IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Dr. Syed Fiaz Ul Hassan Shah

C.P. No.D-5851 of 2023

Faysal Bank Limited	…….	Petitioner
	Versus	
The Federation of Pakistan & 2 others	…..…….....	Respondents

Petitioner	:	Through Agha Shahid Majeed Khan, Advocate
Respondent No.3	:	Through Mr. Anas Makhdoom, Advocate
Federation	:	Through Mr. Khaleeq Ahmed, D.A.G.
Date of Hearing	:	22.10.2025
Date of Short order	:	22.10.2025

-*-*-*-*-*-

O R D E R

***Dr. Syed Fiaz Ul Hassan Shah,* J :-** The present petition has been filed against the Order dated 16.10.2023 **(impugned Order)** passed by the President of Pakistan in Representation No.165/BM/2022, whereby, the order dated 22.09.2022 passed by the Banking Mohtasib Pakistan affirmed. The petitioner has sought following relief: -

a) Set aside the impugned orders of the Banking Mohtasib and the President Secretariat by holding the same to be null and void.

b) Stay/suspend the operation of the impugned order passed by the respondent No.1 and 2, in the interest of justice, till the pending of this Petition; and

c) Grant any other relief as this Hon'ble Court deems fit.

2. Learned counsel for Petitioner contends that on the instruction of Respondent No.3, certain amount was invested with under Petitioner's product namely Barkat Islamic Investment Certificate against 13.25% profit per annum, however, after some time the interest rates KIBOR has deceased to the level of 7.75%. Therefore, the claim of Respondent No.3 against the petitioner bank for payment of profit at 13.23% was untenable in view of the clauses 1 & 7 of the contract wherein it is clearly mentioned that in case of losses it will have to bear by the Respondent No.3 and the petitioner bank has indemnified by the Respondent No.3 himself and both the forum below have not considered the record and the contract executed by and between the petitioner and respondent No.3, as clauses 1&7 of the contract are clear that Respondent No.3 has entered into contract through investment of fund in Barkat Investment Certificates with settled term and conditions to govern under ***Shariah compliant*** having various investment schemes i.e. Ijarah, Istinsa, Murabaha, Musharakah, etc. which does not fix the rate of profit and are being invested as assets. Conversely, learned counsel for respondent No.3 and learned DAG have supported the impugned orders passed by the two forums below.

3. We have heard the learned counsel for the parties as well as learned DAG and minutely perused the record of the case with their assistance.

4. Upon consideration of the arguments advanced by the learned counsel for the petitioner, we are not inclined to enter into factual controversies or revisit concurrent findings of fact within the scope of writ jurisdiction. Such intervention is only warranted where the petitioner demonstrates that the impugned orders suffer from a jurisdictional defect or are contrary to law. In the absence of such grounds, Section 18 of the Federal Ombudsman Institutional Reforms Act, 2013 **(FOIRA)** does not oust the jurisdiction of Respondent No.2, which is established under Section 82D of the Banking Companies Ordinance, 1962 **(BCO)**. This position is supported by the principle enunciated by the Hon'ble Supreme Court of Pakistan in ***Peshawar Electric Supply Company Ltd. v. Wafaqi Mohtasib (Ombudsmen), Islamabad*** **(PLD 2016 SC 940)**, wherein it was held that any order passed beyond the scope of statutory authority is not immune from judicial review by a superior court. Furthermore, subsection (5)(c) of Section 82D of the BCO only restricts the Banking Mohtasib from entertaining complaints that have already been adjudicated by the State Bank of Pakistan or any court of law. In the absence of such prior adjudication, the jurisdiction of the Banking Mohtasib—Respondent No.2—remains valid and operative.

5. We have considered the arguments of the learned counsel for Petitioner that in terms of clause 1 of the contract executed by the

petitioner and Respondent No.3, both parties were agreed that funds shall be invested in Shariah Compliant under the Islamic mode of Mudarabah and in terms of clause 7 both the parties have been mutually agreed any losses incurred by the Mudaraba shall be borne by the customer (Respondent No.3), therefore, the claim of Respondent No.3 for profit at 13.25% interest is untenable and therefore the petitioner bank has paid profit at 7.75% due decline of KIBOR rates. He further contends that the letter dated 30.01.2020 though signed by two Bank Officers of Petitioner which has addressed to one Mr. Amin Bhimani, CFO, Gul Ahmed Energy, Karachi who is distinct entity and such letter has not been addressed to respondent No.3 instead the fund has been invested by Gul Ahmed Employees Provident Fund Trust and therefore the said letter dated 30.01.2020 about payment of profit at 13.25%, ought not to be considered as a binding upon the Petitioner bank in the light of clauses 1 and 7 of the contract, therefore, both the forums below have not considered such aspect and any illegality persisted in the impugned order. We find no merit in the arguments advanced by the learned counsel for the petitioner for the reasons: the contract placed on record as Annexure-E unequivocally stipulates that the investment fund was for a fixed duration of one year, with a profit rate of 13.25%. Although clause (1) refers to the arrangement as "Shariah Compliant," the petitioner has failed to elucidate the meaning and legal implications of this terminology, thereby rendering the argument inconsequential.

6. The second contention of the learned Counsel for the petitioner about the losses in a scheme for investment of funds under Shariah compliant, the petitioner has failed to substantiate any actual losses sustained by the bank that could invoke a defense under Clause-7 of the agreement. The only reliance placed by the petitioner is on the decline in KIBOR rates. However, we are of the considered view that KIBOR fluctuations do not form part of the contractual framework and, therefore, cannot be invoked to alter the agreed terms. Under the provisions of the Contract Act, 1872, the terms mutually agreed upon by the parties are binding, and extraneous economic indicators such as KIBOR are not enforceable unless expressly incorporated into the contract.

7. The final contention raised by the learned counsel for the petitioner, pertaining to the letter dated 30.01.2020 (available at page 141), is misconceived. The said letter was addressed to the Chief Financial Officer (CFO) of Respondent No.3 in relation to the same investment transaction, executed in favor of Gul Ahmed Employees Provident Fund Trust. It is pertinent to note that the CFO was duly authorized by the Trustee, and the Trust itself is a sister concern of Respondent No.3, established for the purpose of managing employee-generated funds.

8. Furthermore, the petitioner bank, through its own conduct and consistent correspondence, unequivocally assured Respondent No.3 of the agreed profit rate. In addition, the petitioner publicly launched an investment scheme titled “Investment for One Year is Back,” which

was extensively advertised, clearly indicating a profit rate of 13.25%. These representations reinforce the binding nature of the contractual terms and negate any contrary stance now taken by the petitioner. As a public limited company, the petitioner is not legally permitted to unilaterally alter the agreed profit rate from 13.25% to 7.75% on the basis of fluctuations in KIBOR. Such unilateral restructuring is impermissible under the doctrine of novation, which requires mutual consent of both contracting parties for any modification to the original agreement. The contract executed on 26.02.2020 reflects a mutually agreed arrangement at the time of investment. Any subsequent variation in terms or circumstances must be supported by the express consent of both parties. In the present case, no such consent was obtained from Respondent No.3, thereby rendering the attempted variation legally untenable.

9. Section 22 of the Specific Relief Act, 1877 confers discretionary powers upon the Court to grant specific performance of a contract. The relief is not automatic or as a matter of right, even if the contract is otherwise lawful and enforceable. Court's discretion must be exercised judiciously, based on a reasoned analysis of the facts, conduct of the parties, and surrounding circumstances. It cannot be arbitrary or mechanical. In ***Liaquat Ali Khan and Others v. Falak Sher and Others*** **(PLD 2014 SC 506)**, the Hon'ble Supreme Court of Pakistan emphasized that there is no fixed formula for granting specific performance, each case must be evaluated on its own merits and the factors such as the language of the agreement, subsequent

conduct of the parties, and equitable considerations are critical in determining whether relief should be granted. We do not find any illegality or jurisdictional error in the impugned order. The petitioner, having executed and relied upon the contract, is legally obligated to honor its terms, including the agreed profit rate. Any attempt to recalculate or restructure the profit unilaterally, without the consent of Respondent No.3, is impermissible and contrary to the settled principles of contract law. Accordingly, the petitioner is bound to recalculate and pay profit strictly in accordance with the rate stipulated in the contract.

10. In view of the above, this petition was dismissed by our short order dated 22.10.2025 and these are the reasons thereof.

JUDGE

JUDGE

Karachi
Dated 23rd October 2025.