Form No: HCJD/C.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No.1857 of 2021

Meezan Bank Limited
Vs.
The President, Islamic Republic of Pakistan etc.

Petitioner by: **Malik Muhammad Siddique Awan, Advocate.**

Respondents by: **Malik Akhtar Shahzad, Advocate.**

Date of hearing: ***08.11.2021.***

AAMER FAROOQ, J.- The petitioner is a Banking Company incorporated under the laws of Pakistan and is aggrieved of the decision by respondents No.1 & 2 dated 21.12.2020 & 13.04.2020, respectively.

2. Respondent No.3 is customer of the petitioner bank. He filed a complaint before respondent No.2 alleging therein that she maintained a joint photo current account No.74010100813988 with Ahmed Pur East Branch of the petitioner bank in Bahawalpur. Her grievance was that during the period from June 29, 2018 till January 11, 2019 her account has been debited for an amount of Rs.336,450/- without her knowledge and consent. She also alleged that she did not receive any SMS alert for these transactions. The referred complaint was decided in favour of the complainant vide order dated 13.04.2020.

3. Representation was filed by the petitioner before respondent No.1 which was dismissed on 21.12.2020.

4. Learned counsel for the petitioner, *inter alia*, contended that unjust and partial orders have been passed by respondents No.1 & 2; that in light of the decision in case reported as ***United Bank Limited v. Federation of Pakistan and others*** **(PLD 2018 Lahore 322)** respondent No.2 has no jurisdiction in the matter; that the claim of the customer is not *bona fide;* that most of the transactions were made on 3D secure website against One Time Password (OPT) which was sent by the petitioner bank each time on her registered cell number and some transactions were made through her ATM, as such, the petitioner bank cannot be held responsible in these circumstances.

5. Learned counsel for respondent No.3, *inter alia*, submitted that due to lapse and negligence of the petitioner she lost a sum of Rs.336,450/- and the impugned orders do not suffer from any illegality or jurisdictional error.

6. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

7. Under Section 82A of the Banking Companies Ordinance, 1962 (the Ordinance) Office of Banking Mohtasib was created to settle primarily disputes between customers and the banks. The jurisdiction/ powers of the Banking

Mohtisab are provided in Section 82B (5) of the Ordinance. For the ease of convenience the relevant provision of law is reproduced below:

82B. Terms and conditions of the Banking Mohtasib.—

……..

(5) The Banking Mohtasib shall exercise his powers and authority in the following manner:-

(a) In relation to all banks operating in Pakistan.— The Banking Mohtasib shall be authorised to entertain complaints of the nature set out herein below:-

(i) failure to act in accordance with banking laws and regulations including policy directives or guidelines issued by the State bank from time to time.

Provided that if there is a dispute as to the proper interpretation of any regulations, directions or guidelines, the same shall be referred to the State Bank for clarification.

(ii) delays or fraud in relation to the payment or collection of cheques, drafts or other banking instruments or the transfer of funds;

(iii)fraudulent or unauthorised withdrawals or debit entries in accounts;

(iv) complaints from exporters or importers relating to banking services and obligations including letter of credits;

(v) complaints from holders of foreign currency accounts, whether maintained by residents or non-residents;

(vi)complaints relating to remittances to or from abroad;

(vii)complaints relating to mark-up or interest rates based on the ground of a violation of an agreement or of State Bank directives; and

(viii) complaints relating to the payment of utility bills.

> *(b) In relation to banks in the public sector.— The Banking Mohtasib shall be authorized to entertain complaints against such banks on the following additional grounds as well—*
>
> *(i) corrupt or malafide practices by bank officers;*
> *(ii) gross dereliction of duty in dealing with customers; and*
> *(iii) inordinate delays in taking decisions;*
>
> *(c) The Banking Mohtasib shall not entertain any complaint or application which has already been disposed of by the State Bank, or any court in Pakistan*."

8. The examination of the above provision shows that complaints in case of failure to follow any directives or guidelines by the State Bank of Pakistan and/or any fraud or unauthorized transaction from the account of person (account holder) can be entertained. The procedure which is to be followed by the Banking Mohtisab while deciding the complaints is provided under Section 82D *ibid*. Under subsection (3) of Section 82D the Banking Mohtisab may adopt any procedure as it considers appropriate in the facts and circumstances; however, an opportunity of hearing has to be provided to the banking company. In the referred backdrop the complainant had made a complaint with respect to unauthorized transaction in the sum of Rs.336,450/- from his account. The reason which prevailed with respondents No.1 & 2 is the failure to comply with the directives of the State Bank of Pakistan and the relevant Regulations. The petitioner bank

was provided ample opportunity to rebut the assertions of the complainant which were on affidavit. Cogent evidence had to be brought on record to do the needful. During the course of arguments reliance was placed on the case titled ***United Bank Limited v. Federation of Pakistan and others*** **(PLD 2018 Lahore 322)** and it was submitted that respondent No.2 has no jurisdiction in the matter; however, I fail to bring myself with the said argument inasmuch as the quasi-judicial body has been created by the legislature for resolving the disputes, the reverence is to be accorded to the will of the legislature and the same provision of law under which the powers are granted are not in violation of the provisions of the Constitution of the Islamic Republic of Pakistan, 1973.

9. The instant petition is in nature of *certiorari* seeking setting aside of orders passed by Banking Mohtasib and the President of Pakistan. The petitioner in order to succeed had to show that the orders impugned suffer from patent illegality or jurisdictional defect. No argument was put forward by learned counsel for the petitioner to the effect (except for reliance on PLD 2018 Lahore 322 *supra*). Even otherwise examination of record also does not divulge any error of law or jurisdiction. The questions of facts cannot be raised in a petition for *certiorari* nor adjudicated upon unless leading to error of law or jurisdiction which, as noted above, is not the case in the instant matter.

10. For what has been stated above, the instant petition is without merit and is accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Announced in open Court on the 7th day of February 2022

JUDGE

M.Naveed