

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

- i. **Habib Bank Limited Versus Dr. Qazi Muhammad Wasiq, Karachi Representaion dated 08.11.2013**
- ii. **Mr. Bashir Khas Kheli and Dr. Samreena Hashmi Versus (1) Dr. Qazi Muhammad Wasiq, Karachi (2) Habib Bank Limited (3) Banking Mohtasib, Karachi Representaion dated 23.12.2013**

**REPRESENTATION AGAINST ORDER OF THE BANKING MOHTASIB DATED 08.10.2013 IN COMPLAINT NO. 2013-439**

I am directed to refer to Representations dated 08.11.2013 and 23.12.2013 on the subject noted above and to convey that the President has been pleased to pass the following orders in the instant case:

2. Through two Representations, one preferred by Habib Bank Limited (HBL) and the other by Pakistan Medical Association(**PMA Sindh**) through its Vice President Mr. Bashir Khas Kheli and Dr. Samreena Hashmi, the Decision dated 8<sup>th</sup> February 2013 handed down by the learned Banking Mohtasib on the Complaint filed by Dr. Qazi Muhammad Wasiq, General Secretary, Pakistan Medical Association, Karachi (**PMA, Karachi**) has been challenged. Operating part of the impugned Decision is reproduced herein below\_

**“ORDER**

*“Having regard to the facts presented, the evidence produced and the conclusion drawn above, I, under the powers vested in me vide section 82 D of BCO read with section 9 of the Federal Ombudsmen Institutional Reforms Act No.XIV of 2013 hereby hold that the bank unlawfully and with extreme negligence enabled and facilitated the opening of a forged and fake account in its branch from which monies donated to the PMA were siphoned off and misappropriated. I therefore order that the bank should forthwith pay the sum of PKR. 2,459,686/- to the account of the complainant in accordance with and in compliance of the order of the High Court of Sindh dated the 6<sup>th</sup> June 2013; in Suit No.744 of 2013; entitled Pakistan Medical association (centre) versus Ms. Samrina Hashmi, the relevant portion whereof reads “However it is clarified that if any donation is received by the Defendant no.1, in the name of the PMA the same shall be handed over to the Secretariat of Plaintiff No.1 so that amount may be deposited in the Plaintiff No.1’s Bank account”.*

3. Succinctly, the present case has a chequered history and parties to the dispute are entangled into contentious litigation at different fora.

4. The case record shows that the above named—Dr. Qazi Muhammad Wasiq of PMA, Karachi (**Complainant**) filed a Complaint No.2013-439 dated 30.05.2013 through Malik Chaudhry Ahmed Siddiqi & Waheed (Advocates Barristers & Attorneys) before the Banking Ombudsman against Habib Bank Limited (**Bank**) and averred that Bank and its concerned officials in collusion with the office bearer of PMA Sindh, the above named—Dr. Samreena Hashmi one of the present private Appellants have (allegedly) opened a fake Bank Account No.00347900175801, which for the sake of reference be called the ‘disputed Bank Account’, wherefrom fraudulent transactions were carried out by misusing the name of Pakistan Medical Association (**PMA**) and consequently the impugned Order has directed the Appellant Bank to pay the sum of Rs.2,459,686/- (*Rupees Two Million Four Hundred Fifty Nine Thousand Six Hundred Eighty Six Only*) to the account of the Complainant. In response to the said Complaint, the Bank (**present Appellants/Representationist**) filed its Reply and denied the allegations of the Complaint. The Bank also produced documents with its Reply and the Resolution of PMA, Sindh, wherein authority was given to its three members/office bearers (including the present private Appellants) for opening and operating the aforesaid Bank Account. However, in the said Complaint before the Banking Ombudsman, the present private Appellants—Mr. Bashir Khas Kheli and Dr. Samreena Hashmi were not impleaded as party.

5. The Record and Proceeding before the Banking Mohtasib also explains that with regard to the subject Bank Account and the purported illegal transactions another proceeding—Suit No.744 of 2013 (through the same Counsel) has been instituted in the High Court of Sindh at Karachi after a week from filing of the afore-said Complaint. In this Suit No.744 of 2013, the Bank was not impleaded as a party. On 6<sup>th</sup> June 2013 the learned High Court has passed a Restraining Order against the present private Appellants from collecting any donation in the name of PMA and to handover amounts already collected to PMA Centre. Copy of the Plaint is available in case file Volume-I and the prayer clause/reliefs claimed in above Suit No.744 of 2013 for the sake of ready reference is reproduced here in under:-

**“PRAYER**

***That the Plaintiffs respectfully pray for the following, inter alia, relief against the Defendant No.1:***

- a. *Declaration that the Account No.0034-7900-1758-01 maintained at Habib Bank SDV Branch opened by Defendant No.1 was without authority and unlawful and illegal.*
- b. *Declaration that Defendant No.1 is not entitled to collect money/donations in the name of Pakistan Medical Association.*
- c. *Declaration that Defendant No.1 is not entitled to open accounts in the name of Pakistan Medical Association, and is not entitled to use their Karachi address.*
- d. *Prohibitory injunction against the Defendant No.1 stopping her from operating Account no.0034-7900-1758-01 maintained at Habib Bank SDV Branch.*
- e. *Prohibitory injunction against Defendant No.1 stopping her from collecting any donations/money in the name of Pakistan Medical Association.*
- f. *Mandatory injunction directing the Defendant No.1 to produce bank statements and details of every single transaction from the date of opening of Account no. 0034-7900-1758-01 maintained at Habib Bank SDV Branch to date.*
- g. *Mandatory injunction directing the Defendant to provide details of where the money from Account no. 0034-7900-1758-01 maintained at Habib Bank SDV Branch was transferred and where did the funds come from.*
- h. *Mandatory injunction directing the Defendant to provide details of how much money was transferred into her personal account and/or accounts of her nominees/agents.*
- i. *Mandatory injunction directing the Defendant to provide details of every single account operated by her in the name Pakistan Medical Association, or any other name related to Pakistan Medical Association, its provincial branches its local branches or its activities including flood relief activities.*
- j. *Mandatory injunction directing the Defendant to refund all the money received in the Account no. 0034-7900-1758-01 maintained at Habib Bank SDV Branch as donations to the Plaintiffs along with cost of funds.*

k. *Damages in the tune of Rs.20 million.*

l. *Cost of Suit.*

m. *Any other relief which this Hon'ble court may deem appropriate".*

6. In addition to the above litigation it has also come on record that other court cases are also filed by the parties against each other, primarily concerning the election and management disputes of PMA. The present Appellants in their instant Representation have mentioned other court cases, which factual position has not been disputed by the contesting Respondent No.1 (the Complainant) in its Reply/Comments to the instant Representation(s).

7. The learned Banking Mohtasib in its impugned decision has also mentioned the fact about the above Suit No.744 of 2013 pending adjudication in the High Court of Sindh and the Restraining Order passed by the Court. The present Appellants; Bank and the private Parties have also pleaded, *inter alia*, grounds that the Complaint was not maintainable in view of statutory bar under Section 82-D, sub-section (4) of the Banking Companies Ordinance, 1962, *inter alia*, as the above referred Suit No.744 of 2013 relating to the same issue was and still *subjudice* in the Sindh High Court.

8. On a careful examination of record certain inescapable facts have come on record. A legal notice dated 30<sup>th</sup> April, 2013 was addressed by the above named Counsel on behalf of the Complainant to the Bank, which was replied to by the Bank denying the Claim of the Complainant/present Respondent No.1. Subsequently, the above mentioned Complaint was filed, wherein the present private Appellants were not made party. Interestingly, within a week of filing of the said Complaint, the above Suit No.744 of 2013 was filed by PMA, Karachi though through its different representative Dr. Shershah Syed, wherein Habib Bank Limited the present Appellant was not made Party.

9. A detail written statement has also been filed by one of the present private Appellants—Dr. Samreena Hashmi in Suit No.744 of 2013 and a copy whereof is also available in the case file as Annexure-R/9. In her pleadings, the said Dr. Samreena Hashmi has specifically pleaded that the Bank Account in question is not a parallel account as alleged nor the name of the present Complainant/Respondent No.1 has been misused, as title of the Bank Account is **“PMA Sindh Relief Account”**, which as averred was opened with an object to help out flood affectees, who were devastated by flood in Sindh in the year 2011. In this regard, an earlier correspondence between PMA, Karachi and Habib Bank Limited dated 12<sup>th</sup> and 13<sup>th</sup> March, 2012, respectively are also available in case file, in which the Bank has categorically denied the allegations that it has allowed a parallel Account to be opened and operated, *inter alia*, as the title of the Account is ‘PMA Sindh Relief Account’. It is also specifically pleaded by the present private Appellants that pre-Account opening formality was completed at PMA, Karachi Office situated on the Garden Road, Karachi, by a Bank

Officer and the Complainant (Respondent No.1) is in knowledge of this disputed Account from the beginning. The Account opening Form [AOF] available in case file also shows that title of the disputed Account is "PMA Sindh Relief".

10. Though it is a well settled legal principle that a party can avail more than one remedy as provided under the law, but at the same time, while availing such remedies before different fora **the parties should be the same**. If the above mentioned prayer clause of the Suit No.744 of 2013 is perused in juxtaposition to the impugned Decision, which appears to be against the Bank only, but in fact it has also adversely affected the present Appellants, *inter alia*, as the finding of fact that the subject Bank Account was fake and forged has in effect granted the prayer clause (a) of Suit No.744 of 2013 as reproduced herein above followed by other reliefs, including that of damages. Therefore, the learned Banking Mohtasib should have given opportunity to the present private Appellants to present and plead their case. Consequently, the objection of the

Complainant (Respondent No.1) as mentioned in its present Reply to the subject Representation about the *locus standi* of the present Appellants is not acceptable, as the impugned Order has adversely affected the present private Appellants—Bashir Khas Kheli and Dr. Samreena Hashmi. In this regard, guidance can be taken from the celebrated case of Supreme Court reported in **PLD 1969 Supreme Court Page 65** and famously known as H.M. Saye case, in which it was held by the Court that an Appeal can be filed by any person who felt aggrieved of the impugned Order, even if he was not impleaded as party in the original Suit or proceeding, *inter alia*, **with the object to avoid a contest**.

11. That with their present Representation the aforesaid private Appellants has filed a leaflet which purportedly was distributed by their Opponents during election campaign of PMA, Karachi. In this leaflet, the present impugned Order has been referred to allege that the said Samreena Hashmi (present private Appellants) committed forgery and embezzlement in respect of the disputed Bank Account in collusion with Bank officials. This factual plea as mentioned has not been specifically refuted by the Complainant side (Respondent No.1) in their present Comments/Reply. This is one of the grounds for interfering in the impugned Order, as it may not be misused as has been done by the parties against each other.

12. The present private Appellants with their subject Representation has also raised factual questions, for instance, in ground (b) of their subject Representation the above named private Appellants have disputed the finding as mentioned in the impugned Order relating to various transactions for the disputed Bank Account, which has not been specifically refuted by the

Complainant side/Respondent No.1 in his Reply, who has opted to contest the Representation of private Appellants on the basis of legal grounds.

13. A careful reading of the impugned Decision also shows that name of one of the present private Appellants—Dr. Samreena Hashmi though has been mentioned as a beneficiary for disputed transactions, yet she was not made a party in the proceeding below. The other prominent feature of the impugned Decision is its operating part, which has based its directions/order for making payment of Rs.2,459,686/- (*Rupees Two Million Four Hundred Fifty Nine Thousand Six Hundred Eighty Six Only*) by the Appellant Bank to Respondent No.1

/Complainant side **as a compliance** of the afore-referred Order dated 6<sup>th</sup> June, 2013 of the learned Sindh High Court, but, while passing the impugned Order of the nature, learned Mohtasib fell into error and lost sight of the fact that the above-referred Order of 6<sup>th</sup> June, 2013 (of Sindh High Court) is admittedly against Dr. Samreena Hashmi (the present private Appellants), who was never impleaded as party in the complaint proceeding before the Banking Mohtasib.

14. In view of the above discussion, the impugned Order calls for an interference and consequently the same is set aside and the case is remanded to the learned Banking Mohtasib for deciding the same afresh after impleading the present private Appellants as parties. The learned Banking Mohtasib considering the fact that a case (Suit No. 744 of 2013) is also *sub judice* in a higher judicial forum may first hear the parties on the question of maintainability of the Complaint, whereafter if the case proceeds further, then respective pleadings of the parties also warrant that the Banking Mohtasib may examine the concerned Bank Officer, who completed the formality for the disputed Bank Account, *inter alia*, so as to give an appropriate finding on the allegation about knowledge of the Complainant in respect of the disputed Bank Account.

15. Accordingly, the President has been pleased to dispose of the above referred Representations in the above terms.

(Arshad Farid Khan)  
Director (Legal-II)

1. The President / Chief Executive,  
Habib Bank Limited,  
Habib Bank Plaza, I.I. Chundrigar Road,  
Karachi
2. Dr. Qazi Muhammad Wasiq,  
General Secretary,  
Pakistan Medical Association (PMA),  
PMA House, Sir Aga Khan III Road, Saddar,  
Karachi

3. Pakistan Medical Association (PMA), Sindh  
Through its duly authorized representative,  
Mr. Bashir Khas Kheli, Vice President of the Association,  
Office at 85-Sadar Bazar, Hyderabad.
4. Dr. Samreena Hashmi  
d/o Tahir Ahmed Hashmi, Muslim, adult,  
Resident of Noor Hospital, Al-Noor Society,  
St-11, Block-19, FB Area, Karachi

No.29/BM/2013 dated 21<sup>st</sup> August 2015

Copy for information to:

1. Banking Mohtasib Pakistan Secretariat, Mr. Faheemuddin Ahmed, (Senior Advisor), 5<sup>th</sup>  
floor Shaheen Complex M.R.Kiyani road, Karachi.

(Arshad Farid Khan)  
Director (Legal-II)