

IN THE HIGH COURT OF SINDH, KARACHI**C.P No. D- 1081 of 2026**

Bank Alfalah Limited V. President of Pakistan & others

Present:
Mr. Justice Yousuf Ali Sayeed,
Mr. Justice Muhammad Osman Ali Hadi

Date of hearing: 11.03.2026.

Date of decision: 11.03.2026.

Petitioner: Through Mr. Muhammad Hassan Arif,
Advocate**ORDER**

Muhammad Osman Ali Hadi, J: The Petitioner has filed the instant Petition against Order dated 29.12.2025 passed by Respondent No.1 (“**the Impugned Order**”), whereby the Representation made by the Petitioner against Order dated 08.10.2024 passed by Respondent No. 2 (i.e. the Banking Mohtasib) was dismissed.

2. Learned counsel for the Petitioner has submitted that the Petitioner is one of the largest private banks in Pakistan, against whom a claim by Respondent No. 3 (before the Respondent No. 2) was filed, stemming from misappropriation of funds due to his (joint) account being hacked.

3. Learned counsel contended that the said complaint was decided against the Petitioner (in favour of Respondent No. 3) by Respondent No. 2, through Order dated 08.10.2024 (1st Order). The 1st Order was then upheld by Respondent No. 1, when they (i.e. Respondent No. 1) dismissed the Representation Application filed by the Petitioner (vide the Impugned Order).

4. The premise of the Petitioner’s case appears to be that due to certain misreadings by both the forums below, i.e., the

Respondents No. 1 & 2, the matter was not properly adjudicated. Counsel's contentions are that the Respondent No. 3 had failed to fulfil the requirement of evidence to prove their case, and therefore the decisions rendered by the Respondents No. 1 & 2 were incorrect, as (per learned Counsel) the said Impugned Order(s) could not have been passed in favour of the Respondent No. 3.

5. Since it is trite law that factual disputes cannot be adjudicated in constitutional petitions, we inquired as to how we (whilst being mindful of exercising our Constitutional Jurisdiction) could delve into the factual aspects of the matter (which were already deliberated in the forums below by Respondents No. 1 & 2 respectively)? At this point Counsel altered his stance and stated he would argue the matter on the legal grounds and not on factual aspects.

6. Counsel then submitted that under section 41 of the Payment Systems and Electronic Fund Transfers Act 2007 (“**PSEFT Act 2007**”), the burden of proof required was not discharged by Respondent No. 3 before the forums below, and as such a violation of this section of the PSEFT Act 2007 had been committed, which (according to counsel) provides the Petitioner a sufficient legal basis to maintain the instant Petition.

7. We confronted learned counsel as to whether this issue of violations of section 41 of the PSEFT Act 2007 was pleaded in their Memo of Petition, to which he answered in the negative. He did however attempt to justify this by responding that since the Petitioner has included the proviso to adopt further additional arguments at the time of hearing in his Memo of Petition, he is able to raise this point concerning section 41 of the PSEFT Act 2007 at this stage. In support of his contentions, he has relied on a judgement passed by a Single Bench of the Lahore High Court reported as **2025 CLD 834**.

8. We find the arguments put forth by the Petitioner to be untenable. The only legal argument that has been put forth by the Petitioner has been in relation to section 41 of the PSEFT Act 2007, which also was not pleaded in their Memo of Petition. This leads us to believe the Petitioner took this stance as a last-gasp effort at the time of arguments, after they were confronted about the lack of maintainability of the instant Petition. Nevertheless, this argument had never appeared to form any part of their Petition, nor was submitted as any ground to challenge the Impugned Order. In any event, we find even this argument of the Petitioner to be weak and without any legal footing. Firstly, it is not for the Petitioner to determine whether the levels of evidence required by the forums below have been met (else there would be no requirement for adjudication by the concerned forums); and secondly, the Petitioner has not shown any illegality with the proceedings. And since we cannot reappraise the evidence under the Constitutional Jurisdiction (nor is there any need to in the instant matter), this argument put forth by the Petitioner remains unconvincing. Furthermore, Para 6 of the Impugned Order (passed by Respondent No. 1) and Para 9 of 1st Order (passed by Respondent No. 2) have both addressed the issue of Section 41 of the PSEFT Act 2007. Additionally, we do not find any assistance in the case law cited by learned counsel to the matter at hand, as that case would have been premised on its own particular set of facts and circumstances.¹

9. Our Courts have repeatedly expressed that the High Court cannot substitute its own findings for the findings of the forum(s) below (for which reliance can be placed on the Supreme Court case of *Syed Mazhar Hussain Shah v Member Board of Revenue*).²

10. The Petitioner has remained unsuccessful in demonstrating any illegality committed by the Respondents No. 1 or 2, or that

¹ Nor does the cited caselaw hold a binding power upon us

² 2006 SCMR 959

there was any lack of jurisdiction on their part to adjudicate the matter. As remarked in the preceding Para, it is not for this Court to substitute its own findings for the conclusion arrived at by the forum(s) below, simply because this Court may perhaps bend to a different view. In order to initiate such change, this Court would have to reach the conclusion that the Petitioner has been able to establish some gross illegitimacy committed by the forum(s) below, failing which, a petition cannot interfere with orders from forums below. This unfortunate trend of constitutional petitions being filed in lieu of appeals / revisions is vehemently misguided, as the former ought not to be considered a substitute for the latter. This principle has been long embedded in our jurisprudential history. In the case of *Muhtd. Husain Munir*,³ the Hon'ble Supreme Court when considering the Constitutional (Writ) Jurisdiction of this Court, opined:

“However, that may be, it is wholly wrong to consider that the above Constitutional provision was designed to empower the High Court to interfere with the decision of a Court or tribunal of inferior jurisdiction merely because in its opinion the decision is wrong. In that case, it would make the High Court's jurisdiction indistinguishable from that exercisable in a full-fledged appeal, which plainly is not the intention of the Constitution-makers”.

11. We further observe that in matters such as this, where a remedy is available (i.e. before the Banking Mohtasib), against which there exists at least one statutory further forum of appeal / revision / review, is self-sufficient and requires no interference. The mere absence of any second appeal or revision does not automatically qualify the invocation of the Constitutional Jurisdiction of this Court under article 199 of the Constitution of the Islamic Republic of Pakistan 1973. It is the wisdom of the legislature of allowing a single appeal / revision / review vide statute; and for the courts to substitute the same by allowing

³ PLD 1974 SC 139

constitutional petitions to pose as a second appeal / revision, would be tantamount to overriding legislation, by providing an extra added appellate forum (which has been deliberately avoided in the statute), which of course is impermissible.

12. In conclusion thereof, the Petitioner utilized their statutory remedy against the 1st Order passed by Respondent No. 2 by filing a Representation under the Banking Companies Ordinance 1962 before Respondent No. 1. They never challenged the jurisdiction below, nor have they been able to show any legal infirmity with the Impugned Order. Moreover, in the Memo of Petition, the Petitioner has not provided any cogent grounds for challenging the concurrent findings against them by the forums below. All things considered, the Petitioner has failed to establish the prerequisites for filing of this Petition. Consequently, since no constitutional violation was demonstrated, the instant Constitutional Petition was dismissed.

13. Due to the aforesaid, the instant Petition was dismissed vide our short Order, and above are the reasons thereof.

Petition dismissed.

Judge

Judge

Ayaz