

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
**Mr. Justice Muhammad Iqbal Kalhoro J.**  
**Justice Mrs. Kausar Sultana Hussain, J.**

C.P. No.D-6796 of 2021

Pakistan Microfinance Ltd. & others----- Petitioner

Versus

Federation of Pakistan & others ----- Respondents

Syed Ali Ahmed Zaidi, advocate for petitioners.  
Mr. Irfan Ahmed Memon, DAG a/w I.O. SI Sabeen  
Ghori, FIA.

**Date of hearing. 17.02.2022.**

**Date of order: 28.02.2022.**

**ORDER**

**MUHAMMAD IQBAL KALHORO J:** Petitioner No1 is a public limited company incorporated under the Companies Ordinance, 1984 (Ordinance, 1984) and is operating as a Microfinance Bank in the province of Sindh. Remaining petitioners No.2 to 4 are working as officials therein on different posts have filed this petition challenging jurisdiction of FIA, respondent No.2, to initiate enquiry No.25/2021 on a complaint lodged by one Abdul Waheed Qureshi alleging usurpation of 02 Tola gold mortgaged with the Bank by him against gold finance loan of Rs.56000/-.

2. The grounds cited by the petitioners in support of their case are that FIA has no jurisdiction to undertake an enquiry against petitioner No.1, being a Microfinance Bank, in terms of section 3 of Microfinance Institutions Ordinance 2001 (MIO, 2001) which excludes it explicitly from definition of banking company in the Banking Companies Ordinance 1962 (Ordinance, 1962), the State Bank of Pakistan Act, 1956 (Act, 1956) or any other law for the time being in force relating to banking companies; FIA's jurisdiction is limited to matters involving federal government and functions carried out in relation thereto; petitioners are not federal government and their functions fall out of pale of prescribed rules of

Federal Agency (Enquiries and Investigation Rules 2002); a mention of Microfinance Bank does not find place in FIA Act, 1974 and the schedule of offences attached thereto; under MIO, 2001, State Bank of Pakistan is regulatory body of Microfinance Banks and has been empowered to act against them should they commit any violation under the said Ordinance; Complainant Abdul Wahab had committed default in payment of installments, was issued notices and only after completion of all formalities, the gold mortgaged was auctioned off; action against the complainant was taken strictly in terms of loan agreement signed by him; no illegality was committed by the petitioners in doing so and the complainant has already approached the State Bank of Pakistan by filing a complaint against them, which is the only relevant forum to decide such issue; the proceedings in the enquiry against the petitioner amount to causing them harassment; are respecting a dispute between two private persons and the FIA has no jurisdiction over it.

3. Learned defense counsel has argued the case at length reiterating above facts and grounds and relying upon the case law reported in **2017 SCMR 1218, 2018 PLC (CS) 1264, 2011 YLR 337, 2020 CLD 359, 2018 P Cr. L J 1676, PLD 2020 Sindh 601, 2016 SCMR 447.**

4. Per contra, learned DAG has submitted that petitioners are governed under regulations of State Bank of Pakistan and are alleged to have usurped fraudulently gold of the complainant which is an offence u/s 409 PPC which FIA has jurisdiction to investigate upon.

5. We have considered contentions of the parties and perused material available on record including the case law cited in defence. Learned defence counsel has relied upon provisions of MIO, 2001 to say that FIA has no jurisdiction over the matter due in the main to the fact that petitioner No.1 is a Microfinance Bank. A perusal of relevant provisions reveals that under section 2 of the MIO, 2001, Microfinance Institution and Microfinance Bank have been identified separately under sub clauses (i) and (ia). Microfinance Institution is described as an institution which extends micro credit and allied services to poor through sources other than public savings and deposits; whereas Microfinance Bank has been

defined as an institution licensed by State Bank of Pakistan under MIO, 2001 to establish and operate as Microfinance Bank. In the petition, petitioner No.1 has claimed to be a public limited company incorporated under the Companies Ordinance, 1984 and operating as a Microfinance Bank and not the Microfinance Institution. Therefore, application of section 3 in the case of petitioners is not without a question.

6. Section 3 which learned counsel cited most to insist that it excludes petitioner No.1 from definition of the banking company as defined under the other laws and extends protection to it from certain adverse actions only speaks of Microfinance Institution and not of Microfinance Banks and *prima facie* weaves a cover against an action to be taken under MIO, 2001 only and not under other laws. In any case, subsection 1 of section 3 which precedes subsection 2 stipulating such protection clearly explains that provisions of MIO, 2001 shall be read in addition to, and, save as hereinafter provided, not in derogation of any other law for the time being in force. Further, in the entire MIO, 2001, nothing has been provided which may lead to a conclusion that this law has an overriding effect over other relevant laws dealing with the banking companies. So effectively, even in presence of section 3 of MIO, 2001, nothing could be read in favour of the petitioners, if in some other laws their particular actions or omissions are considered contraventions and therefore accountable.

7. A further perusal of MIO, 2001, fortifies the opinion that Microfinance Institution as an entity has been treated as separate and distinct from Microfinance Bank. For instance, section 4 states that no person other than a company shall be established as Microfinance Institution; and no microfinance institution shall commence or carry on business of taking deposits in it, unless and until it has been licensed in accordance with provisions of this Ordinance. Whereas, section 5 stipulates that no person other than a licensed Microfinance Bank shall use with its name the words "Microfinance Bank" or "MFB" or its derivatives or any words or letters which convey that it is a Microfinance Bank. Subsection 2 thereof further contemplates that any person or company which has not been licensed under the Ordinance as such or license granted has been cancelled acts in contravention of

provisions of MIO, 2001 shall be deemed to be guilty of a contravention punishable with imprisonment up-to 3 years or with fine of rupees one million or with both.

8. Functions and powers of Microfinance Institution have been explained in section 6, according to which Microfinance Institution is required to render assistance to micro enterprises and provide micro finance services in a sustainable manner to poor persons preferably poor women with a view to alleviating poverty. Under section 7 certain prohibitions and restrictions upon Microfinance Institution to undertake any of business other than the one authorized by or under this Ordinance have been put in place. Whereas, for Microfinance Banks, section 10 of the Ordinance stipulates that the State Bank of Pakistan shall have powers to prescribe paid-up capital requirements, and no Microfinance Bank shall operate unless it has a minimum paid-up capital prescribed as such. The difference between Microfinance Institution and Microfinance Bank, sought to be underscored here, is further accentuated by section 12 contemplating that any person performing functions of a non-deposit taking Microfinance Institution may make an application to the State Bank of Pakistan for issuance of a license to set up Microfinance Bank and the State Bank after satisfying itself of certain conditions (mentioned therein) may grant it a license to take deposits. For any other person wishing to obtain a license to establish any category of Microfinance Bank, criteria has been set up under section 13 of the MIO, 2001. Section 14 stipulates a formula in terms of which affairs of Microfinance Institution have to be administered by the Board of Directors (BoD), while palpably no such condition seems attached with Microfinance Bank.

9. From above discourse, taking into account provisions of MIO, 2001 cited in defense, it is somehow clear that scheme of this law is in addition to and is not in derogation of what has already been provided in other laws. Secondly, Microfinance Institution is a different entity than Microfinance Bank and it is only Microfinance Institution licensed under the Ordinance that has been taken out of definition of a banking company u/s 3 thereof and not Microfinance Bank for the purposes as defined thereunder

10. It may be emphasized here next that although the petitioner has claimed to be operating as Microfinance Bank but has not provided any document to show that it has been licensed by the State Bank of Pakistan to use with its name words “Microfinance Bank” as provided under section 5 of *ibid* law. Or that it has the prescribed paid-up capital as determined by the State Bank of Pakistan to operate as such as required u/s 10. Or that petitioner No.1 was a non-deposit taking Microfinance Institution and was permitted to function as Microfinance Bank after being so authorized in terms of section 12 of MIO, 2001. Or that it had directly applied for a license to establish Microfinance Bank under section 13 of the said law. Even the relevant information as to whether it is acting as a Microfinance Bank as defined under MIO, 2001 or a Microfinance Institution and is being managed by BoD or otherwise has not been set forth for our consideration.

11. We have also not come across any material indicating that petitioner has been functioning as “Microfinance Bank” under the license granted by the State Bank of Pakistan. *Save* an apparent profession in para 1 of the petition that it is a public limited company incorporated under the Companies Ordinance 1984 and is operating as a Microfinance Bank, nothing substantial has been placed on record. In view of this opaqueness with which this petition has been filed, and for want of necessary documents, we are not able to determine whether petitioner No.1 is a Microfinance Bank as defined in MIO, 2001 or not. Therefore, there is no reason available to us to infer that petitioners are subject to provisions of MIO, 2001, and not to other relevant laws, for their acts and omissions in their avowed capacity in the first place. And in the second place, even if we assume that petitioner No.1 is a Microfinance Bank, yet, in our humble view, it is not entitled to protection as available *prima facie* to a Microfinance Institution under section 3 of MIO, 2001, for, there is clearly no mention of Microfinance Bank therein which the said law has identified as a separate entity. But even if we stretch things beyond a normality and include petitioner No.1 within brackets of Microfinance Institution, still there is no reason to hold that the allegations

leveled against it by the complainant cannot be investigated by the FIA. It is because of obvious reasons that MIO, 2001 has no overriding effect on other laws, the alleged offence is not recognized as a contravention within its pale of jurisdiction so as to extend protection to the petitioners u/s 3 thereof, and lastly the allegations against them apparently constitute an offence u/s 409 PPC which is a scheduled offence under FIA, Act, 1974.

12. The contentions of learned defence counsel that in terms of sections 22 and 28 of MIO, 2001 only the State Bank of Pakistan is vested with the power to take action against the petitioner, in our view, is not sustainable either in the facts and circumstances of the case. Section 22 gives authority to the State Bank of Pakistan to issue directions to Microfinance Institution to conduct its affairs in a manner not detrimental to the interest of the depositors or in a manner prejudicial to the interest of Microfinance Institution. In terms of section 28 except upon a complaint in writing by an officer of the State Bank of Pakistan authorized in this behalf, it is provided, no Court shall take cognizance of an offence under MIO, 2001. Both the provisions talk of only certain procedure to be followed in the wake of some contraventions cognizable and punishable under MIO, 2001, and not the offence(s) defined in other laws including allegations of usurpation of gold, kept as a trust, fraudulently by an entity professing to be a Microfinance Bank, an offence u/s 409 PPC *prima facie* and provided in the schedule of the FIA Act, 1974. More so, the matter is still only at enquiry stage and nothing has materialized so far. The circumstances inducing the petitioners to auction the gold off, the default of the complainant, if any, to pay the loan, etc. have not been determined. Therefore, it is premature to presume that the procedure as provided in the relevant laws is not likely to be pursued in the case and that in any case this enquiry is going to be decided against the petitioners, so that there is a justification to nip it in the bud.

13. To the contention of learned defence counsel that FIA has no jurisdiction because petitioner No.1 is not the Federal Government and has nothing to do with any duty or work incidental or ancillary to any matter connected with it. It may be said that it has been admitted by the all appearing for the parties that the State Bank of Pakistan is the regulatory authority of petitioner No.1,

which even otherwise is evident in provisions of MIO, 2001. The State Bank of Pakistan is working under the Federal Government is not disputed either, and therefore any entity, in our view, claiming to be a financial institution etc. working under its supervision would be deemed to be functioning by implication under the Federal Government ultimately for all purposes and amenable to jurisdiction of FIA in case any cognizable offence which is a scheduled offence in terms of FIA, Act, 1974 is reported to it. We do not find therefore, even this contention forwarded by learned defense counsel helpful to the petitioners.

14. For foregoing discussion, the petition merits no consideration and is dismissed accordingly along with pending application with no order as to costs.

JUDGE

JUDGE

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