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Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Writ Petition No.77994 of 2021

MCB Bank Limited
Versus
The Federation of Pakistan etc.

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JUDGMENT

Date of Hearing:	10.01.2023.
Petitioner by:-	Mr. M. Zaheer Asghar Bhatti, Mr. Aamir Aziz Khan & Mr. Maaz Sajjad. Advocates.
Respondent No.1 by:-	Mr. Ijaz Rehmat Basra, Assistant Attorney General.
Respondent No.3 by:-	Ch. Muhammad Aslam, Advocate.

CH. MUHAMMAD IQBAL, J:- Through this writ petition, the petitioner has challenged the validity of order dated 28.10.2021 passed by the President's Secretariat (Public), Aiwan-e-Sadr whereby representation of respondent No.3 was accepted directing the petitioner-bank to compensate her forthwith as per instructions of the State Bank of Pakistan.

2. Brief facts of the case are that respondent No.3 Dr. Farida Sharif has opened a personal account with the petitioner-bank and obtained safe deposit locker from it. On 05.05.2009, respondent No.3 was assigned a Locker No.434 and accordingly Key No.395 was handed over to her on the same date. Respondent No.3 operated her locker eight times since opening date and lastly used the locker on 08.03.2016. After about 4 years, respondent No.3

went to the Bank branch on 14.01.2020 to operate her locker and found her gold jewellery weighing 16.50 Tolas missing from the locker whereupon she accordingly informed the Bank authority (Manager) in this regard. She filed an application/ complaint on the same day i.e. 14.01.2020 before the Manger of the petitioner-bank regarding missing of her gold jewellery but her complaint was declined by the petitioner-bank.

Respondent No.3 filed a complaint under Section 82-D of the Banking Companies Ordinance, 1962 read with Section 9 of the Federal Ombudsman Institutional Reforms Act, 2013 and the Banking Mohtasib, Pakistan turned down the said complaint vide order dated 29.01.2021. Feeling aggrieved with the above said order, respondent No.3 filed a representation before the Worthy President of Pakistan who accepted the same vide order dated 28.10.2021 directing the petitioner-bank to compensate respondent No.3 /complainant forthwith as per instructions of the State Bank of Pakistan. Hence, this writ petition.

3. I have heard the arguments advanced by the learned counsels for the parties at full length and gone through the entire record with their able assistance.

4. The learned Banking Mohtasib entertained a complaint of respondent No.3 under Section 82-D of the Banking Companies Ordinance, 1962 read with Section 9 of the Federal Ombudsman Institutional Reforms Act, 2013 but failed to discharge his duty as per Sections 82-A, 82-B, 82-D, 82-E and 82-F of the Banking

Companies Ordinance, 1962, as the complainant who is a doctor by profession filed her an affidavit alongwith the complaint regarding loss of gold ornaments from the locker, whereas neither any departmental inquiry was held nor any counter affidavit was filed by the petitioner-bank to controvert her solemn deposition. It is settled law that in absence of any counter-affidavit the contents of the sworn affidavit are deemed to be admitted. Reliance is placed on a case titled as Abida Parveen Vs. District Education Officer, Schools Elementary (Female) Mirpur & 4 Others (2014 PLC (C.S) 999) wherein it has been held as under:-

“8....It is a settled principle of law that when some fact is alleged and supported by an affidavit, if, there is no rebuttal from the other side by filing counter affidavit, the same shall be deemed admitted....”

Reliance is placed on the case title Muhammad Nawaz Vs Mohsin Saleem (2016 MLD 1553) wherein, this Court held as under:-

“5.....It is well established that any application supported by an affidavit, if not controverted by filing counter affidavit along with the written reply should be taken as correct statement of fact.”

In a case titled as Iyaz-ul-Haq Chaudhary Vs Nib Bank Limited through Authorized Attorney & 4 Others (2016 CLD 1741), a learned Division Bench of this Court held as under:-

“6.....Even otherwise, respondent No.1 has neither filed any reply to application under section 24 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 read with section 5 of the Limitation Act, 1908 (C.M.No.1/C/2015) nor counter affidavit to controvert the narration of facts and the grounds raised in this application, which means an admission on the part of respondent No.1.....”

Reliance is also placed on the case cited as Muhammad Bachal Vs. IXTH Additional District Judge, Hyderabad & Another (2019 CLC Note 51) wherein it is held as under:-

“17.....and that the Affidavit of the applicant has not been controverted by the respondent / plaintiff by filing counter affidavit, which amounts to admission of the averments made in the affidavit application.”

Reliance is also placed on the cases cited as President of Pakistan through Chairman, P.W.R., Lahore Vs Sarfraz Khan (1980 CLC 541), Muhammad Farooq M. Memon Advocate Vs. Government of Sind through its Chief Secretary, Karachi (1986 CLC 1408), Messrs Holy Family Hospital through Administrator Vs. Government of Sindh & Another (2009 PLC (C.S) 824) & Quaid-e-Azam Medical College, Bahawalpur through Principal Vs Muhammad Aslam & Another (2009 YLR 1508).

5. The State Bank of Pakistan, the governing body of the banking sector of the country, issued Circular No.5 dated 5th June, 2007 stating the SOPs for security of the lockers and as per clause 2(v) of the said circular all the lockers shall be insured. For ready reference, Circular No.05/2007 is as under:-

“MASTER CIRCULAR ON SECURITY STANDARDS FOR ENHANCEMENT OF SECURITY OF THE LOCKERS.”

Please refer to BPD Circular No. 27 read with BPD Circular Letter No. 48 of 2004 on the above subject.

2. It has been brought to the knowledge of State Bank of Pakistan that some banks are reluctant to honour the claims with regard to vandalism of lockers by the security guards or by their employees. This is being attributed to a clause in their agreement with the insurance companies, which restrict them to honour such claims. This position has been reviewed and it has been decided to issue following instructions on the subject:-

- i) The banks/DFIs shall ensure that safe deposit locker rooms in their respective branches are adequately secured from all sides, and the security arrangements in place are fool-proof and meet the

security standards developed by each bank / DFI. The banks/DFIs may review their existing security arrangements to outsource the same to a security agency enlisted on the approved panel of Pakistan Banks Association (PBA). The banks may decide at their own to obtain or otherwise, any undertaking from the head of the security company for recovery of losses incurred on breakage of lockers by the security guards.

ii) In case the bank branches are providing safe deposit locker facility in areas where security agency on the PBA approved panel is not available, the bank/DFI shall carry out due diligence at the branch for the appointment of their own security guard(s).

iii) The banks/DFIs shall review their existing insurance agreements and shall obtain comprehensive insurance with clear cut “Cap Limits” on various sizes of lockers at competitive rates from the insurance companies ready to cover the act of vandalism of lockers both by the security guards and employees of the banks/DFIs.

iv) The banks/DFIs shall properly convey the terms & conditions (including size, rent/p.a, insurance ceiling etc) to the existing locker holders / new locker holders. Consent of all existing/new locker holders shall be obtained for the insurance ceiling etc.

v) In case of breakage /damage to the locker by any means, the locker holder shall be compensated by the bank/DFI immediately as per the insurance ceiling of the locker.

3. The banks/ DFIs are free to take further measures in addition to above for safety & security of lockers.

4. Apart from strengthening security arrangements, the banks/DFIs should also bolster/reinforce their internal controls for smooth operation of lockers.

5. This circular supersedes all previous instructions on the subject.”

6. The relationship of a Bank and its customer is based on trust on the basis of which the respondent No.3 had put her valuable articles i.e. gold ornaments in the locker but it is noted with great concern that when the respondent No.3 informed the petitioner-Bank about missing of her valuable articles from the locker, the petitioner-Bank instead of making its best efforts to redress her

grievance, not only declined her application but also went one step further and contested her case before respondents No.1 & 2. This conduct of the petitioner-Bank is not appreciable at all. The public opt to put their valuable articles in bank lockers for security purpose and if their articles are misplaced from there and the banks will not redress their grievance in such case of loss, the very foundation of the banking system would collapse.

All the above material facts and law have not been considered by the Banking Mohtasib Pakistan while dismissing her complaint whereas respondent No.1 has rightly allowed the representation of the respondent No.3 and directed the petitioner-bank to compensate respondent No.3/ complainant forthwith as per instruction of the State Bank of Pakistan contained in Circular No.5 dated 5th June, 2007.

7. Learned counsel for the petitioner has not been able to point out any illegality or material irregularity in the impugned order passed by the President of Pakistan and has also not identified any jurisdictional defect.

8. In the wake of above discussion, this writ petition is ***dismissed*** being devoid of any merits. This Court while granting interim relief directed the petitioner-Bank to initiate the process of recovery of sum of insured amount of locker from the insurance company and upon receiving it, deposit the same in some profit bearing scheme and shall not disburse to respondent No.3 till decision of this *lis*. The petitioner-bank submitted report on 08.11.2022 while stating therein that the insured amount of locker

has been deposited in the account of respondent No.3. As instant writ petition is being dismissed, as such the amount lying in the account of respondent No.3 be released to her.

(CH. MUHAMMAD IQBAL)
JUDGE

Approved for reporting.

JUDGE

Shahzad Mahmood / Abdul Hafeez