

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D 5695 of 2017 : Faysal Bank Limited vs.  
Federation of Pakistan & Others

For the Petitioners : Mr. Ghulam Ali Khan, Advocate

For the Respondents : Mr. Shoa-un-Nabi, Advocate

Date of Hearing : 29.05.2019

Date of Announcement : 29.05.2019

## JUDGMENT

**Agha Faisal, J:** The facts pertinent hereto are that the title documents of property, mortgaged by the respondent 3 with the petitioner bank, were lost by the bank. The respondent No.3 filed a complaint before the Banking Mohtasib Pakistan which was decided against the bank vide order dated 17.02.2017 ("**Mohtasib's Order**"). The petitioner bank assailed the Mohtasib's Order before the President and the said representation was dismissed vide order dated 17.07.2017 ("**President's Order**"). The present petition was filed by the petitioner bank assailing the Mohtasib's Order and the President's Order on the basic premise that the proceedings before the Banking Mohtasib did not have the sanction of law, hence, any order delivered in pursuance thereof was illegal.

2. Mr. Ghulam Ali Khan, Advocate appeared on behalf of the petitioner and submitted that the Banking Mohtasib was not empowered to adjudicate the complaint filed before it as the matter was required to be agitated before a civil court. It was further argued that the Mohtasib's Order was rendered in violation of the provisions conferring the jurisdiction upon the Banking Mohtasib as the forum was not empowered to render findings upon the issue of compensation.

3. Mr. Shoa-un-Nabi, Advocate appeared on behalf of the respondent No.3 and submitted that the offending act of the petitioner bank stood duly admitted as it was never the case of the petitioner that the title documents deposited therewith were not lost by them. Learned

counsel submitted that the respondent 3 admittedly repaid the finance facility in full and, therefore, was entitled to return of the deposited title documents. Learned counsel stressed that any property with duplicate documents, in place of the original, suffers significant diminution in value. In conclusion, it was submitted that there were two concurrent findings against the petitioner and that the petitioner was not entitled to any concession or relief in the present proceedings.

4. We have considered the arguments of the respective learned counsel and have appreciated the documentation to which our surveillance was solicited.

It is an admitted fact that the respondent 3 obtained a finance facility from the petitioner bank and as security in respect thereof deposited the original title deeds of the mortgaged property. It is also admitted that the aforesaid finance facility was repaid in full, however, the title documents were not returned to the respondent 3 as the same were lost by the petitioner bank.

In this background, the primary controversy sought to be determined by us is whether the Banking Mohtasib had the jurisdiction to hear the complaint and decide the same. Prior to entering into this deliberation it is considered appropriate to reproduce the operative findings of the Mohtasib's Order and the President's Order respectively.

#### Banking Mohtasib's Order

"In view of the foregoing factual position I, under the powers vested in me vide Section 82D of BCO, 1962 read with Section 9 of Federal Ombudsmen Institutional Reforms Act 2013, order the Bank to arrange duplicate property documents of the Complainant which were misplaced/lost by the Bank and not returned to the complainant on 10.03.2014 when after clearance of loan, Bank issued "No Objection Certificate". Further, Bank with the consent of complainant would engage Pakistan banks Association's (PBA) approved Surveyor to evaluate/assess the value of the property and devaluation impact on price of the property on account of missing documents/issuance of duplicate property documents. The complainant's actual loss sustained due to duplicate papers may be paid to the complainant."

#### Presidents Order

"33. After perusal of record, examination of all documents and detailed hearing, it has been noted that as per NOC issued by the Bank on 28.02.2014 and delivered to Complainant on 10.03.2014 loan account was closed. After clearance of liability Bank was required to return all property documents to the Complainant but it was not done. The Bank produced a list of documents returned to Complainant terming it receiving of the complainant for disputed documents. The list (receiving) does not carry those documents disputed by the Complainant hence the Bank could not substantiate its stance of handing over documents to the Complainant before the Banking Mohtasib and the appellate forum.

It was highlighted to Bank's officials that 'Safe in Safe out' register provided by the Bank does not show the entry of disputed documents although other charge documents were mentioned in that register. The Bank Representative stated that in this case bank's lawyer vetted the documents for sanction of loan only on photocopies of property documents and original were not submitted by the Complainant. Such statement of the Bank's representative is neither plausible nor justifiable as per SOP/practices in vogue in the Banking Industries. On this it was told to Bank's Representative that the Bank cannot sanction loan on photocopies as for mortgage loan, charge is created on production of sanctioned and disbursed and requisite formalities must have met as such question of sanction of loan against photocopies of property documents is irrelevant and unacceptable and objectionable. It is fact that loan was originally sanctioned in 2005 by the then Prime commercial bank which merged with ABM AMRO and finally merged with Faysal bank and, therefore, it was Bank's Credit Department's responsibility to get complete record at the time of acquiring the loan portfolio in question. 'Safe in and Safe out' does not reflect disputed documents and thus documents in question are missing which give strength to understanding that a Bank's end the document were lost or misplaced.

It has been observed by the Banking Mohtasib through correspondence trial appended below that the complainant had been pursuing the case with the Bank after adjustment of loan since March 2014; however the Bank did not resolve issue and prolonged the matter unresolved. On 16.04.2016 the complainant verbally requested the bank for return of documents and on that date the Bank gave him online number 1-1687654210 for further correspondence. It has also been observed that Mr. Sajjad Officer of Faysal Bank advised the Complainant to approach officials of Parent Branches Khayaban e Shahbaz, DHA, Karachi. The complainant contacted the Branch concerned online and was informed that the Complainant should contact them after 10 days but no further response from the Bank was received by the complainant. On 06.05.2014, the complainant through email enquired about progress I the matter but mater was lying unresolved. On 07.05.2014, the complainant submitted hardcopy of the complaint which was received by the Bank in the same date and yet documents not returned. In the same date, the Complainant also filed his request through email but no response was given to the complainant.

On 19.05.2014, the Complainant sent reminder through email and Mr. Shaban Ali Office of the Bank took up the matter with the concerned officer of the Bank and called for report. In the same date Mr. Farukah of Bank through email informed that documents were not traceable. On 06.10.2014, the Complainant served notice upon the Bank through his advocate. The Bank then informed that they were making efforts to search the documents but despite passing of several months documents were not returned. On 23.06.2016, the Complainant served notice upon the Bank that in case his issue is not resolved he would lodge complaint with the Banking Mohtasib and yet his issue was not resolved. It is admitted position that original property documents handed over to the Bank for mortgage loan were not handed over to the complainant despite vigorous follow up by the complainant as already highlighted.

In the circumstances, it has been proved that the complainant has posed trust on the bank, having custodian and trustee of hard earned money as well as documentations of the accountholders including the complainant. Unquestionably, the complainant has been deprived of his valuable documentation due to negligence of banking staff either of the prime bank or ABN Abro or Faysal Bank Ltd. In common parlance, the Complainant has been striving hard by making several applications/requests but nobody provide him remedy even a sigh of relief by the senior Management of the Bank. Unfortunately, the complainant has visited many time to the senior officers even walking from pillar to post but could not get any relief. When the complainant has assessed that he can attain essential documentations but only a Greek Calends, he tried his best to knock the door of all relevant forums for the civil proceedings. The irony of the fate is that the Faysal Bank Ltd. has miserably failed to perform its duties of the trustee and custodian of the sacred documentations of such clients including the complainant. Employees of Bank made hoodwink and mockery of the audit system and supervision through inspection and surprise checking through eagle's vigilance of the senior management of the Bank. The complainant has been deprived of his documentations without his fault. Thus, on principle of the vicarious liability, the Bank is responsible to make good of the loss of the complainant. It is fiduciary responsibility of the Bank to pay as per just, fair and lawful decision of the learned Banking Mohtasib and to supply essential documentations instead beating the complainant about the bushes through fakeup stories. The Bank Management is used to play fast and loose with the clients, just to save their own skin and to avoid impending vicarious liability. Such type of tendency by the senior management of a bank needs to be discouraged to safeguard/preserve the sacred relationship with the accountholder(s) which is based on sacred trust, that is precious than any material thing. Throwing dust in all concerned eyes through cock and bull story in not

appreciate-able rather the decision of the Bank have unimpeachable foundation stone. Without an iota of doubt, the representation of the Bank is liable to be set aside and the orders of the Banking Mohtasib are sustainable and unexceptional in the eyes of law. Needless to be mentioned that the representation has been filed by Bank repeating the contents of the pleadings already made before the learned Banking Mohtasib. Nothing turns on the same as it fails to answer the reasoning of learned Banking Mohtasib and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the Banking Mohtasib. Undoubtedly, Banking Mohtasib's decision is based on sound reasoning and supported by the prevailing law. Thus, the representation is devoid of any merits and is liable to be rejected. Banking Mohtasib impugned orders do not warrant any interference. Consequently Banking Mohtasib order is sustainable and unexceptional having no illegality.

34. Accordingly, the President has been pleased to reject representation of Faysal Bank Limited and orders of learned Banking Mohtasib are upheld. Compliance is to be reported to the Banking Mohtasib within 06 weeks of receipt of this order."

5. The jurisdiction and ambit of the Banking Mohtasib was recently deliberated at length by a learned Divisional Bench of this Court in the judgment dated 05.04.2019 in the case of *Muslim Commercial Bank Limited vs. Federation of Pakistan and others in CP D 905 of 2017* and connected matters ("**MCB**"), wherein this Court was pleased to uphold the jurisdiction of the Banking Mohtasib, subject to certain observations with regard to the ambit thereof. In the present matter it was never argued on behalf of the petitioner that there was no maladministration on its part. On the contrary the challenge was restricted to the issue of jurisdiction of the Banking Mohtasib to decide the said matter and render findings with respect to compensation. These questions have been elaborately addressed in *MCB* and the ratio thereof is binding upon us.

6. Section 82 of the Banking Companies Ordinance 1962 ("**BCO**") demarcates the role of the Banking Mohtasib and the power to entertain complaints is expressly contained in Section 82A(3) thereof. In view thereof the petitioner's argument, that the Banking Mohtasib could not entertain the complaint, is prima facie untenable. The learned counsel for the petitioner virtually conceded the maladministration on the part of the bank, thus, there was no cavil for a complaint in respect thereof to be filed before and be entertained by the Banking Ombudsman.

7. The issue of compensation is also addressed by the BCO itself as Section 82E thereof empowers the Banking Mohtasib in such regard. Adnan Iqbal Chaudhry, J has also delved into this issue in *MCB* and maintained that the Banking Mohtasib is seized of the requisite authority to issue directions with regard to compensation.

8. The jurisdiction and ambit of the Banking Mohtasib stands elaborated by a Division Bench of this Court in *MCB* and on the basis thereof the arguments of the petitioner, challenging such jurisdiction, are untenable. The ratio of *MCB* is applicable squarely in the present facts and circumstances and no argument has been led before us to distinguish the said authority. Furthermore, the learned counsel for the petitioner has been unable to point out any infirmity with respect to the procedure adopted by the respective fora culminating in the Mohtasib's Order and the President's Order. Conversely, the culpable act of the petitioner bank has not been denied.

9. In view of the reasoning and rational contained herein, we are of the view that the Mohtasib's Order and the President's Order have adequately addressed the issue there before and that no interference is merited therewith in the exercise of Constitutional jurisdiction of this Court. Therefore, the present petition, along with pending application/s, was dismissed vide our short order dated 29.05.2019. These are the reasons for our short order.

J U D G E

J U D G E

Karachi.

12<sup>th</sup> June 2019.

*Farooq PS/\**