

# HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Misc: Civil Appeals No.S-11 and 12 of 2024  
[*United Bank Ltd vs. Dr.Farooque Adil Abbasi*]

Appellant by: Mr.Muhammad Siddique, Advocate

Respondent by: Mr.Herchand Kumar, Advocate

Dated of hearing: **31.01.2025**

Date of decision: **14.02.2025**

## **J U D G M E N T**

**ARBAB ALI HAKRO, J:** This judgment will dispose of both aforementioned appeals, as they involve common questions of law and facts.

2. In the appeals filed under Section 34 of the Sindh Consumer Protection Act, 2014 (the "**Act of 2014**"), two separate Orders dated 21.3.2024 (the "**impugned orders**") passed in Claim Nos. 11 and 07 of 2023 by the learned Presiding Officer, Consumer Protection Court, Jamshoro have been challenged. The appellant in both appeals is United Bank Ltd, Jamshoro Branch. The respondent (**Claimant**) lodged two separate claims against the Appellant-bank, alleging that he had been issued an ATM card as an account holder of the Appellant-bank. On 16.9.2023, he went to an ATM booth of Sindh Bank Ltd, Jamshoro, to withdraw cash. He inserted his ATM card into the machine's card slot and gave a command for Rs.6000/-. However, cash was not dispensed physically, though he received an SMS stating that Rs.6000/- had been debited from his account. Consequently, he approached the Appellant-bank to register his complaint. He was advised by the Operation Manager to register his complaint online, but attempts to contact the helpline number written on the ATM card were unsuccessful. Subsequently, on 06.10.2023, the Claimant served a legal notice upon the Appellant-bank via email. A few hours later, the amount was credited back to his account; however, the Appellant-bank did not respond to the legal notice nor provide compensation and damages. The Claimant further alleged that he suffered significant emotional distress and, therefore, filed Claim No. 11 of 2023. Under similar facts and circumstances, the Claimant also lodged another Claim No. 07/2023, wherein he alleged that on 17.6.2023, he used his ATM card at a booth of Sindh Bank, SUECHS Jamshoro Branch, and gave a command for Rs. 20,000/-. The amount was not disbursed physically but was debited from his account and credited/reversed back to his account on 27.6.2023.

3. The complaints/claims were adjudicated by the learned Presiding Officer of the Consumer Protection Court, Jamshoro, who accepted them and directed the Appellant-bank to compensate the Claimant by paying Rs.300,000/- in each claim for mental agony, inconvenience, and litigation charges through the impugned orders.

4. At the very outset, learned counsel representing the Appellant bank has not disputed the factual aspects of the case and has contended that Section 7(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("**FIO, 2001**"), excludes the jurisdiction of the Consumer Protection Court. Therefore, the claims of the Claimant do not fall under the Act of 2014. He has further argued that the Claimant is not a consumer of the Appellant-bank, therefore, is not entitled to lodge his claims as he is only a Customer/Account Holder of the Appellant-bank, as defined under Section 2(c) of the F.I.O, 2001. He also contends that the service of an ATM Card does not fall within the definition of "services" as provided under Section 2(q) of the Act of 2014. Finally, he concluded that the learned Consumer Protection Court has illegally and without jurisdiction entertained the claims of the Claimant, and thus, the impugned orders are liable to be set aside. In support of his contentions, he relied upon case law, which was reported in **2015 CLD 196, 2016 CLD 1546, and 2016 CLD 383.**

5. Conversely, learned counsel representing the Claimant argued that the learned Consumer Protection Court has rightly entertained the claims of the Claimant and awarded compensation as provided under Section 32 of the Act of 2014. He further contended that the Claimant had used the ATM card service provided by the Appellant-bank. However, due to their fault, he did not receive the cash, and the amount was reversed into his account after a delay of a couple of days. Consequently, he faced inconvenience and mental agony. He has relied upon case law reported as **PLD 2022 Sindh 430** to support his contentions.

6. I have meticulously considered the arguments proffered by the learned counsel for both parties and have assiduously scrutinized the material available on record, including the case law adduced at the bar.

7. The central legal issue posited by the learned counsel for the Appellant-bank revolves around the interpretation of Section 7(4) of the F.I.O, 2001 and its potential exclusion of the Consumer Protection Court's jurisdiction. This necessitates an adjudication on whether the Banking Court, as established under the F.I.O, 2001, possesses exclusive jurisdiction over disputes pertaining to the parties.

8. Pursuant to Section 2(a)(ii) of the F.I.O, 2001, the definition of a "Financial Institution" encompasses entities such as a Mudarba or Mudarba management company, investment bank, and similar entities. The term "customer" refers to an individual to whom finance has been extended by such a financial institution. Section 7(4) of the F.I.O, 2001, expressly stipulates that no court other than a banking court shall exercise jurisdiction over matters within the purview of the banking court as delineated by the Ordinance. In the present context, the Claimant holds the status of an Account Holder with the Appellant-bank and utilized the bank's ATM Card services. The Claimant's grievance arises from an incident where the ATM Card transaction failed to dispense the requested cash amount, which was nonetheless debited from the Claimant's account and subsequently reversed after a delay. The Claimant's claims thus hinge on the assertion that no finance facility was extended, and the dispute centres around the provision of banking services rather than a traditional financial arrangement.

9. Further clarification is required by examining the definitions provided in the Act of 2014. Section 2(e) defines a "**Consumer**" as a person or entity who buys or obtains on lease any product for consideration, including any user of such product, but not someone who obtains any product for resale or commercial purposes. It also includes anyone who hires any service for consideration and any beneficiary of such services. Section 2(n) defines "**Product**" with the same meaning as "**goods**" in the Sale of Goods Act, 1930, but excludes animals, plants, and natural products in their raw state. Section 2(q) defines "**Service**" as the provision of any kind of facilities, including communication and advisory services, but excludes services under a contract of service or those meant to deliver judgments by a court or arbitrator. Given these definitions, the Claimant, having availed the ATM Card service, falls under the category of "**Consumer**" as per Section 2(e), and the ATM Card service qualifies as a "**Service**" under Section 2(q) since it involves banking facilities. Consequently, the claim arguably falls within the jurisdiction of the Consumer Protection Court as per the Act of 2014, and the Banking Court's exclusive jurisdiction under Section 7(4) of the FIO, 2001, would not extend to this case because the Claimant did not obtain a financial facility but rather availed a banking service.

10. Addressing the contentions of the learned counsel for the Appellant-bank, Section 7(4) of the F.I.O, 2001, centralizes financial disputes within banking courts. However, the Claimant's issue with the ATM Card service falls under consumer rights as it involves a deficiency in

service and not a financial facility. The Claimant qualifies as a consumer under Section 2(e) of the Act of 2014, and the ATM Card service is a service under Section 2(q). Therefore, the Consumer Protection Court's jurisdiction is justified in entertaining the claims of the Claimant.

11. The contention that the Claimant is not a consumer is refuted by the fact that the Claimant availed himself of the ATM Card service, thereby categorizing him as a consumer under the Act. The definition of "customer" within the FIO, 2001, does not invalidate the broader definition of a consumer. Furthermore, the ATM Card service unequivocally falls within the purview of "services" defined under Section 2(q) of the Sindh Consumer Protection Act, 2014, affirming the Consumer Protection Court's jurisdiction. The case law cited by the counsel for the Appellant-bank does not diminish the Consumer Protection Court's jurisdiction, as the present case distinctly pertains to consumer rights and services. Consequently, the claims have been rightfully entertained by the Consumer Protection Court.

12. Reverting to the merits of the case, the Consumer Protection Court directed the Appellant-bank to compensate the Claimant with Rs.300,000/- for each claim for suffering mental agony, inconvenience, and litigation charges. In Claim No. 11/2023, the Claimant made a transaction of Rs.6,000/- on 16.9.2023, which was not physically received, and the amount was reversed after 20 days on 06.10.2023. In Claim No. 07/2023, the Claimant made a transaction of Rs.20,000/- on 17.6.2023, and the amount was reversed after 10 days on 27.6.2023. It is admitted that the amounts were reversed before filing the claims.

13. Section 13 of the Act of 2014 stipulates that a service provider is liable for damages proximately caused by the provision of services that resulted in harm. Section 14 asserts that the standard of service is regulated by special law or, in its absence, by the reasonable expectation of the consumer at the time in Pakistan. Section 15 indicates that if no tangible damages are suffered, the provider is only liable to return the consideration and associated costs. Section 32 of the Act empowers the Consumer Court to order various actions, including compensation for any loss due to negligence, awarding damages, and actual costs, including lawyer's fees. Given these provisions, the compensation for mental agony and inconvenience must be reasonable and proportionate to the actual harm experienced. The Claimant endured delays in the reversal of amounts (20 days for Rs.6,000/- and 10 days for Rs.20,000/-), but there is no evidence suggesting additional damages beyond the delay. Awarding Rs.300,000/- per claim appears excessive, considering the transaction

amounts and delay duration. Reasonable compensation should reflect the actual harm and inconvenience caused by the delay. A more appropriate compensation is Rs.10,000/- for Claim No. 11/2023 (Rs.6,000/- transaction with 20 days delay) and Rs.15,000/- for Claim No. 07/2023 (Rs.20,000/- transaction with 10 days delay). This compensation acknowledges the inconvenience caused by the delays without being disproportionate to the actual transaction amounts. Additionally, fixing actual litigation costs at Rs.20,000/- in each claim would cover the expenses incurred by the Claimant in pursuing the claims.

14. For the foregoing reasons, the suggested compensation aims to fairly address the inconvenience and mental agony experienced by the Claimant while ensuring it is proportional to the actual transaction amounts and delay duration. The compensation would be more reasonable and justifiable under the circumstances by awarding Rs.10,000/- and Rs.15,000/- for the respective claims, along with Rs.20,000/- in litigation costs for each claim. The Appellant-bank is directed to pay the above compensation to the Claimant within fifteen (15) days of the announcement of this judgment. In case of failure to comply, the Consumer Protection Court shall proceed against the Appellant-bank as provided under Section 33(2) of the Act of 2014. With this modification, the impugned orders of the Consumer Protection Court are hereby upheld, and consequently, both appeals stand disposed of accordingly.

**JUDGE**

Sajjad Ali Jessar