

**IN THE HIGH COURT OF SINDH
AT KARACHI**

SUIT NO. 2009 of 2016

Plaintiff	Ghulam Ali P. Allana, through Mr. Taimoor Ali Mirza, Advocate.
Defendant No.1	State Bank of Pakistan through Mr. Manzoorul Haque, advocate.
Defendant No.2	Bank Al-Habib Ltd, through Mr. Hassan Mandviwala, advocate.
Date of hearing	24.11.2017
Date of Judgment	

ORDER

YOUSUF ALI SAYEED, J. In terms of this Suit under the original civil jurisdiction of this Court, the Plaintiff has assailed the reporting of his name by the Defendant No.2, a scheduled bank, to the Credit Information Bureau (“**CIB**”) established by the Defendant No.1, the State Bank of Pakistan, showing the position in relation to certain finances availed by the Plaintiff as being overdue. Whilst the Plaintiff has admittedly obtained and availed such finance facilities from the Defendant No.2, in the face of certain disputes said to have arisen in relation thereto, cross-suits have previously been instituted by the Plaintiff and Defendant No.2 respectively under the banking jurisdiction of this Court under the Financial Institutions (Recovery of Finances) Ordinance, 2001, which remain pending.

2. The crux of the Plaintiffs assertion in the banking suits appears to be that the finances availed by him were secured through the pledge of rice stocks of a value in excess of the amount owed to the Defendant No.2, which were allegedly misappropriated by the muccaddam said to have been an appointee of such Defendant, hence the Plaintiff is not liable to repay any amount to the Defendant No.2. It is on the strength of this claim that the Plaintiff contends that the finances availed by him cannot be reported as overdue to the CIB so as to indicate default.

3. In terms of the plaint filed in the instant suit, the cause of action for the *lis* is expressly said to have arisen in favor of the plaintiff and against the defendants “when his name was reported in the month of Jan, 2016 by the Defendant No.2 to the defendant No.1 in the CIB list, when no Show Cause Notice or opportunity of hearing was afforded to the Plaintiff, when the plaintiff’s name was reported on the CIB list maintained with the defendant No.1 without following due process of law and even when the Suits filed by the plaintiff and defendant No.2 are pending adjudication before the Hon’ble High Court of Sindh at Karachi and the cause of action continues till date as the plaintiff’s name is being reported every month by the defendant No.2 on the CIB list maintained with the defendant No.1”, and the Plaintiff has thus principally prayed for Judgment and decree as follows:

“(i) *Declare that the reporting of name of the Plaintiff by the defendant No.2 on the CIB list maintained with defendant No.1 is illegal, void ab initio and without lawful authority, in violation of defendant No.1’s BSD Circular dated 6.11.2004 and CPD Circular Letter No.1 of 2010 dated 12.1.2010 and set aside and/or remove the same.*

(ii) *Permanently restrain the defendant No.2 from reporting the name of plaintiff on the CIB data base of the Defendant No.1 and the defendant No.1 from sharing any such credit information report with any person or entity;*

(iii) *Direct the defendant No.1 to take punitive action under the Banking Companies Ordinance, 1962 against the defendant No.2 for violating the defendant No.1’s BSD Circular dated 6.11.2004 and CPD Circular Letter NO.1 of 2010 dated 12.1.2010.”*

4. It is in this backdrop that the Defendants seek rejection of the plaint under Order 7, Rule 11 CPC, vide separate Applications filed in that regard, being CMA 8253/17, as filed by the Defendant No.1, and CMA 17400/16 by the Defendant No.2 respectively, and it is these two applications on which the parties have proceeded with their submissions, and which fall to be decided in terms of this Order.

5. The basic statutory framework underpinning the CIB is encapsulated in S.25A of the Banking Companies Ordinance, 1962 (the “**BCO**”), sub-section (1) of which stipulates as follows:

25A. Power of the State Bank to collect and furnish credit information. - (1) *Every banking company shall furnish to the State Bank credit information in such manner as the State Bank may specify, and the State Bank may, either of its own motion or at the request of any banking company, make such information available to any banking company on payment of such fee as the State Bank may fix from time to time:*

Provided that, while making such information available to a banking company, the State Bank shall not disclose the names of the banking companies which supplied such information to the State Bank:

Provided further that, a banking company which proposes to enter into any financial arrangement which is in excess of the limit laid down in this behalf by the State Bank from time to time shall, before entering into such financial arrangement, obtain credit information on the borrower from the State Bank.

6. Furthermore, as per the explanation provided for the purposes of Section 25-A, the term “credit information” means any information relating to—
- (i) *the amounts and the nature of loans or advances or other credit facilities, including bills purchased or discounted, letters of credit and guarantees, indemnities and other engagements extended by a banking company to any borrower or class of borrowers;*
 - (ii) *the nature of security taken from any borrower for credit facilities granted to him;*
 - (iii) *the guarantees, indemnities or other engagements furnished to a banking company by any of its customers; and*
 - (iv) *operations or accounts in respect of loans, advances and other credit facilities referred to in this clause.*

7. As envisaged in S.25A, instructions are given to commercial banks from time to time by the Defendant No.1 in terms of circulars issued, of which BSD Circular No.16 of 2004 dated 6.11.2004 and CPD Circular Letter NO.1 of 2010 dated 12.1.2010 have been relied upon and cited by the Plaintiff as having been violated, and it is such alleged violation that is specifically said to have given rise to the grievance of the Plaintiff occasioning the instant Suit.
8. In terms of BSD Circular No.16 of 2004 dated 06.11.2004 pertaining to the subject of "Reporting to Credit Bureaus", the following instructions were issued: -
- (i) *The reversals / write-offs made as a consequence of settlement in writing, through mutual consent of the bank/DFI and the borrower, should not be reported as "write-offs" to a private credit bureau(s).*
 - (ii) *The amounts in dispute with the customers, substantiated with the documentary evidence, should be reported as "amounts under dispute" and not as "defaults" to a private credit bureau(s).*
 - (iii) *The banks/DFIs shall send an intimation letter to the concerned borrower before reporting his name as "defaulter" to a private credit bureau(s). Such letter shall, inter alia, inform the borrower about the implications of reporting his / her name to a private credit bureau(s) as defaulter, and allow a reasonable time period (at least 15 days) for reconciliation / settlement of overdue liability.*
 - (iv) *Whenever any further information / clarification regarding a borrower reported to the CIB or a private credit bureau(s) is sought by the SBP, the concerned bank / DFI shall be required to provide such information / clarification to this Department within three working days of receipt of such query.*
 - (v) *The banks/DFIs shall properly guide their customers as and when they approach them seeking information about their outstanding liabilities.*

9. Subsequently, through CPD Circular Letter NO.1 of 2010 dated 12.1.2010, instructions on the subject of reporting were issued to all banks in the following terms:

Please refer to BSD Circular No.16 dated November 06, 2004, wherein banks / DFIs were advised to follow the instructions contained therein with regard to reporting of credit data to private credit bureaus. In this connection banks / DFIs are advised to observe the following instruction before reporting an overdue to eCIB of State bank of Pakistan: -

The banks / DFIs shall send an intimation letter to the concerned borrower before reporting 90 days overdue against his / her name to eCIB. Such letter shall, inter alia, inform the borrower about the implications of reporting of name to eCIB, and allow reasonable time period (at least 15 days) for reconciliation / settlement of overdue liabilities.

All other instructions on the subject shall, however, remain unchanged.

10. Vide CMA 17400/16, the Defendant No.2 assails the maintainability of the Suit on the sole ground that the question underlying the instant proceedings had already been adjudicated in terms of an Order made on 02.07.2016 in respect of CMA 6406/2016 filed by the Applicant in Suit No. B-42 of 2015, seeking removal of his name from the CIB list. By contrast, the grounds raised by the Defendant No.1 in terms of CMA 8253/17 and submissions made thereon during the course of proceedings are more broad-based and assail the maintainability of the Suit in light of various provisions of the BCO, being Sections 25A, 90, 93C and 94. With reference to these provisions it was submitted that the relief sought was contrary to the statutory mandate encapsulated therein, and could not be granted, hence the plaint was liable to be rejected. Additionally, during the course of arguments, considerable emphasis was placed on S.82A of the BCO, providing for the appointment of a Banking Mohtasib, and the principal thrust of the submissions made gravitated around this aspect, and it was essentially contended that the Suit was barred by virtue of Section 9 of the Code of Civil Procedure, 1908, when read in light of Section 18 of the Federal Ombudsmen Institutional Reforms Act, 2013 (“**FOIRA**”), coupled with Sections 82A and 82B of the BCO.

11. Turning firstly to CMA 17400/16, it was submitted by learned counsel for the Defendant No.2 that vide CMA 6406/2016 in Suit No. B-42 of 2015, the Plaintiff had sought relief similar to that prayed for in terms of the present Suit, and that in view of the dismissal of that application in terms of the Order made on 02.07.2016, the matter stood closed and there was no further scope for adjudication on that score in the matter at hand. Conversely, it was submitted by Plaintiff's counsel that whilst Section 11 of the CPC provides that "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or, any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court", the issue or matter of the instant suit substantially pertains to compliance/non-compliance of the Defendant No.1's circulars, which was not "directly and substantially in issue" in Suit B-42 of 2015, hence the ground of res judicata was not made out. Furthermore, he pointed out that the Order of 02.07.2016 had proceeded on the basis that a determination of the question raised could not be made in the absence of the present Defendant No.1, hence the said application was dismissed merely on the ground that the present Defendant No.1 was not a party in that suit and, as such, the matter was not "heard and finally decided", thus the Order accordingly did not culminate in or constitute a conclusive determination of the matter.
12. In this regard, having perused the Order of 02.07.2016, it merits consideration that the jurisdiction of a banking court pertains to an "obligation", as defined under the Financial Institutions (Recovery of Finances) Ordinance, 2001, whereas the matter of the reporting of the Plaintiff's name to the CIB does not fall within the meaning of such term and is thus not a subject for determination in exercise of the banking jurisdiction, hence the Order could *a fortiori* even otherwise not serve to have the effect of barring the instant Suit.

13. Turning next to CMA 8253/17, it was submitted by learned counsel for the Defendant No.1 that under S.25A of the BCO it is incumbent on every banking company proposing to enter into any financial arrangement with a borrower to first obtain credit information on the borrower from the State Bank of Pakistan. He submitted that the relief sought in terms of prayer clause (ii) of the plaint is opposed to the second proviso of Section 25-A of BCO, hence the Suit was not maintainable and the plaint liable to be rejected. He placed reliance on the cases reported as *Azam Wazir Khan v. Messrs Industrial Development Bank of Pakistan & others 2013 SCMR 678*, *Syed Wajahat Hussain Zaidi through Procurator/Authorized Representative v. State Bank of Pakistan through Governor and 7 others 2016 CLD 1084*, *Messrs Abdul Aziz Nawab Khan & Company v. Federation of Pakistan, Ministry of Finance & others 2006 CLD 55*, *Sahibzada Faisal Ali Khan v. Federation of Pakistan and others 2017 CLD 463*, and *Messrs J.S. Developers through Chief Executive and another v. State Bank of Pakistan through Governor SBP and another 2015 CLD 173* to demonstrate that the constitutionality and vires of S.25-A had been upheld and the implementation of the framework put in place thereunder had been held not to be violative of fundamental rights. He pointed out that in the Suit, the Plaintiff had not raised a challenge to the vires of S.25-A of the BCO or to any circular issued in that respect by the Defendant No.1, but had evidently based his case on an alleged violation of defendant No.1's BSD Circular No. 16 dated 6.11.2004 and CPD Circular Letter No.1 of 2010 dated 12.1.2010 by the Defendant No.2. Per learned counsel, from a reading of the definitions of the terms "Ombudsman" and "relevant legislation" set out in the FOIRA, where specific reference had been made to the BCO, the scope of the FOIRA specifically stands extended to the office of a Banking Mohtasib created under S.82A of the BCO; that the dispute raised in terms of the instant Suit falls squarely within the jurisdiction of the Banking Mohtasib in terms of Sections 82B(5) of the BCO, hence the jurisdiction of this Court in relation to the subject of the instant Suit resultantly stands barred under S.18 of the FOIRA.

14. Conversely, learned counsel for the Plaintiff controverted the assertion as to S.18 of the FOIRA serving as a bar to jurisdiction, and submitted that by virtue of S.82A(3) of the BCO the jurisdiction of the Banking Mohtasib was confined to banking transactions, whereas the dispute underpinning the instant Suit pertained to the reporting of the Plaintiff's name for the purposes of the CIB in alleged contravention of the procedure prescribed by the Defendant No.1 in its capacity as the regulator of banks in terms of the powers conferred under S.25A of the BCO, which was not a banking transaction per se, hence not amenable to the jurisdiction of the Banking Ombudsman and thus not subject to any bar pursuant to S.18 of the FOIRA. He placed reliance on a judgment of this Court in the case reported as *A&A Services through Proprietor v. Federation of Pakistan through Secretary Ministry of Finance & others 2014 CLD 809* in an endeavour to show that a learned Division Bench had been pleased to direct the removal of the name of the petitioner in that case due to non-compliance of the law pertaining to reporting of credit information on the CIB, and contended that this served as a precedent that such intervention was permissible in the instant case and that the plaint was therefore not liable to be rejected. Alternatively, it was submitted that the Courts of civil judicature have ultimate jurisdiction and the bar to such jurisdiction could not be invoked where the impugned action was mala fide, as alleged in the instant case. With reference to the proviso of sub-section (i) of 82B(5) of the BCO, it was submitted that the same provides that if there is a dispute as to the proper interpretation of any regulations, directions or guidelines, such dispute shall be referred to the State Bank for clarification, thus the Defendant No.1 would become a judge in its own cause, which would be prejudicial to the Plaintiff. He argued that the Civil courts have jurisdiction under Section 9 CPC to enforce fundamental rights as embodied in the Constitution, that the Jurisdiction of civil court is only barred when order is passed within jurisdiction, that the Jurisdiction of civil Courts even if barred and conferred upon special tribunals, civil Courts being Courts of ultimate jurisdiction have jurisdiction to examine acts of such forums to see if such are in accordance with law, or illegal, or mala fide,

and that when authorities acted in violation of provisions of statutes which conferred jurisdiction on them, such act could be challenged before a civil court in spite of an ouster clause. Reliance was placed on the judgments in the cases reported as *Abbasia Coperative Bank (Now Punjab Provincial Cooperative Bank Limited) through Manager and other v. Hakeem Hafiz Muhammad Ghaus and 5 others* PLD 1997 Supreme Court 3, *Abdul Rauf and others v. Abdul Hamid Khan and others* PLD 1965 Supreme Court 671, *Mr. Muhammad Jamil Asghar v. The Improvement Trust, Rawalpindi* PLD 1965 Supreme Court 698, and *Messrs Arif Builders and Developers v. Government of Pakistan and 4 others* PLD 1997 Karachi 627. Additionally, numerous other judgments were also cited in support of such argument, however, suffice it to say that none of the judgments relied upon pertained to the FOIRA or otherwise addressed the question arising for consideration in the matter at hand from that standpoint, and it is thus unnecessary to burden this judgment with discussion of these decisions where such unrelated propositions are set out.

15. By way of rebuttal, it was pointed out by counsel for the Defendant No.1 that the grievance of the Plaintiff was essentially against the Defendant No.2 and not the Defendant No.1, as reporting to the eCIB was done by the concerned bank and the State Bank of Pakistan had no vested interest in the matter; the responsibility for any violation in this regard also falls on the reporting/member institution who have online access to the eCIB system. If any violations of banking laws occurred or if any banking company failed to act in accordance with the banking regulations, policy directives, guidelines and/or circulars issued by the State Bank, then the aggrieved person/borrower could file a complaint before the Banking Ombudsman, who has jurisdiction to entertain the complaint against the banking companies for violations of that nature.

16. Having examined the pleadings and considered the aforementioned submissions advanced by learned counsel, the essential question to be addressed is that of the scope of the instant Suit vis-à-vis the jurisdiction of the Banking Mohtasib. For such purpose, it is noteworthy that Sections 82A(3) and 82B(5) of the BCO state as follows:

S. 82A (3) *“the jurisdiction of the Banking Mohtasib in relation to banking transactions shall be to—*

- (a) enquire into complaints of banking malpractices;*
- (b) perverse, arbitrary or discriminatory actions;*
- (c) violations of banking laws, rules, regulations or guidelines;*
- (d) inordinate delays or inefficiency and*
- (e) corruption, nepotism or other forms of maladministration.”*

S.82-B(5) - *In relation to all banks operating on Pakistan, the Banking Mohtasib shall be authorised to entertain complaints of the following nature: -*

- (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 clarifications.

- (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 unauthorized 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 markup 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.”

17. It is in this context that Section 9 CPC and Section 18 of the FOIRA fall to be examined, and for ease of reference the same are reproduced, as below:

Section-9 CPC

Courts to try all Civil Suits unless barred---. *The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

Section 18 FOIRA

Bar of jurisdiction---. *No court or authority shall have jurisdiction to entertain a matter which falls within the jurisdiction of an Ombudsman nor any court authority shall assume jurisdiction in respect of any matter pending with or decided by an Ombudsman.*

18. In the instant case, with reference to the contention of learned counsel for the Defendant No.1 that the relief sought by the Plaintiff is contrary to the letter and spirit of Section 25A of the BCO, it merits consideration that the case of the Plaintiff pertains to a violation of particular circulars and thus hinges on whether the correct procedure has been followed. Such a question would therefore be a matter of argument that would not be properly determinable at this stage. However, with reference to the contention as to the bar in terms of S.18 of the FOIRA and the counter arguments raised by counsel for the Plaintiff, it is noteworthy that there is no allegation of *mala fide* on the part of the Defendant No.1, nor is there any challenge to the vires of either S.25A or any circular issued in that regard, and for the purposes of the case set up it has merely been pleaded that the placement of the Plaintiffs name on the CIB list “without issuance of any proper and prior notice or affording any hearing opportunity” is unlawful, illegal and without justification.

19. Although it has been suggested through the pleadings that the Defendant No.1 has so placed the name of the Plaintiff and that while doing so it was incumbent upon the Defendant No.1 to apply its mind as regards the pending dispute inter se the Plaintiff and Defendant No.2, such an assertion appears opposed to the scheme of the CIB and the prayers made in terms of the Plaint, from which it is apparent that the name of the Plaintiff stands reported by the Defendant No.2, with the role of the Defendant No.1 being that of implementer of the CIB framework in terms of S.25A of the BCO. As such, the dispute of the Plaintiff appears to properly be confined to the Defendant No.2 and the arguments raised with reference to the role of the Defendant No.1 in the context of the case law cited as a counter to the subject of ouster of jurisdiction appear misplaced and devoid of merit.
20. Whilst S.82A(3) of the BCO refers to “*the jurisdiction of the Banking Mohtasib in relation to banking transactions*”, that is not to say that it thereby curtails and confines the overall scope of the Mohtasib’s jurisdiction only to such transactions, and it can at best be said that in terms of that sub-section the jurisdiction in relation to ‘banking transactions’ is circumscribed with reference to the matters that follow thereafter. Be that as it may, S.82B(5) does not appear to be controlled by S.82A(3), or the use of the aforementioned expression. Indeed, were that the case, then in the presence of a reference to “*violations of banking laws, rules, regulations or guidelines*” in S.82A(3), it would be superfluous for there to be any further mention in the latter provision of a “*failure to act in accordance with banking laws and regulations including policy directives or guidelines issued by the State Bank from time to time*”, as is the case. Even otherwise, whilst the reporting of a borrower’s credit information to the CIB may not of itself be a banking transaction in the strict sense, such information clearly stems from and obviously relates to an underlying transaction of that very nature and description.

21. The scope and extent of the Banking Mohtasib's jurisdiction and the interplay between S.82A(3) and S.82B(5) of the BCO came to be considered in the case reported as *Soneri Bank Limited through Constituted Attorneys/authorized Officers and another v. Messrs Pak Land Corporation (Pvt) Limited through CEO and 4 others 2013 CLD 1756*, and in that judgment it was observed by a learned single Judge of this Court as follows:

“ Section 82A(3) sets out the scope and extent of the Mohtasib's jurisdiction but this must be read with Section 82B(5), which amplifies the former...”
[Underlining added]

22. Thus, in that case it was observed that S.85B(5) provided that the Banking Mohtasib has the jurisdiction to entertain complaints in relation to fraudulent or unauthorized withdrawals or debit entries in accounts. In the matter at hand, it is apparent that the case set up by the Plaintiff is predicated on alleged violation of BSD Circular dated 6.11.2004 and CPD Circular Letter No.1 of 2010 dated 12.1.2010, which therefore clearly brings the matter within the scope of S.82B(5)(i) of the BCO, hence subject to the bar in terms of S.18 of the FOIRA.

23. As far as the argument of the Plaintiff as to exercise of jurisdiction by this Court with reference to the judgment in the case of *A&A Services (Supra)* is concerned, it is well-settled that a provision in a sub-constitutional enactment, such as the FOIRA, cannot bar the jurisdiction of a Constitutional Court. If any authority is required, the same is available in the judgments of the Honourable Supreme Court and of a full bench of the Lahore High Court in the cases reported as *Shahid Zahir Abbasi & Others v. President of Pakistan and Others PLD 1996 SC 632* and *Arshad Mehmood v. Commissioner/Delimitation Authority Gujrawala & Others*

PLD 2014 Lahore 221 respectively. Be that as it may, the present proceedings are evidently on a different footing, in as much as the same have been filed under the original civil jurisdiction of this Court, hence the principle encapsulated in the aforementioned judgments, as would have been applicable in the case of *A&A Services (Supra)* in respect of the writ jurisdiction under Article 199 of the Constitution, would not be of avail in this Suit. Moreover, the question of S.18 of the FOIRA was not the subject of consideration in that case.

24. In view of the preceding discussion, whilst CMA 17400/16 is found to be misconceived and is therefore dismissed, CMA 8253/17 is allowed with the result that the plaint stands rejected. The pending miscellaneous applications, having consequently become infructuous, stand dismissed accordingly. There is no order as to costs. Office is directed to draw up the decree in the preceding terms.

JUDGE

Karachi
Dated _____