main ground argued by learned counsel for the petitioners was that the petitioners were a necessary party to the inquiry carried out into Mr. Naqvi's complaint to the Banking Mohtasib (respondent No.2) and also to the appeal filed M.C.B. before the Governor State Bank of Pakistan and that they have been adversely affected by not being made parties. In this respect learned Counsel relied on the case of **H.M. Saya & Co V Wasir Ali Industries** (PLD 1969 SC 65)

10. On the other hand, learned counsel for the M.C.B. submitted that the petitioners had no locus standi to be parties to the proceedings before the Banking Mohtasib and State Bank of Pakistan since the complaint had been made against M.C.B. and not the Petitioners in their individual capacity. He also submitted that the present petition is not maintainable under Article 199 of the Constitution as it concerned disputed facts and issues which could not be determined in the Court's Constitutional Jurisdiction.

11. We have perused the record and considered the submissions of learned counsel at the bar.

12. We are of the view that this petition is not maintainable under Article 199 of the Constitution since the core of the dispute relates to banking transactions which would involve a consideration of disputed questions and issues of facts which this Court has no jurisdiction to look into in its constitutional jurisdiction under Article 199.

13. Even otherwise the orders of the Banking Mohtasib and Governor State Bank of Pakistan were made against M.C.B. and not the petitioners. The Petitioners therefore had no locus standi in those proceedings.

14. In our view this matter ought to be resolved through an internal inquiry against the Petitioners conducted by M.C.B. under its relevant rules and regulations relating to such complaints and to ascertain the responsibility and liability, if any, against the petitioners and thereafter take appropriate action. Likewise, it is for the petitioners to defend themselves against the criminal proceedings which have been lodged against them before the Special Court dealing with Offences in respect of Banks.

15. Accordingly, this petition is dismissed and disposed of.

16. These are the reasons for our short order while dismissing the petition on 29.02.2016.