

IN THE NAME OF ALLAH ALMIGHTY, THE MOST GRACIOUS AND THE MOST MERCIFUL.

**IN THE COURT OF MUHAMMAD KALEEM SHEIKH,
PRESIDING OFFICER / DISTRICT & SESSION JUDGE,
DISTRICT CONSUMER COURT, FAISALABAD.**

<p>Muhammad Ikram s/o Allah Rakha R/o House# 1201 St# 6 Fateh Abad East Faisalabad</p> <p>(Claimant)</p>	<p>1. Allied Bank of Pakistan Head Office at I.I. Chundrigarh Road Karachi through its President</p> <p>2. Manager Allied Bank of Pakistan Satiana Road Branch Faisalabad.</p> <p>(Respondents)</p>
<p>Claim No:</p> <p>Date of Institution of Claim</p> <p>Date of decision</p>	<p>296/DCC-2008.</p> <p>25.07.2008.</p> <p>12.05.2009.</p>

**Muhammad Ikram
Vs
Allied Bank Ltd Faisalabad.**

**COMPLAINT FOR RECOVERY OF RS. 11927979/-
COMPENSATION/DAMAGES FOR FAULTY SERVICES OF
RESPONDENT BANK**

ORDER:-

1. The facts deciphering this case, as put forth in the claim, in nutshell, are as under;

The claimant Muhammad Ikram being an MBBS Doctor opened a current account bearing No. 01-200-3512-8, with the Allied Bank Limited of Pakistan, Satiana Road Branch Faisalabad. He deposited different amounts in the said bank so as his total credit on 10.09.2007, in his said account was an amount of Rs. 1037979/- vide statement of account as EX-P2. However, the claimant with drew an amount of Rs. 210000/- and his balance in the said account was Rs. 827979/- as on 10.09.2007. Any how due to fraud of the then branch Manager, the claimant was refused to withdraw his above said amount from the said Bank without any reason. On 03.07.2008, the claimant received an intervention letter from the respondent branch that he had been disclaimed from his amount vide letter of even date. Felt aggrieved with the defective and faulty services of the respondent Bank, the claimant has lodged this claim on 25.07.2008, for recovery

of an amount of Rs. 11927979/- as his balance amount, loss of business loss of profit since September 2007, mental torture and agony.

2. The respondent Bank has vehemently opposed the above said claim by filing his statement of defence, interalia, on the ground that although the claimant was maintaining his account with the Bank but that Mr. Shoukat Naeem EX Manager was involved in de frauding the Bank with the help of the customers, that the claimant's case was taken up by the Bank authorities but his claim was found to be false.

3. As case involved complexities of mixed questions of law and facts, therefore, the parties were required to produce their evidence through affidavits and documentary evidence in support of their respective versions. In this connection the claimant has got recorded his statement as PW-1, through his affidavits as EX-PW1/1, whereas, PW-2, Muhammad Ihsan has been produced through his affidavits as EX-PW2/1. In his documentary evidence, the claimant has tendered receipts dated 27.07.2007, of ABL receipts as Mark "A" and "B", statement of account ABL as EX-P2, photo copy of petition as Mark "C", copy of affidavit as Mark "D", order of ABL dated 03.07.2008 EX-P-3. Both the witnesses were subjected to cross examination by the learned defendant's counsel Ch. Khalil-ur-Rehman Advocate.

4. In rebuttal, Javaid Sharif Manager ABL appeared as DW-1, through his affidavit EX-DW1/1. In his documentary evidence the defendant Bank through his Manager has adduced statement of account EX-D1, copy of letter dated 17.10.2008, Mark "A", letter dated 07.10.2008, Mark "B", letter dated 23.01.2007, as Mark "C", letter dated 27.10.2008, as Mark "D", copy of FIR No. 615 as Mark "F", the application of account opening as EX-D2.

5. After conclusion of evidence of the parties, I have heard their learned counsel at length and have perused the record carefully and inestimably.

6. During his arguments, the learned claimant's counsel Mr. Pervaiz Akhtar Tahir Advocate has strenuously argued that the claimant has proved his case through cogent and coherent evidence as the claimant's statement gives a panoramic view of the claim as delineated and set forth in the body of the claim, that the Bank Manager acting on behalf of the Banking Company is answerable for

his acts that therefore, the Bank is vicariously, liable for the acts of its officer Shoukat Naeem Ex-Manager that, therefore, he can not evade responsibilities for damages, that the claimant has lodged this claim soon after the Bank refused to accept his claim there that hence, he has concluded that the claim may be accepted and the claimant may not only the paid balance of his account but he should also be compensated due to loss of business, mental torture and agony due to faulty services of the Bank.

7. Conversely, learned counsel for the defendant has strenuously contended during his arguments that the claim is not maintainable as it is the jurisdiction of the Banking Court that the claimant is not consumer within the definition of Section 2 of Punjab Consumer Protection Act 2005, that the claim is barred by limitation u/s 28(4) *ibid*, that the claimant was collusive with Shoukat Naeem the Ex-Manager of the Bank therefore, he got fraudulent entries in his favour in the Bank Record, and that the Bank is not responsible for the fraudulent acts of the Ex-Manager that therefore, he has submitted that the claim may be dismissed.

8. Prior to reaching a safe conclusion in this case, it would be pertinent to have critical appreciation of evidence as adduced by both the parties as under;

In this connection it transpires from the statement of Muhammad Ikram the claimant that he deposited an amount of Rs. 960000/- in his current account No. 01-200-3512-8, in the ABL Satiana Road Branch Faisalabad, on 26.07.2007, that he deposited further amount of Rs. 360000/- in his above said account that therefore, his balance of the deposited amount as on 10.09.2007, was Rs. 1037979/- as per statement of account issued by the Manager, that he drew an amount of Rs. 210000/- from his said account where after leaving his balance at an amount of Rs. 827979/- but that he was later on refused to draw this much amount due to fraudulent acts of the Bank Manager. The claimant further disclosed through his affidavit that he provided all the proofs in support of his claim of the above said amount in presence of Muhammad Ihsan PW-2 but that his such claim was rejected that therefore, he has brought this claim

after delivery of legal notice to the defendants on 04.07.2008, Muhammad Ihsan PW-2, through his affidavit has supported the later part of the facts of the claimant's statement. Ex-P2 is the statement of account showing the claimant's closing balance as narrated by him. In rebuttal, Javaid Sharif Manager ABL as DW-1, has deposed that some complaints were lodged in the Bank that Mr. Shoukat Naeem Ex-Manager has committed fraud with the Bank in collusion with the account holders that therefore, the Bank has lodged the FIR No. 615 in offences u/s 420,408,471,468 PPC against the said Shoukat Naeem which is under investigation, that in audit of the claimant's account it was found that the claimant's account opening form was attested by said Shoukat Naeem Ex-Manager as introducer, that the said Ex-Manager himself deposited Rs. 360000/- from his own pocket in order to conceal the real facts from the claimant about non deposit of the pay order that therefore, the claimant's case has been accepted by Bank Authorities only to the extent of Rs. 390000/- and that the receipts of account produced by the claimant is not in accordance with the Bank Record. In cross examination Javaid Sharif Manager ABL as DW-1, has admitted that the claimant deposited an amount of Rs. 960000/- in his account in the Bank on 26.07.2007. He further admitted it correct to suggest that there was balance of an amount of Rs. 1502970/- in the claimant's account as on 28.07.2007, vide EX-P2. He further admitted that the claimant's case for recovery of original amount of Rs. 827979/- is made out.

9. From the above said scenario, as transpired from the recitals in the pleadings of the parties as well as facts readily available and ascertainable on record through evidence and its appreciation the following points are crystal clear to my entire satisfaction;

- a. The claimant is account holder of the ABL Satiana Road Branch Faisalabad under his account No. 01-200-3512-8, and he had balance of an amount of Rs. 827979/- as disclosed by the claimant in his affidavit as EX-PW1/1, and admitted by Javaid Sharif Manager ABL in his cross examination;

- b. That the crime case has been lodged against the Ex-Manager of ABL but there is no such specific allegation against the claimant in Mark "F", hence, the claimant may not be debarred from the claim of the disputed amount;
- c. The claimant has exhausted his remedy before Bank Authorities but when his claim was rejected by Bank hierarchy on 03.07.2008, the claimant has brought this claim as a final resort for redressal of his grievances,,,
- d. The allegation against the claimant is that he was operating in collusion with the Manager under a secret agreement specially in order to do something dishonest to trick the Bank the oners to prove such fraud rested on the shoulders of the Bank but there is no corroborative evidence on record that the claimant was collusive with the Ex-Manager of the Bank so as to extort the disputed money from the Bank fraudulently;
- e. The evidence as produced by the claimant is corroborative, confidence inspiring and worth believing.

10. The upshot of the above whole discussion is that the Bank refused to settle the claim of the account holder Muhammad Ikram whome the Bank is aware that the customer is put to a loss on account of fraud and misappropriation committed by his Ex-Manager and it amounts to deficiency in service of the Bank. The Banks whether big or small constitute an essential and almost indispensable component of modern, social and economic setup. They render vital services to the community and the community naturally feeds them, they must be over-vigilant and solicitous about the interest of their customers as departure from such standard causes inconveniences not only to stray individuals but wide spread economic disasters. The Bank should therefore, be enjoined to maintain their services efficient and above reproach. Any how, from the circumstances prevalent on record, as discussed above, the only irresistible and irrefutable conclusion drawn is that the Bank's services to the claimant were not only faulty but also

deficient. Any how, before parting with this order, it would be in the fitness of things to discuss the points of law and facts as raised by learned defendant's counsel during his arguments, one by one, as under;

Fistly. The claimant availed no financial facility from the defendant Bank as he was just an account holder. The case of account holder does not come with the purview of section 7(4) and 9(1) of Banking Companies (record of loans, advances, credits and finances) Act 1997, (2000 MLD 1850 Lahore);

Secondly. Admittedly, the Bank was paying interest of the amount to the credit of the claimant to his PLS account, the Bank realized more interest on the said sum by lending it. The difference of the interest paid to the account holder and the interest earned by the Bank by lending his amount was the consideration for services of Bank as such, the claimant is consumer u/s 2 (C) of the Punjab Consumer Protection Act 2005;

Thirdly. The claimant has admittedly lodged this claim when the payment of disputed amount was refused to him by the Bank on 03.07.2008. The claim has been lodged on 25.07.2008, therefore, such claim is maintainable being within limitation period u/s 28 (4) *ibid*, as cause of action accrued to him on the said date;

Fourthly. The Bank has alleged that the consumer was collusive with EX-Manager therefore, he was to prove as such. However, from the contents of the Para No. 4, of his affidavit Javaid Sharif as DW-1, Manager ABL has disclosed that the EX-Manager Shoukat Naeem deposited Rs. 360000/- from his own pocket to avoid dishonour of the cheque to the concealment of the claimant and such statement amounts to approbate, rapprobate as also there is no corroborative piece of evidence from the defendant's side on this aspect of the case vis-à-vis over whelving evidence of the claimant. The contention is repelled;

Fifthly. The agents are the servants of the Banks and relationship of Master and servant exists hence, the Bank is

liable for the fraudulent acts of the EX-Manager and therefore, the Bank is liable to refund the amount as the Bank is vicariously liable and can not evade responsibility of damages (Ref; 2005CLD, 705 Karachi, II 2002 CP, 2002 (1) CPR4 49 MAH, 1 (2003), CPJ 178(NC).

11 For what has been discussed above, I have no hesitation to accept the claim here. The claim is hereby accepted. The defendant Bank shall now pay actual amount of Rs. 827979/- alongwith legal expenses Rs. 10000/- total amount of Rs. 837979/- to the claimant. The claim to the extent of remaining prayer is hereby dismissed with the direction that the defendant Bank shall pay Rs. 837979/- to the claimant within a period of 30 days otherwise the matter shall be dealt with u/s 32(2) of the Punjab Consumer Protection Act, 2005. File be consigned to the record room after its due completions.

Announced
12.05.2009.

Muhammad Kaleem Sheikh,
Presiding Officer/
District & Session Judge,
District Consumer Court, Faisalabad.

Certified that this judgment consists of seven pages, dictated, signed and corrected by me.

Muhammad Kaleem Sheikh,
Presiding Officer/
District & Session Judge,
District Consumer Court, Faisalabad