

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Rep.No.79/BM/2022
Date of Decision:25.01.2023

Askari Bank Ltd VS Zaffar Ahmed Malik

Subject: REPRESENTATION FILED BY ASKARI BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 01.03.2022 IN COMPLAINT NO. 2021-3898

Kindly refer to your representation on the above subject addressed to the President in the background mentioned below:-

This representation has been filed by Askari Bank Ltd on 31.03.2022 against the order of the learned Banking Mohtasib dated 01.03.2022, whereby it has been held that:

“In view of above facts and observations I under the powers vested in me vide Section 82D / read with Section 9 of the Federal Ombudsman Institutional Reform Act 2013, direct the Bank to proceed as per para No. 15 above and update e-CIB record and issue an "NOC" to Complainant accordingly. The process should be completed within 45 days from date of receipt of the order.”

2. Mr. Zaffar Ahmed Malik (the complainant) has been maintaining an account with the Bank's Peoples Colony Branch Samanabad, Faisalabad. Reportedly, he received a call from the Bank's representative, who threatened him of dire consequences for non-payment of outstanding dues of his Credit Card in November 2020. He again received a call from the same person in December 2020 informing him that there were dues outstanding against his Credit Card which he was required to be paid. Admittedly, Rs.30,000/- were outstanding dues against his Credit Card and reportedly he paid Rs. 18,000/- as final payment in the Bank's Recovery Office on the advice of Recovery Officer in 2010 or 2012. Subsequently, he had applied for No Objection Certificate which was not issued to him. Further, he had not been received any letter or information from the Bank for payment of outstanding dues if any since 2012. Conversely, the Bank put his name on the portal of e-CIB as defaulter. Thus, he approached the learned Banking Mohtasib for redressal of his grievances.

3. The Bank stance before the learned Banking Mohtasib was that the complainant's account had been in default since November 2011 and Rs 39,086.81 were outstanding against his Credit Card. Since then, the account was allocated to different Recovery Officers, but they were unable to locate his whereabouts as he had left his registered address and reportedly shifted to Islamabad. Legal Notices were also served on 07-11-2017 and 16-11-2018 on his Faisalabad address. As he did not provide his updated particulars due to which the Bank was unable to locate him. However, after considerable long period, he attended call of the Recovery Department and in response, informed that a settlement was effected with the Bank's staff for payment of outstanding dues, but he did not provide any supporting documents in this regard.

4. Considering the respective stances, the learned Banking Mohtasib proceeded to pass the above mentioned order, which is assailed by the Bank.

5. The hearing of the case was fixed for 20.12.2022, however, none of the parties was present. The case was adjourned and refixed for 03.01.2023. Today, 03.01.2023 Mr. Muhammad Asif has represented the Bank, whereas, Mr. Zafar Ahmed Malik complainant himself has appeared.

6. The learned Banking Mohtasib thrashed the matter vide Paras 13 to 15 of the order as follows:-

“13. The complainant made last repayment on 12-09-2007 of Rs 2,500/-. From the period year 2007 till November 2020, a time period of almost 13 years, the Bank could not produce any record to substantiate their efforts for recovery of the amount from the complainant. In absence of proof of service of the legal notices and credit card bills sent to complainant, it cannot be ascertained that these were actually delivered to the complainant.

14. The representative of Bank has informed during hearing (para No.7) that it is AKBL's policy that legal suit shall not be filed where outstanding amount is Rs.50,000/- or less. In the instant case the outstanding as per Bank's calculation is Rs. 39,086.81 (para No.3 above). Therefore, Bank has no intention as per their policy to file any law suit for recovery. Even otherwise the case is time barred and Bank has no legal recourse. Further the Bank due to their own negligence failed to recover the outstanding dues earlier when sufficient balance was available in complainant's account for a considerable period of time.

15. In the above circumstance, it is prudent for the Bank to accept complainant's offer of Rs 5,000/- as full and final settlement.”

These are findings arrived at on duly consideration of the record and no cavil could be found with such an approach to the matter.

7. The contention of the petitioner Bank is that the learned Banking Mohtasib is precluded from exercising judicial powers in such like matters on the strength of the judgment in UBL vs Federation of Pakistan 2018 CLD 1152. Suffice it to observe that this matter is already subjudice before the Honourable Supreme Court of Pakistan in view of conflict of opinions about this issue, inter se, the various High Courts of the country and whatever will be the decision by the Apex Court, the same will hold the field. Be that as it may there is no restraining order of the Honourable Supreme Court of Pakistan for non entertaining the complaints by the learned Banking Mohtasib who is thus dealing with such matters in accordance with the law.

8. The ambit and extent of jurisdiction of Banking Mohtasib is spelt out under Section 82A(3)(a)(e), Section 82B (4)(5) and Section 82F of the Banking Companies Ordinance, 1962. The cumulative reading and perusal of these provisions of law undoubtedly leads to the conclusion that the Banking Mohtasib is to inquire into the complaints about banking malpractices, maladministration, wrong doings, the fraudulent transactions, the corrupt and malafide practices by the Bank officials and pass appropriate orders on conclusion of inquiry. These powers of the Banking Mohtasib when considered in context with Sections 18 and 24 of the Federal Ombudsmen Institutional Reforms Act, 2013 further show that in matters falling within the jurisdiction of the Banking Mohtasib, the jurisdiction of other courts or authorities is excluded; and the provisions of Act 2013 have the prevalence.

9. The Bank was given ample opportunity to controvert the claim of the complainant and the findings of the learned Banking Mohtasib, the Bank, however, failed to discharge the burden and statutory liability cast upon it under the law. Hence, no justification has been made to interfere with the order of the learned Banking Mohtasib. The Representation of the Bank is devoid of any merit and deserves to be rejected.

10. The Bank has filed the instant representation against the learned Banking Mohtasib's decision involving a mere disputed credit card outstanding recovery of Rs.39086.81. Conversely, the learned Banking Mohtasib has directed the Bank to accept the complainant's offer of Rs.5000/- as full and final settlement. On a query that why did the Bank not file a legal Suit for recovery of outstanding dues despite lapse of such a long period. The Bank's Representative has apprised that as per Bank's Policy, a legal Suit is not filed where outstanding amount is less than Rs.50,000/-. This fact has also been acknowledged by the learned Banking Mohtasib vide para 17 of the order. **However, the Bank has adamantly filed frivolous representation wasting its resources and time as well as Banking Mohtasib Pakistan and Office of the Head of State. In such circumstances, the Hon'able President has imposed a cost/fine of Rs.10,000/- payable to the complainant upon the Bank for making such a frivolous representation. Thus, the representation is liable to be disposed of accordingly by modifying the order of the learned Banking Mohtasib.**

11. Accordingly, the Hon'ble President, as per his decision above, has been pleased to dispose of the representation of the Bank.

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(Anwar-ul-Haq)
Director General (Legal)

The President/Chief Executive,
Askari Bank Ltd,
Head office at 3rd Floor, NPT Building,
F-8 Markaz, Islamabad.

Mr. Zaffar Ahmed Malik,
S/o Malik Muhammad Rafique Ahmad,
27/C, Peoples Colony, Faisalabad. 0321.6677827

Copy for information to:

1. Ms. Samreen Tanveer, PSO to Banking Mohtasib Pakistan, Banking Mohtasib Pakistan Secretariat, 5th Floor Shaheen Complex, M.R. Kiyani Road, Karachi.
2. The Chief Executive, Askari Bank Ltd, AWT Plaza, The Mall, Rawalpindi.
3. Master file.

-Sd-

(Anwar-ul-Haq)
Director General (Legal)