IN THE HIGH COURT OF SINDH AT KARACHI

Spl. H.C.A No. 135 of 2013

[Standard Chartered Bank (Pakistan) Limited Vs. Mr. Yawar Faruqui and another]

PRESENT:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

Appellant	:	Through Ijaz Ahmed Zahid, Advocate
Respondent No.1	:	Through Mr. Muhammad Haseeb Jamali, Adv.
Respondent - SBP	:	Through Syed Saad Bin Khurram, Advocate
Dates of Hearing	:	14.05.2025
Date of Announcement	:	22.08.2025

JUDGMENT

Muhammad Osman Ali Hadi, J: The instant Appeal arises from Judgment dated 30.09.2013 ("**the Impugned Judgment**") passed by the learned Single Judge in Banking Suit No. B-26 of 2007, whereby the learned Single Judge decreed the Suit of Respondent No.1 (Plaintiff in the said Banking Suit), and Respondent No.1 was awarded Rs.125,491/- (along with markup) as well as damages of Rs.5,000,000/- (Rs. Five Million Only with markup at the rate of 14% per annum).

2. The brief facts of the case are that the Respondent No. 1 was a customer of the Appellant Bank, hence the Appellant issued him a credit card in the year 1998 (as per their own assertion which is denied by Respondent No. 1), bearing number 4921 2400 0032 3006 (**"1st Card"**). As per the Appellant, the Respondent No. 1 reported his credit card stolen, and a new credit card bearing number 4921 2400 0088 4213 (**"2nd Card"**) was issued to him which was valid from July 2001 – May 2002. In between 4th – 8th July 2001 there were certain transactions conducted on the 1st Card (in Italy, which amounted to Rs.101,478.50/-). Respondent No.1 refuted the charges and stated that his credit card was lost / stolen during such time and the charges were not made by him, for which he had filed a complaint with the Appellant in July 2001.

3. The Appellant then conducted an investigation in 2001, stemming seven (7) uncertain transactions on the credit card, which were disputed by Respondent No. 1. After the investigation was concluded in the year 2001, 6 out of the 7 transactions were reversed in favour of Respondent No. 1. However, one transaction remained intact for the amount of Rs. 125,491/-. The Appellant (unknown to Respondent No. 1 at the time) also placed Respondent No. 1's name on Respondent No. 2 (SBP) CIB Defaulters List (for non-payment), labelling him as a defaulter.

4. Respondent No. 1 then submitted that towards the end of July 2006, he discovered two bank statements showing the Appellant had auto-debited his bank account for the sum of Rs.125,491/- on 26.04.2006. This was later found to have been done by the Appellant as a process of recovery, against what the Appellant termed as an 'unsubstantiated claim' for losses on the credit card transactions incurred in the year 2001.

5. Respondent No. 1 being aggrieved by the actions of the Appellant filed the Banking Suit for declaration, injunction, recovery and damages (from which the Impugned Judgment stems) claiming, *inter alia*, recovery and damages for adverse health conditions caused by distress resulting from the actions of the Appellant.

6. The matter was taken up and the Appellant's leave to defend application was allowed, after which the following (consent) issues were framed:

- Whether the Defendant arbitrarily and unlawfully had placed the Plaintiff's name on the data check defaulters list? If so, what is its effect?
- Whether the Plaintiff's personal account was unlawfully debited by the Defendant on 14.04.2006 for credit card payment? If so, what is its effect?
- Whether the Plaintiff is not liable for the alleged Rs.125,000.00 claimed by the Defendant as credit card payment?
- Whether the Plaintiff's fair name, reputation and health has suffered on account of the banking malpractice of the Defendant?
- Whether the Plaintiff has cause of action in the present suit and it entitled to the relief/damages claimed in the suit?
- What should the decree be?

7. Evidence was led by the parties, after which final arguments were heard and the Impugned Judgment was passed whereby the said Suit was decreed in favour of the Respondent No. 1 / Plaintiff, which included damages to the tune of Rs.5,000,000/- with an 18% mark-up. The Appellant being aggrieved by the Impugned Judgement, preferred the instant Appeal.

8. Arguments were commenced by learned Counsel for the Appellant. He opened his arguments by submitting his version of the facts, referring to several documents available on File. [1] He firstly contended that the claim of Respondent No. 1 appears to have been granted by the Trial Court on the basis of defamation of character, for which the stringent process provided under the applicable Defamation Ordinance 2002 was never followed. He further stated that under the laws of defamation, a six-month time period exists within which to issue the alleged offending party notice and file a claim, which was not done. Counsel for the Appellant then referred to provisions under the Defamation Ordinance 2002, particularly sections 5, 9, 11, 13, 10 & 12, for which he explained the compensation available under defamation law provides certain checks and balances, which were not fulfilled by Respondent No. 1. He respectfully submitted that the learned Single Judge ought to have considered the same before granting damages, which has resulted in a *per incuriam* judgment.

9. He further stated that as per Respondent No.1's own pleadings, his alleged stress and mental torture was discovered in the year 2001, but he did not file any suit until the year 2007. He has referred to articles 22, 24 & 25 of the Limitation Act 1908 which provide a one (1) year limitation period from when an injury is committed or when alleged defamation occurred. He further stated that even under Article 28 of the Limitation Act 1908, the limitation period is only one (1) year from the date of the distress, and that was also time barred. He therefore concluded that even in this regard, under the general laws of limitation, the claims put forth by Respondent No. 1 were time barred as the Suit was filed belatedly in the year 2007, whereas the alleged incident / cause of action occurred in the year 2001.

10. Learned Counsel for the Appellant added that the Respondent No. 2 cannot be sued, as they are excluded from defamation as a banking institution, and as such the Suit filed was void.

11. Learned Counsel for the Appellant next contended that the Banking Court could not have granted the damages, as he stated that there are only specific conditions under which a banking court is competent to award damages, which did not apply in the instant matter. He stated that the damages awarded by the Banking Court in the Impugned Judgement were under a claim of 'tort law', for which the Banking Court does not hold any jurisdiction. He submitted if the Respondent No. 1 had any such claim against the Appellant, the same could only have been done through a civil suit for damages and not through a banking suit.

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[1] Learned counsel referred to Page Nos.73, 93, 299, 309, 317, 321, 339, 341-351, 353, 355-363, 343, 23, 39, 343, 41, 443, 445, 55, 365, 59, 61, 29, 297, 313.

12. He continued that the evidence and documents provided by Respondent No. 1 are contradictory in nature and that Respondent No. 1 failed to provide any documentation to substantiate the medical (mental trauma, stress, heart problems etc.) injuries sustained by him, upon which the learned Single Judge has relied when granting damages. Counsel referred to an affidavit in evidence filed by Respondent No. 1,[2] as well as certain medical documents filed by Respondent No. 1,[3] for which he submitted that no medical practitioner report was produced, nor was any examination/ cross-examination conducted through any medical professional to verify the authenticity. He submitted it was incumbent upon the Trial Judge to first properly validate the Respondent No. 1's claim before granting any relief, which he states was not done, but that the learned Trial Court awarded damages without properly verifying the same.

13. He maintained that Respondent No. 1 had been using his credit card since the year 1998, with the 1st Credit Card (**"1st Card"**) bearing number 4921 2400 0032 3006 and was issued a 2nd Credit Card bearing number 4921 2400 0088 4213 in July 2001 (expiring in May 2002) (**"2nd Card"**), after the 1st Card was blocked due to reports of it being stolen. He stated Respondent No. 1 had failed to pay various credit card bills and was informed that a recovery process against him would be initiated if he didn't clear his outstanding dues.

14. Counsel then submitted that even under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance 2001 (**"FIO 2001"**) the Banking Court did not hold jurisdiction to adjudicate the matter and grant damages, as there was a clear absence of default in fulfilment of any financial obligation by the Appellant, which was *sine qua non* for bringing forward a banking suit.

15. In conclusion of his submissions, learned Counsel for the Appellant summarized that all-in-all, the Impugned Judgment has erred on the several legal grounds (highlighted above), and as such this Appeal ought to be allowed and the Impugned Judgement set aside. He submitted case law in support of his contentions.[4]

16. Learned Counsel for Respondent No. 1 controverted the submissions of the Appellant. He started out by referring to the fact that there were two separate credit cards which were issued by the Appellant, and pointed out that one ends with the number '4213' (**"2nd Card"**) whilst the other card ended with number '3006' (**"1st**

[2] At Page 299 of the File
[3] At Pages 323-335 of the File
[4] 2024 CLD 1536, 2009 CLD 49, 2009 CLD 432, 2007 CLD 457, 2006 CLD 167, 2003 CLD 856, 2018 CLD 1351, 2015 CLD 600, 2010 CLD 293, 2013 CLD 2005, 2016 CLD 2007, PLD 2006 SC 328, 2011 SCMR 743, 2012 CLD 453, 2013 CLD 981, 2017 YLR 397, 2017 CLC 311, 2016 CLC 1880, PLD 1987 SC 53, PLD 1966 (W.P.) Karachi 556, 1986 MLD 24, 2002 SCMR 1903, 2007 SCMR 1318, 2022 SCMR 1054, 2024 YLR 1227, 2024 YLR 1360, 2022 CLC 335, 2007 CLC 288, 1981 CLC 1055, 2009 SCMR 276, 2024 CLD 1536, 2006 MLD 907, 2001 MLD 1065 & 1992 CLC 1561.

Card"). He submitted Respondent No. 1 never had the 1st Card, and any claims by the Appellant based on the 1st Card cannot be attributed to Respondent No. 1. He submitted Respondent No. 1 was only issued the 2nd Card, and that too in the year 2000 (not in the year 1998 as alleged by the Appellant). He further referred to Para No. 8 (1)(3) of the Memo of Appeal, which he says substantiates his submissions regarding the credit card. He referred to Para No. 2 of the Plaint[5] and the Leave to Defend Application filed by the Appellant[6] in which he submitted that there was a candid admission by the Appellant corroborating that the said credit card was issued by the Appellant to Respondent No. 1.

17. He next referred to Respondent No. 1's bank statement[7] to illustrate the issue of wrongful charges on the credit card, which were resolved in favour of Respondent No. 1. He submitted these issues were resolved in the year 2001, but were later belatedly and unjustly reopened by the Appellant, without giving any notice to Respondent No. 1.

18. He referred to Page 91 of the File which held the signature of Respondent No. 1 on the plaint. He then cross-referenced the same with Pages 115-119, which were signatures on the disputed transactions, and highlighted that there appeared a clear distinction between the signature in the disputed credit card receipt and that of Respondent No. 1, showing that the credit card receipts were not signed by Respondent No. 1, and the signature on them forged. He contended that no questions regarding discrepancies in the signature were ever raised by the Appellant in their cross-examination, and therefore the same stood as accepted.

19. He next referred to the examination-in-chief and cross-examination[8] of an officer of the Appellant who stated that the date of the alleged investigation conducted by the Appellant was in the year 2002, whereas the auto-debit through which the Appellant withdrew funds from Respondent No. 1's bank account was in April of 2006. He submitted such belated action showed the ill intentions and *mala fide* on part of the Appellant.

20. Counsel then referred to the examination-in-chief and cross-examination of another officer for the Appellant,[9] which he said showed a clear admission by the Bank themself that there was a discrepancy between the amount allegedly claimed, versus the amount taken from Respondent No. 1. He reiterated that the auto-debit

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[5] At Page 77 of the File
[6] At Page 169 of the File
[7] At Page 111 of the File
[8] At Pages 405 - 409 of the File
[9] At Page 479 - 483 of the File

from Respondent No. 1's account was done belatedly, after a period of 4 years and 9 months, as per the Appellant's own admission.

21. He next highlighted the examination-in-chief and cross-examination of a third officer of the Appellant,[10] which he stated also showed a clear admission that the auto-debit was carried out extremely tardily, whereas the inquiry conducted by the Appellant was completed in the year 2001. Learned Counsel submitted that such delayed actions by the Appellant in withdrawing funds from Respondent No. 1's account without any prior warning or providing any chance to defend himself was unlawful.

22. Counsel then referred to several letters of the Appellant[11] in which he stated no figure of Rs.1,25,491/- (i.e. the amount taken from Respondent No. 1) was shown anywhere, but there were other discrepant figures being claimed by the Appellant. Counsel contended that this discrepancy in numbers shows that the Bank did not have any clear amount to claim against Respondent No. 1, but rather the Appellant was conjecturing up random claims.

23. Counsel submitted that the Appellant themself admitted to having conducted an inquiry against Respondent No. 1 in the year 2001, and the matter stood resolved then.

24. Counsel pointed to a letter dated 08.10.2005 issued by the Appellant which stated that they had conducted a re-investigation, and had unilaterally decided to overturn the previous findings concerning Respondent No. 1's reporting of the lost credit card. Learned Counsel submitted that this re-investigation was done without any prior notice, and that the same contradicts the Appellant's own evidence which shows the investigation was finalized in December 2001 and could not have been reopened.

25. Counsel then pointed to the Appellant's pleadings[12] in which he stated that there was an explanation and admission from the Appellant about unilaterally withdrawing funds from Respondent No. 1's bank account through auto-debit, without seeking prior approval. He further submitted that Para Nos. 11 & 14 of the Leave to Defend Application clearly show an admission to this. He contended that the auto-debit system can only be applicable upon instructions by the client, and that the said system is not there to be utilized by the bank against a customer, without first seeking their permission. He submitted that in essence, auto-debit was created for ease of making payments, which facility was awarded to a client, and the purpose of

[10] At Pages 489 - 491 of the File
[11] At Pages 125 – 129 of the File
[12] Para 4 of the Leave to Defend Application at Page 171 of the File

such auto-debit was not for a bank to arbitrarily withdraw funds from clients' accounts as had been done by the Appellant.

26. Learned Counsel referred to the Appellant's own terms & conditions[13] and referred to Clause 16[14] which holds that the Appellant's own terms provide for notices to first be issued to any card member before seeking a demand, which he submits was not done in the case of Respondent No. 1.

27. Counsel then referred to Clause 18 of the terms & conditions[15] which he says was relied upon by the Appellant against Respondent No. 1, as the said clause provides the Bank a right to set-off any amount against a card holder. He submitted that such clause is a lopsided clause, for which he referred to Black's Law Dictionary citing the said clause as a "*in terrorem*" clause, which is a threatening clause and is contrary to law, as no due process is followed and the principles of nature justice stand violated.

28. Referring to Para 10 of his Plaint,[16] he asserted that Respondent No. 1's name was added to the defaulters list (CIB) in the year 2001 by the Appellant. He pointed to the Appellant's response[17] which he stated shows that there was no denial by the Appellant in having placed Respondent No. 1's name on the defaulters list. He submitted that due to this, Respondent No. 1's credit rating suffered and he was unable to get further credit cards / finance facilities, causing him great distress.

29. He then showed a letter issued by Respondent No. 2[18] which stated that there was no legal requirement to place Respondent No. 1's name on the CIB, but he submitted the Appellant did the same purely out of maliciousness.

30. He pointed to Respondent No. 2's letter dated 06.11.2004[19] in which they directed that the disputed amount (between the Appellant and Respondent No. 1) should be reported as "amounts under dispute" and not "default". He stated that the Appellant had wrongfully placed Respondent No. 1 as defaulter, despite not having been required to do so, and only removed his name once Respondent No. 1 filed his Suit in June 2007.

31. He referenced a letter dated 01.05.2002 issued by Respondent No. 1[20] which he stated was a clear threat from the Appellant to Respondent No. 1. He submitted

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[13] At Page 231 of the File
[14] At Page 233
[15] At Page 235
[16] At Page 81 of the File
[17] At Pages 175-179 of the File
[18] Pg. 81 Part II of the File
[19] Pg. 191 of the File
[20] Pg. 125 of the File

that the Appellant did not hold any authority to issue such a threatening letter, and the same was done contrary to law.[21] Referring to Para No. 9,[22] he submitted the Appellant has accepted they can report the name of any person to the credit bureau agency when such person is defaulter, which he stated was an admission on part of the Appellant of having (wrongfully) referred to Respondent No. 1 as a defaulter.

32. Counsel next pointed to a letter dated 29.03.2006 issued by ABN-Amro Bank[23] refusing Respondent No. 1 a credit card. Counsel submitted that such refusal was due to the illegal actions of the Appellant by putting Respondent No. 1 on the CIB List as a defaulter.

33. Learned Counsel then addressed the submissions put forth by the Appellant, that Respondent No. 1 failed to provide proper evidence regarding his ill health. Counsel referred to Respondent No. 1's examination and cross examination[24], and stated that there was no challenge by the Appellant to the health / doctor certificates / test reports filed by Respondent No. 1,[25] and therefore the same were to be accepted as the truth.

34. He next contended that the Appellant is now trying to setup a new case which is beyond the issues and the pleadings, and the same is not permissible. He stated the claims of the Appellant under defamation were never pleaded earlier, nor was the same a part of the issues framed or the pleadings, and therefore cannot be considered now. He referred to Order II Rule 2 of the Code of Civil Procedure of 1908, along with Section 7 of Financial Institution (Recovery of Finances) Ordinance 2002, and Section 73 of the Contract Act 1872 in support of his contentions, as well as various case law.[26]

35. Learned Counsel for the Appellant whilst employing his right of rebuttal, countered the arguments put forth by Respondent No. 1. He submitted that the prayer clause in the Suit[27] fell beyond jurisdiction of the Banking Court and could not have been granted. He next reiterated his previous stance that the Suit was hit by limitation, against which Respondent No. 1 failed to provide any grounds for condonation.

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[21] In this regard he also referred to the Appellant's pleadings (at Pages 165-167 of the File)

[22] Pg. 175 of the File
[23] Page 135 of the File
[24] Available at Pages 391-397
[25] Available at Pages 323-335 and Pages 97-109 of the File
[26] 2010 SCMR 1883, 2008 SCMR 456, PLD 2016 SC 730, 2015 SCMR 1698, PLD 2012 SC 268, 2022 CLC 1397 Lahore, 2021 CLD 1112 Lahore, 2014 CLD 390 Lahore, PLD 1978 SC 242, 2013 SCMR 238, 2003 CLD 1612, PLD 2018 SC 828, 2013 SCMR 1493, 2017 SCMR 1696, PLD 1975 Karachi 358, 2005 SCMR 678, 2007 SCMR 330, 2023 SCMR 1319, 2023 SCMR 1189, PLD 2024 Sindh 279, 2022 PLC 188 Karachi, 2021 SCMR 1805, 1991 SCMR 2300, PLD 2024 Sindh 279 & 2023 MLD 846.
[27] Page 89 of the File

36. Counsel further referred to section 93-C Banking Companies Ordinance 1962, whereby he claimed the Appellant was legally protected from exchanging information with the Respondent No. 2, and no suit could have been brought nor could any damages be awarded against them in this regard.

37. He (again) referred to various documents on File, and stated that the 2nd Card cannot be denied by Respondent No. 1. He submitted that the 2nd Card was given as a replacement of the 1st Card, after the 1st Card was reported having been misused / stolen.

38. He further averred the Respondent No. 1 had a default history, and that the Respondent No. 1 was issued both the 1st and 2nd Cards, which he states was previously accepted by Respondent No. 1 (based on documents attached by the said Respondent No. 1 himself). He concluded by reiterating his initial arguments and stated the Impugned Judgement was erroneous and liable to be set-aside.

39. We have heard the extremely exhaustive arguments put forth by both the learned Counsels, and have perused the documents on File.

40. We shall first address the argument of the Appellant relating to the Suit being barred under the laws of limitation as well as per the Defamation Ordinance 2000 (**"2000 Ordinance"**), as the two points were argued interconnectedly. The plea raised by the Appellant pertaining to the law of defamation, and the process provided under the 2000 Ordinance not being followed are unfounded. Neither of these arguments were present in the Appellants' pleadings, nor were they taken by the Appellant at the trial stage. This appears an attempt by the Appellant to improve their case (post a judgement being passed against them) belatedly at the appellate stage, during oral arguments. Such new grounds cannot be taken verbally, particularly keeping in mind the Appellant had plenty of opportunity during the trial stage to raise the same, before the (consent) issues were framed. In the case of *Muhd. Yaqoob v Mst. Sardaran Bibi*[28] the Apex Court held:

> *"8. Arguments heard. Record perused. At the very outset, we have noticed that the written statement filed by the Appellant was completely silent with regard to essential details of the oral sale transaction. Further, there was no mention of the value at which the land was allegedly purchased by the Appellant. It is settled law that a party is not allowed to improve its case beyond what was originally setup in the pleadings."* (emphasis supplied).

41. In the case of *Sardar Muhd. Naseem Khan*[29] the Supreme Court held:

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[28] PLD 2020 SC 338
[29] 2015 SCMR 1698

> *"3. Heard. In election disputes, the petition (the election petition) and the reply thereto are the foundational documents, which are of utmost importance and significance. And undoubtedly for all intents and purposes these are akin to the pleadings of the parties in a purely civil litigation, which (pleadings) are structural in nature, whereupon the edifice of the case is rested. The election petition lays down the foundation of the claim of an election petitioner, whereas the written reply thereto of the respondent (returned candidate) is the underpinning of his defence. The importance of the pleadings and its legal value and significance can be evaluated and gauged from the fact that it is primarily on the basis thereupon that the issues are framed; though the pleadings by themselves are not the evidence of the case, the parties to a litigation have to lead the evidence strictly in line and in consonance thereof to prove their respective pleas. In other words, a party is bound by the averments made in its pleadings and is also precluded from leading evidence except precisely in terms thereof. A party cannot travel beyond the scope of its pleadings. It may be pertinent to mention here, that even if some evidence has been led by a party, which is beyond the scope of its pleadings, the Court shall exclude and ignore such evidence from consideration. Thus, it is clear that if any party to a lis wants to prove or disprove a case and some material has to be brought on the record as part of the evidence, which (evidence) otherwise is not covered by the pleadings, it shall be the duty of such party to first seek amendment of its pleadings."*

42. Bolstered and bound by precedents, we find the submissions put forth by the Appellant relating to the Suit allegedly being barred under laws of defamation and / or limitation during arguments in the Appeal to be untenable, and the said submissions are rejected accordingly.

43. The next argument put forth by the Appellant which we shall address relates to the jurisdictional power of the Banking Court to award damages for mental stress, health etc. due to the Appellants' actions in the instant case. In this regard, the Appellant has relied upon Section 9 of the Financial Institution (Recovery of Finances) Ordinance 2001 (**"FIO 2001"**), of which the relevant provisions are reproduced:

> ***"9. Procedure of Banking Courts.-***
>
> *(1) Where a customer or a financial institution commits a default in fulfillment of any obligation with regard to any finance, the financial institution or, as the case may be, the customer, may institute a suit in the Banking Court by presenting a plaint which shall be verified on oath, in the case of a financial institution by the Branch Manager or such other officer of the financial institution as may be duly authorized in this behalf by power of attorney or otherwise".* (emphasis supplied)
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> *(3) The plaint, in the case of a suit for recovery instituted by a financial institution, shall specifically state:*
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> *(a) the amount of finance availed by the defendant from the financial institution;*
>
> *(b) the amounts paid by the defendant to the financial institution and the dates of payment; and*

> *(c) the amount of finance and other amounts relating to the finance payable by the defendant to the financial institution upto the date of institution of the suit.*
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> *(4) The provisions of section 10 of the Code of Civil Procedure, 1908 (Act V of 1908), shall have no application for and in relation to suits filed hereunder.*

44. The Banking Jurisdiction created under FIO 2001 is a special jurisdiction, created for the specific purpose of dealing with financial obligations arising between a '*customer*' and a '*financial institution*'.[30]

45. Section 9 (*ibid.*) opens the gateway to this special jurisdiction conferred under the FIO 2001. It provides that any default in a payment arising out of a financial obligation may be adjudicated by filing of a suit under the jurisdiction of the Banking Court. Therefore, by process of elimination, this would discard any other matter from being heard by the Banking Court. ***Prayer Clause 'E'***[31] in the plaint shows Respondent No. 1 sought compensatory damages from the Appellant. The said Prayer Clause is reproduced below:

> *"E) Damages for Rupees One hundred million against the defendant No.1, with interest at 18%"*

46. *Damages* were granted by the learned Single Judge in the Impugned Judgement to the tune of Rs. 5,000,000/- (Rupees Five Million Only) plus markup at 14% per annum.[32] This was deliberated in the Impugned Judgement[33] and the said *damages* were awarded based on loss of reputation, mental stress, agony, heart condition etc. suffered by Respondent No. 1, as well as due to his name being placed by the Appellant on the CIB Defaulters List, on which he (i.e. Respondent No. 1) *inter alia* based his claims for damages. It appears clear however, that the basis on which such damages were awarded in the Impugned Judgement[34] were premised on tortious claims (as opposed to claims arising from a financial contractual obligation). The Impugned Judgement did not provide any nexus of a financial contractual obligation between the parties, due to which such damages were given. In the case of *Citi Bank N.A. v Syed Shahansha Hussain*[35] a learned Division Bench of this Court held:

> *"Now adverting to the argument of appellant's counsel that the Banking Court is not empowered under the Financial Institutions (Recovery of Finances) Ordinance, 2001 to award compensatory cost on account of personal injury, we do not agree with this argument as well. No doubt, the scope of section 3 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 is limited only to such suits where a default in the fulfilment of any obligation in relation to a finance has been committed but this does not mean that no claim at all for damages which is based on personal injury could be agitated before a Banking*

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[30] Defined in section 2 of the FIO 2001
[31] At Page 89 of the File
[32] At Page 61 of the File
[33] In Para Nos. 25 – 29 at Pages 55 – 61 of the File
[34] *Ibid.*
[35] 2009 CLD 1564

Court. A personal injury could arise on account of default in fulfilment of any obligation in relation to finance and an aggrieved party may claim damages as well. A claim for damages i.e. a claim for seeking pecuniary compensation is a relative term. Such a claim may arise on account of inquiry or loss caused by one to the other by commission of tort or by breach of a contractual obligation. The claim for damages caused on account of commission of tort or by breach of a contract which has nothing to do with the default in the fulfilment of an obligation arising from a financial facility and covered under the definition of "finance" as provided in section 2(d) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 obviously cannot be agitated before a Banking Court. However, a claim for damages, on account of any injury or loss caused by a Financial Institution to its customer, which has resulted from any default committed by the Financial Institution in the fulfilment of its obligation in relation to finance, can certainly be taken to the Banking Court for adjudication. Hence, a claim for pecuniary, compensation could either arise from a tortuous act i.e. not based on any contract or a breach of a contractual obligation not pertaining to a accommodation or facility of finance as defined under section 2(d) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and for these two categories of claims obviously the Banking Court is not the appropriate forum. However, a claim for pecuniary compensation could also arise on account of the failure of a Financial Institution to fulfil its obligation in relation to any financial accommodation or facility. It is this category of claim which certainly comes within the scope of section 9 of the Ordinance and a suit relating thereto is always maintainable before a Banking Court."

47. The *damages* of Rs. 5,000,000/- granted in the Impugned Judgement pursuant to Paryer Clause 'E' were on account of mental stress, agony etc. suffered by Respondent No. 1, which cannot be considered to have occurred out of any contractual or financial obligation between the parties. Whilst we find Respondent No. 1 may have the right to institute a claim against the Appellant for seeking such damages, they can only be awarded by a Civil Court of competent jurisdiction, and not by the Banking Court in its special jurisdiction, as was clearly held in the case of *Citi Bank N.A.* (ibid.), and by the Apex Court in the case of *Summit Bank v Qasim & Co*[36]; and further followed in the cases of *Muhd. Sadiq v Standard Chartered Bank*[37], *Citi Bank N.A. v Muhd Tasleem*[38] & *H.M.S. Khaga v Bank Al-Falah.*[39] We therefore remain bound by the precedents and the law, and therefore on this ground we find the Impugned Judgement has travelled beyond the scope of the Banking Court's jurisdiction. Accordingly, this part of the Impugned Judgement is set-aside. We however do hold that Respondent No. 1 remains at liberty to file any civil suit for damages etc. against the Appellant in a court of competent jurisdiction for seeking his claims of damages, in accordance with law.

[36] 2015 SCMR 1341
[37] 2025 CLD 1;
[38] 2024 CLD 1536
[39] 2023 CLD 1464

48. We next turn to the argument submitted by the Appellant, whereby he stated that under Section 93-C of the Banking Companies Ordinance 1962 (**"1962 Ordinance"**), the Suit was also barred. For purposes of ease, Section 93-C of the 1962 Ordinance reads:

> *"93C. Exchange of information.—(1) Banking companies may exchange on confidential basis amongst themselves, either directly or through any other person providing credit information services, information about their respective clients. (2) No suit or other legal proceeding shall lie against the any credit information provider or any banking company or any officer of the Pakistan such credit information providers or banking company for anything which is in good faith done in pursuance of this section or for any damage caused or likely to be caused by anything done or intended to be done as aforesaid."*

49. This section bars any suit for damages in connection with exchange of confidential information between banking companies. This claim by Respondent No. 1 seeking damages on account of his name being placed as a defaulter also does not arise out of any default of a financial contractual obligation between him and the Appellant. Since we have already opined (*ibid.*) unless there are damages stemming from default in contractual financial obligations between the parties, any damages based on tort (or a non-contractual basis) cannot be claimed through a court under the banking jurisdiction. Therefore, even this claim by Respondent No. 1 would have to be presented before an appropriate civil court having jurisdiction for adjudication, and hence we need not further deliberate on this matter.

50. However, we do hold that the Appellant was not without some fault and blame. The Appellant was negligent in their approach and dealing with this entire matter. The Appellant (through their own evidence) accepted they initially closed the investigation into Respondent No. 1's complaint in the year 2001, then unilaterally re-opened it and withdrew PKR 125,491/- from the Respondent No. 1 in the year 2006, i.e. five years post closing the investigation. This shows negligence and mismanagement on their part. The said amount was adjudicated by the Appellant themselves without giving the Respondent No. 1 any proper opportunity for hearing & rebutting the same. In the case of *Summit Bank v Qasim & Co.*[40] the Honourable Supreme Court held:

> *"13. Here it may be relevant to note that even under the law which provides for recovery through coercive process such as land revenue, determination of the amount due is an essential pre requisite. The bank cannot be conferred with judicial powers for determination of the amount due against its customer / borrower. The right / power to set-off would be available only where the amount claimed was due and is determined by a competent judicial forum",*

[40] 2015 SCMR 1341

51. The Appellant Bank ought to have followed due process and conducted a proper investigation and sought adjudication in accordance with law, rather than themself acting as the proverbial judge, jury and executioner in the matter, especially without affording Respondent No. 1 a proper and fair hearing. Such action of the Appellant additionally also violated the principles of natural justice.

52. The Appellant also failed to provide clarity regarding the distinction in the different credit card numbers raised by Respondent No. 1, and further failed to explain their extraordinary five-year delay in auto-debiting the Respondent No. 1's account belatedly in the year 2006, whilst the alleged disputed transactions occurred in the year 2001. Nor have the Appellant explained why the matter which was previously closed was reopened at all? This auto-debit of Respondent No. 1's bank account conducted by the Appellant would also no doubt have caused some loss to the Respondent No. 1, as his funds were withdrawn by the Appellant without permission,[41] which also would have automatically resulted in unjust enrichment for the Appellant Bank (which is unlawful).

53. We find the Appellant has also appeared to have placed Respondent No. 1's name on the CIB Defaulters List without notice or warning to the Respondent No. 1, which could have had serious repercussions for Respondent No. 1. These actions of the Appellant Bank do not find good standing with us, and in this regard we find the Appellant Bank acted in defiance to its legal obligations to Respondent No. 1 (who was admittedly a customer and credit card holder of the Appellant), and as such the Appellant remain blameworthy in this regard.

54. Furthermore, a contractual relationship between the Appellant and Respondent No. 1 also cannot be denied, as the Appellant themselves in their pleadings and arguments have relied upon various (contractual) terms and conditions in support of their contentions, particularly when arguing about alleged default committed by Respondent No. 1 in not paying his credit card bills, which established a contractual financial obligation between the parties. Hence, in this regard the invocation of the Banking Court to adjudicate the matter concerning credit card payment / dispute was correctly entered.

55. We therefore find no fault with the Impugned Judgement's findings regarding Prayer Clause 'D'[42] [43] for allowing recovery of the funds which we hold were wrongly auto-debited by the Appellant from Respondent No. 1's account without any

[41] It is relevant to mention it is the Appellant themselves who have held that a contractual relationship existed between the Appellant and Respondent No. 1, by relying upon various Terms & Conditions between the Parties.
[42] At Page 61 of the File, Para 30 (II)
[43] Explained in Para Nos. 23 & 24 of the Impugned Judgement

forewarning or permission, and without any proper due process being followed. We uphold the finding that the Appellant is liable to pay back Respondent No. 1 Rs. 125,491/- along with markup at the same rate charged by the Appellant from its customers, at the rate of 14% per annum. Though we vary the commencement date to be with effect from 26.04.2006[44] to 19.09.2012, along with markup at the stated rate until realization of the entire amount is received by Respondent No. 1.

56. Accordingly, this Appeal stands partially allowed and disposed of in the above terms.

JUDGE

JUDGE

[44] We have changed the commencement date from the Impugned Judgement which printed 25.04.2006, as the same may been a typographical error, since the date of default when the funds were withdrawn by the Appellant from Respondent No. 1 was 26.04.2006, as stated in the Replication at Para 18 Pg. 269 of the File