

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

Rep.No.85/BM/2022
Date of Decision:06.01.2023

United Bank Ltd VS Mr. Muhammad Shahid Sani

Subject: **REPRESENTATION FILED BY UNITED BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 15.03.2022 IN COMPLAINT NO. 2021-12952**

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

This representation has been filed by United Bank Ltd dated 09.04.2022 against the order of the learned Banking Mohtasib dated 15.03.2022, whereby it has been held that:

“For the reasons, mentioned above, I, under the powers vested in me under Section 82D of BCO, 1962 read with Section 9 of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013, allow the complaint and direct UBL, to pay/credit the Complainant's account with Rs.20,000/- and report compliance within 30 days from the date of issue of this order”.

2. Mr. Muhammad Shahid Sani (the complainant) has been maintaining an account with the Bank's Iqbal Road Branch, Vehari. Reportedly, he made an attempt to withdraw cash of Rs. 20,000/- from ATM of the Bank's Club Road Branch, Vehari on 02-10-2021 but cash was not dispensed while his account was debited with such amount. Although, he lodged a complaint next day of disputed transaction on the Bank's Helpline followed by submitting Dispute Settlement Form dated 03-10-2021 but his complaint was declined by the Bank summarily vide letter dated 07-10-2021. Thus, he escalated his complaint with the learned Banking Mohtasib for redressal of his grievance.

3. The Bank submitted copies of some documents only to the learned Banking Mohtasib. The Host Report provided by the Bank showed that the complainant's transaction of Rs.20,000/- dated 02.10.2021 made at 20:22:54 was approved. Thereafter, he made a balance enquiry on the same day, which was also approved. However, the Bank had neither provided EJ Roll of both those transactions nor snapshots and CCTV footage, the Bank had simply mentioned that same were not available without stating reasons for non-availability of those vital evidences although the Bank declined the matter on the basis of primary evidence of EJ Roll.

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 Mr. Umair Ahmad, District Operation Manager has represented the Bank, whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

6. The learned Banking Mohtasib thrashed the matter vide Paras 10 to 13 of the order as follows:-

“10. UBL failed to provide its Investigation Report and requisite information/documents to BMP office despite follow-up and given opportunity during hearing as well. Therefore, relying on Section 82 F(c) of the Banking Companies Ordinance, 1962 it is inferred that Bank has no base to substantiate their stance.

11. The Bank has failed to follow the directive given by SBP, vide its PSD Circular No. 1 dated 6th April, 2006 to settle the complaint on the basis of secondary evidence which reads as under:

“It is recommended that banks install external camera/cameras in ATM cabins/rooms within three months from the date of issue of this circular to have secondary evidence against cash claim to satisfy customer....”

12. The Bank has also failed to comply with SBP instructions issued vide CPD Circular No. 1 dated 29th February, 2016 para 1.12 which reads as under:

“Record keeping: For record keeping relating to complaints, banks are required to follow instructions contained in Prudential Regulations. Where CCTV footage is considered part of circumstantial evidence, it must be retained at least for two months. For complaints escalated to Courts, all the related evidences should be retained till the final decision.”

and instructions issued PSD Circular No. 5 dated 10th June, 2016 Section 5(d) 1.12 that:

“CSPs shall maintain completed visual records of all ATM transactions for a period of one year.”

13. In view of above, UBL could not satisfy its customer /complainant as well as to this forum in respect of this complaint and has also rendered its non-compliant with SBP directives. Therefore, grievance of the complainant merits consideration.”

These are findings arrived at on due 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 loss of money to the complainant has occurred due to the reason that the Bank’s facility of EFT was made operational without his request / consent. Had this channel not been opened by the Bank the accountholder would have avoided this financial loss. Further, the Bank could not produce any document / evidence to the effect that they had complied with the provisions of law, rules and regulations discussed supra.

9. 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.

10. 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.

11. The Bank has preferred the instant representation against the learned Banking Mohtasib's decision involving a mere amount of Rs.20,000/- only. The Bank has adamantly filed frivolous representation wasting its resources and time as well of the Banking Mohtasib Pakistan and the office of the Head of State. In the such circumstances, it may be appropriate that a fine of Rs.20,000/- is imposed upon the Bank for making such a frivolous representation with directions to pay to the complainant alongwith his defrauded amount.

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

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

The President/Chief Executive,
United Bank Limited,
Head Office at State Life Building,
I.I Chundrigar Road, **Karachi**

Mr. Muhammad Shahid Sani,
S/o Mr. Zahid Pervaiz, c/o Rehmat Bashir Oil Traders,
Popular Market, near PSO Depot, Multan Road, **Vehari**

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) Master file.

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