

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D 2819 of 2016 : Faysal Bank Limited vs.
Banking Mohtasib & Others

CP D 7326 of 2018 : Ayesha Anwar vs.
Banking Mohtasib & Others

Advocates for the parties : Mr. Kashif Hanif, Advocate
(for the petitioner in CP D 2819
of 2016 & for respondent no.2 in
CP D 7326 of 2018)

: Mr. Malik Naeem Iqbal & Mr.
Khurram Memon, Advocates
(for the petitioner in CP D 7326
of 2018 and for the respondent
no.2 in CP D 2819 of 2016)

: Mr. Abdul Razzaq, Advocate for
the respondent no.1 (Banking
Mohtasib) in both the petitions

: Mr. Manzoor-ul-Haq, Advocate
for the Respondent no.3 (SBP)
in CP D 7326 of 2018

: Mr. Kafeel Ahmed Abbasi
Deputy Attorney General

Date of hearing : 29.05.2019

Date of Announcement : 26.06.2019

JUDGMENT

Agha Faisal, J: The present petitions pertain to the grievance of a 62 year old lady, who had opened a bank account in which she had deposited her savings. The said funds were allegedly misappropriated from her account, thus, she moved a complaint before the Banking Mohtasib Pakistan. The said complaint was decided in her favour, and against the bank, and the same fate befell the proceedings before the President whereat the bank had challenged the order rendered there against. CP D 2819 of 2016 was filed by the bank assailing the jurisdiction of the Banking Mohtasib to entertain and determine the complaint filed there before and CP D 7236 of 2018 was filed by the

complainant seeking implementation of the concurrent orders passed in her favour. Since the subject petitions involve the same controversy and were heard conjunctively, therefore, they shall be determined vide this common judgment.

2. Mr. Naeem Iqbal, Advocate represented the complainant, petitioner in CP D 7236 of 2018, and submitted that she had opened an account with Faysal Bank Limited ("**Bank**"), being the respondent no.2 in CP D 7326 of 2018 and petitioner in CP D 2819 of 2016, in 2011. Learned counsel submitted that a couple of days after opening the account she had proceeded to the United States in order to attend to her child, being a special child requiring constant care. Learned counsel stressed that no cheque book or ATM card was ever received by the said petitioner prior to her departure from Pakistan. Learned counsel submitted that in addition to the initial deposit a subsequent deposit was also made into her account, thus, the aggregate amount available in her account amounted to Rs.32,080,000/-. However, it transpired that almost the entire amount had been misappropriated from her account leaving behind a balance of Rs.200/- only. Learned counsel submitted that the petitioner filed a complaint with the Banking Mohtasib Pakistan and vide order dated 15.02.2016 ("**Mohtasib's Order**") the complaint was decided in favour of the petitioner and against the Bank and the Bank was directed to pay the complainant the misappropriated sum along with profit, at the rate declared by the Bank on PLS saving deposit, from the date of withdrawals till the amount was refunded to the complainant. It was further submitted that the Bank assailed the Mohtasib's Order before the President, however, the President was pleased to uphold the Mohtasib's Order vide its order dated 01.06.2016 ("**President's Order**"). Learned counsel submitted that despite two concurrent findings having been rendered against the Bank, it failed to discharge its obligation. Learned counsel submitted that it is imperative that the Constitutional jurisdiction of this Court be exercised in favour of the aggrieved, who is demonstrably the petitioner as she has lost her lifesavings and is running from pillar to post to seek justice.

3. Mr. Kashif Hanif, Advocate appeared on behalf of the Bank, being the petitioner in CP D 2819 of 2016 and the respondent no.2 in CP D

7326 of 2018. It was submitted that the Banking Mohtasib, being a quasi-judicial forum, was not empowered to entertain the complaint and render binding findings in respect thereof. It was further contended that the said forum did not have the jurisdiction to determine vicarious liability and/or the quantum thereof and also that without leading of evidence any such exercise was even otherwise dissonant with the law. Learned counsel submitted that the Bank, in any event, was not amenable to the writ jurisdiction of this Court and that this Court was not the executing authority for orders passed by quasi-judicial fora. In conclusion, it was submitted that since the office of the Banking Mohtasib was devoid of jurisdiction to entertain the complaint, therefore, the proceedings and the orders passed thereupon and any confirmation thereafter were contrary to the law, hence, void.

4. Mr. Abdul Razzaq, Advocate for the respondent no.1 submitted written arguments and supported the Mohtasib's Order. Learned counsel drew attention to specific segments of the Mohtasib's Order to demonstrate that the points for determination were discussed by the learned Banking Mohtasib in elaborate detail and the findings were arrived at after due consideration of all the facts and circumstances. Learned counsel also referred to case law including a recent Division Bench Judgment of this Court dated 05.04.2019 in the case of *Muslim Commercial Bank Limited vs. Federation of Pakistan & Others (CP D 905 of 2017)* and connected matters ("**MCB**") wherein the jurisdiction and ambit of the Banking Mohtasib were definitively delineated and submitted that in view thereof the objections of the Bank with regard to the jurisdiction of the Banking Mohtasib stand answered and repelled.

5. Mr. Manzoorul Haq, Advocate represented the respondent 3, SBP, and submitted that there was no cavil to the jurisdiction of the Banking Mohtasib and further submitted that the relevant law empowered the Banking Mohtasib to implement its own orders. Mr. Kafeel Ahmed Abbasi, learned Deputy Attorney General, also argued in favor of the Banking Mohtasib's jurisdiction and reiterated that the matter was duly covered by the earlier Division Bench judgment of this Court in *MCB*.

6. We have heard the respective learned counsel and have also considered the documentation and authority to which our surveillance was solicited. The Bank has challenged the jurisdiction of the Banking Mohtasib, whereas the complainant seeks implementation of the concurrent orders subsisting in her favour. Prior to proceeding with the two issues we deem it appropriate to reproduce the relevant findings of the Mohtasib's Order and the President's Order respectively:

Mohtasib's Order

"I have carefully examined Bank's Investigation Report related original documents produced by FIA including those furnished during the course of investigation or hearing. The meticulous perusal of all the documents and evidences lead me to an irrefutable fact that entire activity of withdrawals of complainant's funds from her account took place at the time while she was evidently not present in Pakistan. On 18th May, 2011, the fateful day, she was in Barcelona (Spain) after leaving Pakistan only few minutes after the close of the day of 17th May, 2011. The saddening part of the grievance of the lady complainant is regarding the funds entrusted to the Bank on 17th May, 2011 immediately after opening her Account on May 16, 2011, started vanishing from her Bank account only after lapse of one day i.e. 17th May, 2011, the date on which the funds were genuinely transferred by the Lady in her newly opened account. Responding to this pertinent point of fact, the Bank in its written and verbal stance had made out a case to explain that it only happened because of lady Complainant's Power of Attorney duly signed by her and handing over thereof to her attorney Syed Dawood Shah; shown next of the kin in Account Opening Form. The Bank claimed the Power of Attorney being genuine, allowed Syed Dawood Shah to act as her Attorney accepted the change in mandate, accepted his request for issuance of Cheque book, handed over to him a Cheque Book and subsequently entertained all cheques issued by him until the account was exhausted all in good faith and without any negligence. However, after receipt of the Complainant about unmandated withdrawals the bank reached and sent her signatures available on the said Power of Attorney for Forensic Examination, obtained the said report dated 22.04.2015 concluding that the signatures of the Lady Complainant over the questioned Power of Attorney are genuine.

The examination of the signature of the Lady Complainant available on Power of Attorney were however found at a great variance when compared with the signature on mandate form and Account Opening Form. In order to dispel our impression about variance of signatures, her fresh signature were also obtained during the hearing in presence of Bank Officers which exercise instead of dispelling our adverse impression rather re-confirmed our adverse impression owing to visible difference, mismatch and evident variance initially and spontaneously noticeable. In view of above newly emerged factual position, the conclusion drawn in the report of the Forensic Expert unfortunately appeared to be conflictory and contradictory as repeated scrutiny exposed more visible difference in two signatures. More significantly the Bank did not produce the Forensic Expert during the hearing of necessary cross examination. Therefore, in absence of forensic Expert, the visible variations noted and serialized hereinafter could not be further discussed. The questioned signature and specimen signatures are reproduced and recorded here under for sake of immediate perusal and scrutiny by authorities or any one of the parties to this case as and when it is so required....

The examination of aforementioned disputed and genuine signatures indicates Basic Variations and important handwriting characteristics as the disputed signatures contained inherent characteristic of imitation.

- i. The line quality of genuine signature is similar and superior in quality whereas the line quality of questioned signature is typically inferior which is quite common and consistent with an act of limitation.
- ii. The pen pressure of specimen signatures are identical in contrast to the pen pressure of the questioned signatures.

- iii. The flow of the specimen signature is regular, fluent with natural tapering as against the questioned signature which are apparently drawn with slower fluency, regularity and without natural tapering.
- iv. The formation of signature in circles appears identical in all specimen signature whereas in the questioned signature it is dis-similar in formation of circles.
- v. The dotting style and their position is peculiarly different in specimen signature and in questioned signature.

There are many other variations which are avoided for the sake of brevity. The purpose of giving list of variations was to show that the report of the Bank's Forensic Expert is of no assistance to me and cannot be relied upon to draw a fair and reasonable conclusion. In the given set of facts, leads to examine both the signature to decide as to whether the questioned signature are genuine or otherwise in light of the decision of Sindh High court in the case of Ansar Ahmad Vs. Bank of America (PLD 1975 Karachi 252)....

Moreover, Handwriting Expert opinion under Section 67 of Evidence Act presently Article 78 Qanun-e-Shahadat is weak type of evidence and much reliance cannot be placed on such evidence unless supported by document PLD 1984 Quetta 11; NLR 1984 Cri 505. Opinion of Handwriting Expert is only corroborative nature, not safe to base conviction (1969 P. Cr. L.J. 596) (1969 P. Cr. L.J. 1328). It is, therefore, merely an opinion and the decision as to whether the instrument is forged or not is that of the Adjudicating authority only although he may if he chooses find assistance from the opinion. In light of my scrutiny of specimen signature and questioned signature and in absence of the Expert for cross examination, I have no hesitation to hold that the questioned signature on Power of Attorney are fake.

In addition to above drawn conclusion, it is equally important to dilate upon the central document i.e. Power of Attorney itself as the fate of the entire case hinges upon this document and is vehemently relied and contested by the Bank. A copy of the questioned Power of Attorney has been scanned and reproduced as under:

- a) The power of Attorney comprised of two stamp papers bearing Nos.0012957 and 0012990 of Rs.100/- each issued by Stamp Vendor Mr. Muhammad Anwar on August 25, 2010 i.e. 261 days before the opening of the account on May 11, 2011 leading to the change of mandate on May 18, 2011 while the Lad Complainant was out of country.
- b) It was issued in the name of Zafar Alam Advocate.
- c) The Power of Attorney is witnessed by Muhammad Syar CNIC No.42201-938457-14 and Mr. Farooque Ahmed CNIC No.42301-5823157. Both the CNIC numbers are not verifiable through NADRA Verisys.
- d) The Power of Attorney is attested by one Mr. S.A. Hashmi bearing his stamp but without mentioning the date of attestation.
- e) The verification of signatures in the Power of Attorney at page 1 and 2 has been verified by the Branch Manager through his signature made with pencil.

The number available on two (2) pages are un-serialized which indicates are un-serialized which indicates a serious abnormality. The signature of the Customer, available on Power of Attorney, has already been proved as fake. The witnesses are also fake being not verifiable from NADRA record. the CNIC number of one of the witness Mr. Muhammad Sayar ends with Even number 4 which is allotted to 'Females', whereas Muhammad Sayar appears to be a 'Male'. The query raised in this regard during the hearing was not replied but a meaningful silence was prepared. The attesting Notary Public Mr. S.A. Hashmi is reportedly not available having left the country. The Stamp paper has been sold to Mr. Zafar Alam, Advocate, who is reportedly available but no finding in investigation report has been given by the Bank. The finding of the Bank on the role of Mr. Zafar Alam was inevitably necessary especially when this document had not been purchased in the name of concerned parties. To another query as to how and why the Bank failed to notice the anomalous date of issuance of the Stamp Paper, issued 261 days prior to opening of account, that too by a unconcerned person remained un-explained as complete silence then was preferred and allowed to prevail for reasons best known to the Bank. All these facts led me to the conclusion that none of the facts indicated in the Power of Attorney could be put to scrutiny on verification to prove its genuineness. The story did not end here but it went on and on when it was observed that the bank failed to follow its own Standard Operating Procedure (SOP) for incorporation of Mandate. The Bank has quoted the required SOP which is of interest and relevance to

the facts of the case which also needs to be reproduced for the sake of reference and clarity....

In the light of Sop we find no vetting having been done by Legal and Compliance Wing of the Bank. The Branch did not ensure but failed to ensure that the mandate is signed by the Principal. We raised the question of screening of the mandate by the Bank under NCTO procedure and we wanted to look into a document as to how and who made the screening and forwarded the same to CPU - AMU at Lahore for incorporation but the Bank could not provide those documents to prove that proper compliance of SOP was followed. Therefore, in absence of those documents, I have no option but to take an adverse view against the acceptance of mandate without following the laid down SOP.

Having pointed out the above serious lapses, I could also find an indication in the Bank's investigation report that "Power of Attorney Bank's receiving stamp date affixed as 18th May, 2011 and forwarded to Lahore CPU - AMU for incorporation in the account on 18th May, 2011 and which had been received at Lahore CPU - The Mail Lahore on 23rd May, 2011.

In light of Bank's own admission when the very document was received in Lahore on May 23, 2011 for necessary incorporation of the mandate then how withdrawals were allowed before incorporation of the mandate which was yet to be incorporated by their Office at Lahore, after its due processing as per SOP. To my surprise from 18th to 23rd May, 2011, when document were received by Lahore Office on 23rd May, 2011 and incorporation of mandate was yet to be processed, the Bank unprudently allowed unlawful withdrawal of Rs.21,951,421/- through twelve (12) transactions as per Lady Complainant's bank statement.

We also failed to understand as to how the instruments of withdrawals i.e. Cheque Books were illegally handed over to Dawood Shah when he was not formally incorporated mandate and relevant papers were undergoing the process of incorporation and he was not yet holding a proper/formal/incorporated mandate as per SOP of the Bank.

From the above analysis it is sufficiently clear that a well thought out fraud was perpetuated on an innocent Lady Complainant in connivance with the concerned officials of the Bank, using despicable modes and methods in gross violation of Banking Law, procedure and policies leaving nothing but unpleasant test, with an exemplary misconduct, malfunction and negligence fraught carelessness and connivance of bank's own staff. Although the learned Advocate of bank indicated towards connivance of Lady Complainant with the Mandate but I regret to note that he could not strengthen his own statement with a shred of evidence to show that how the Lady complainant benefited out of the withdrawn funds by the so called mandate. The argument of learned Advocate being devoid of any substance thus merits to be rejected, which now stands rejected accordingly.

Since all withdrawals were made in consequence of acceptance of a forged Power of Attorney proven to be fake, the withdrawals made on the strength of the said Power of Attorney are also legal without the authority or mandate of the Lady Complainant, which are restored in her favour accordingly.

Order

Having regard to foregoing facts and circumstances, under the powers vested in me vide Section 82 D of the BCO read with Section 9 of the Federal Ombudsmen Institutional Reforms Act, 2013 I hereby accept the Complaint held the Bank vicariously liable for the loss sustained by the complainant due to wrongful acts of its employees and direct the Bank to forthwith pay the Complainant a net sum of Rs.32,080,000/- alongwith profit at the rate declared by the Bank on PLS Saving Deposit from the date withdrawals were made from her account till the date amount is refunded to the Complainant."

President's Order

"10. It is an admitted position that the complainant has opened account on 16.05.2011 and that name of Mr. Dawood Shah is nowhere mentioned in the Account Opening Form that he will operate the account but the mode of operation was single. The complainant only was entitled to operate the account. She has mentioned the name of her husband as her next of kin. She has not authorized to anyone to operate

her account. The stance of the bank that the complainant had executed Power of Attorney in favour of Mr. Dawood Shah giving him mandate to operate her account and also put her signatures on Mandate Form and presented to Bank Manager on 17.05.2011, is not convincing and plausible explanation for the reason that had the holder intended to give mandate to anyone to operate her account, she would have mentioned the same in Bank Account Opening Form one day before i.e. 16.05.2011 instead of bothering to prepare power of Attorney and again visiting the Bank the very next day i.e. 17.05.2011 and submitting the same to the Bank manager. The stance of the bank is further falsified as the date of presentation of Power of Attorney is mentioned as 18.05.2011 and 17.11.2015.

11. It is also established on record that the said Power of attorney was allegedly witnessed by Mr. Muhammad Sayar CNI No.42201-9384571-4, resident of Karachi and Mr. Farooque Ahmed, CNIC No.42301-5823157, resident of Karachi. However, neither names of fathers of two witnesses nor their addresses have been mentioned. During the proceedings before the banking Mohtasib the authentication of these ID Cards were made from NADRA and according to report of NADRA these ID Cards were not issued to Mr. Muhammad Sayar and Mr. Farooque Ahmed respectively. It has been established that both the witnesses mentioned in the Power of Attorney are not genuine persons. Moreover, stamp papers used for the said Power of Attorney valuing Rs.100/- each bearing No.0012960 and No.0012957 have been issued on 25.08.2010 by Muhammad Anwar Stamp Vendor, Karachi, whereas the account was opened after more than eight months in May, 2011 but the Bank staff failed to take notice of the same.

12. It is also found that the complainant has not only denied execution of Power of Attorney and putting of signatures on the said Power of Attorney as well as on Mandate which also disclose date of presentation or executing as 18.05.2011 when the complainant was not in Pakistan and had already left the country. The only documents i.e. Power of Attorney and Mandate, which are being relied upon by the Bank for allowing Mr. Dawood Shah to operate the account and withdraw the amount, but the genuineness of the same was not proved. Moreover, the Power of Attorney giving mandate to Mr. Dawood Shah to operate the account of the complainant was forwarded by the Bank Manager, Mr. Haider Ali Raujani on 18.05.2011 which was received on 23.05.2011 to Faysal bank, Head Office Lahore, whereas the transactions on the basis of the said Power of Attorney and mandate were allowed on the same day i.e. 18.05.2011.

13. Clauses ix and x of the Sop for Incorporation of mandate in the Accounts read:

“ix. Branch will retain the copies of the above documents (if required) and courier the originals to CPU for capturing the Mandatee details in the system.

x. Upon receipt of the Mandate and relevant documents, Assistant manager CPU/supervisor will scrutinize the same for completeness. In case of any discrepancy, the same will be communicated to branch via email for rectification. Documents will not be returned if the discrepancy can be rectified without returning the documents.”

14. This being the position, the action of branch staff of the Bank to allow the transaction by Mandatee even before the scrutinizing the Power of Attorney and Mandatee for completeness is in violation of the SOP as if the transactions is to be allowed the provision for scrutinizing the completeness become redundant. Further, the Cheque list forwarded by the Bank manager to Head Office was entered by the Client contact person/relationship manager Mr. Kashif Hussain Naqvi and branch Manager, Mr. Haider Ali Raujani as supervisor of Client contact person. The whole exercise becomes futile when the operation of account is allowed to Mandatee without sending the said document to Lahore for scrutinizing the completeness of the same. the Bank has also issued Cheque Book and ATM Card to Mr. Dawood Shah and he was allowed to operate the account on the basis of signatures of the complainant on Power of Attorney and even before issuance of Cheque Book the transactions have been allowed to Mr. Dawood Shah, who on the very first day i.e. 18.05.2011 withdrew an amount of Rs.30 lacs. Thereafter two more transactions of Rs.50 lacs each on the very next day i.e. 19.05.2011, which were credited to the account, speaks a lot about connivance of the Branch Manager, who subsequently allowed to withdraw the whole amount leaving the balance of only Rs.200/- without any verification and without any due care and caution. Audit of the Bank has also not checked this operation till visit of the complainant to the Branch to check balance of her account in 2015.

15. It is also on record that a criminal case has been got registered with FIA under sections 409/420/468/471/477-A/34/109 of Pakistan Penal Code against the

then Bank Manager- Mr. Haider Ali Raujani and Mr. Dawood Shah. In order to further cement the fraud Mr. Dawood Shah persuaded the bank Manager who needed opening of new accounts by the account holders to show his efficiency. A joint account was opened on 29.10.2012 by the complainant and her husband Mr. Anwar Rehman, when they stayed for few days in Pakistan. Though they signed the Account Opening Form but did not deposit any amount in the said account. This fact also clarifies that the bank Manager – Mr. Haider Ali Raujani was fully in league with Mr. Dawood Shah who later on operated the said joint account and both of them deceived the complainant with huge amount by preparing forged documents.

16. the findings of the Banking Mohtasib are based on cogent reasons, which are supported by documentary evidence and the banking Mohtasib has rightly decided the case and there was no need to produce any evidence when the documents are itself sufficient. The complainant has trusted the bank and deposited huge amount in her account. In case the bank is absolved of its responsibility due to fraud committed by its employees in league with private persons the whole system of banking in the society will collapse as the same is based on trust. It is responsibility of bank management to evolve its efficient system to have a check on any fraud and to formulate SOP for checking the abnormal transactions, which in present day of modern technology is not impossible, so that its employees may not commit fraud with the account holders of the bank.

17. In the circumstances, the Bank is responsible to make good of the loss by making payment of the amount to the complainant. It has rightly been held by the Banking Mohtasib as the Bank Manager was appointed by the Bank and amount was deposited in the Bank and the findings of the Banking Mohasib are based on evidence and sustainable. No case is made out for interference. the representation of the bank merits rejection.

18. Accordingly, the President has been pleased to reject the representation of the Bank/Faysal Bank Limited.”

7. We now proceed to address the issue of jurisdiction of the Banking Mohtasib to entertain complaints. The statutory sanction for the role of the Banking Mohtasib is contained in section 82 of the Banking Companies Ordinance, 1962 (“**BCO**”) and section 82 thereof contains an exhaustive delimitation of the jurisdiction and the ambit thereof. An earlier Division Bench of this Court was seized of a similar matter in the case of *Soneri Bank vs. Pakland Corporation Private Limited & Others (High Court Appeal 51 of 2013)* and vide judgment dated 26.09.2013 the Court was pleased to hold that if any funds from the bank account of a depositor have been fraudulently taken away on account of negligence or collusion of the functionaries of the bank, the law clearly provides the forum to agitate the matter and the said forum is the Banking Mohtasib. *MCB* is a recent pronouncement of another Division Bench of this Court wherein this Court has extensively considered the jurisdiction of the Banking Mohtasib and upheld the same while defining the ambit thereof.

8. The issue of vicarious liability of a bank, for the acts of its employees, was considered in *MCB* and it was held that the argument that the Bank was not vicariously liable for the fraud of its employee, and the argument that the Banking Mohtasib did not have jurisdiction to hold the bank vicariously liable, are both misconceived. The Division Bench

maintained that it is settled law that the employer's vicarious liability extends also to the fraudulent acts of its employee/s if the fraud was perpetuated in the course of employment, and then it does not matter whether the fraud was for the employer's benefit or for the employee's own. It was further held that the very remedy provided to a complainant against a bank before the Banking Mohtasib is predicated upon the principle of vicarious liability.

9. It has also been recognized in *MCB* that while the Banking Mohtasib remains empowered to record evidence there is no compulsion to do the same in each and every complaint. It was held that "The Banking Mohtasib shall have the power and responsibility to receive evidence on affidavit" in clause (c) of sub-section (4) of section 82B of the BCO is not to say that that the Banking Mohtasib shall decide each complaint after the formal recording of evidence. It was further maintained that if leading of evidence would be construed as a mandatory requirement then the consequence thereof would be to convert the summary nature of proceedings before the Banking Mohtasib to a trial, even in cases where the record produced before the Mohtasib is sufficient to hold maladministration. In the present case it is prima facie borne from the Mohtasib's Order that the culpability was manifest from the admitted facts and documents arrayed before the learned Banking Mohtasib.

10. In view of the foregoing it is apparent that the jurisdiction of the Banking Mohtasib to entertain, proceed with and decide with complaints has been maintained by successive Divisional Bench judgments of this Court, the ratio whereof is squarely applicable to the facts and circumstances herein and is also binding upon us. It is thus concluded that the learned counsel for the Bank has been unable to distinguish the authority cited hereinabove and has also remained unable to point out any infirmity in the Mohtasib's Order and/or President Order, hence, no interference is merited therewith.

11. The next issue to consider is that of enforcement of the orders referred to hereinabove. The Federal Ombudsmen Institutional Reforms Act, 2013 ("**FOIRA**") provides the Banking Mohtasib with the power to

implement its own orders. The relevant constituent of the FOIRA is section 10 thereof which is reproduced herein below:

“10. Powers of Ombudsman.—In addition to powers exercised by Ombudsman under the relevant legislation, he shall also have following powers of a civil court, namely:

- (i) Granting temporary injunction; and
- (ii) Implementation of the recommendations, orders or decisions.”

The powers conferred under Section 10 of the FOIRA are specifically applicable to the Banking Mohtasib as the said forum is included in the definition of the relevant legislation contained in section 2(c) of FOIRA reproduced herein below:

“2. Definition. In this Act, unless there is anything repugnant in the subject or context.

(c) “relevant legislation” means, the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. No1 of 1983), the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (XXXV of 2000), the Insurance Ordinance, 2000 (Ordinance No.XXXIX of 2000), the Banking Companies Ordinance, 1962 (LVII of 1962), and the Protection against Harassment of Women at the Workplace Act, 2010 (IV of 2010).”

12. We are cognizant of the fact that the Mohtasib’s Order was suspended by this Court in CP D 2819 of 2016 on 24.05.2016 and the said interim orders remained in the field. However, as a consequence of determination of the fate of the said petition vide the present judgment, the interim orders also stand vacated and there is no impediment to the enforcement of the Mohtasib’s Order by the forum statutorily prescribed in such regard.

13. In view of the reasoning and rationale contained herein the subject petitions are determined as follows:

- i. CP D 2819 of 2016, along with pending applications, is hereby dismissed with no order as to costs.
- ii. CP D 7326 of 2018 is hereby disposed of with directions to the petitioner to approach the Banking Mohtasib for

implementation of the Mohtasib's Order, in view of Section 10(2) of the FOIRA.

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*Farooq PS/**