

IN THE COURT OF MR. MALIK PEER MUHAMMAD,
DISTRICT & SESSIONS JUDGE /PRESIDING OFFICER, DISTRICT CONSUMER
COURT, SIALKOT/NAROWAL.

Case No. 61 /2009

Date of Institution: 15-06-2009.

Date of Decision: 20-11-2009.

*Safdar Ali S/O Zikar Muhammad R/O Khemowali P/O Kila Ahmed Abad,
Tehsil & District Narowal.*

(Consumer/subscriber/Complainant)

Versus

1. *Abdul Latif shopkeeper (Naya Sawera Pesticide, Kila Ahmedabad,
Tehsil & District Narowal.*
2. *Muhammad Sarwar Alias Pappu Master, Kila Ahmedabad.*
3. *Iftexhar Ahmed Area Officer, Agriculture Department, Narowal.*
4. *Muhammad Rafique Deputy District Officer, Agriculture Department,
Narowal.*

(Service Provider/Respondent)

ORDER.

According to narrow compass facts drafted in the instant complaint, complainant is a disable farmer, he purchased the seed for the “Masoor” crop for to sow in his agriculture land. After sowing this crop it was consider in the vicinity that growth of the “Masoor” crop is excellent. Complainant as for to sale his crop from the disease namely “fungus,, resorted to the respondent. Respondent No.1 assured to the complainant that he has a very good (Contd....2)

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pesticide for to sprinkle upon his crop, in the result his crop shall be saved from seasonal diseases. Respondent No.1 deputed to the respondent No.2 for

to sprinkle the pesticide upon his crop. Complainant paid Rs.540/- as price of spray and one hundred for remuneration for this job spray. Respondent No.1 and 2 with their carelessness and negligence did not wash to the spray machine and further they excessively sprinkled the spray on his crop, resultantly his valuable crop destroyed. Complainant move one application to respondent No.4 upon which respondent No.3 visited his crop and drafted report that upper portion is damaged whereas his lower portion of the crop is not damaged. Complainant suffered big loss due to the negligence of the respondent No.1 and 2 hence, Rs.100,000/- damages be awarded to him.

Respondent No.1 Abdul Latif submitted his written reply and repulsed the entire allegation leveled by complainant while filing this complaint in this reply. It is averred that he sold the pesticide but did not deputed the respondent No.2 for to sprinkle, purchased pesticide. Complainant got sprayed the pesticide by his own responsibility. He himself paid remuneration to the respondent No.2. Respondent No.1 has no concern with respondent No.2. **(Contd....3)**

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The allegation regarding carelessness and boldness could not be imposed on the answering respondent No.1. Complainant received damage to his crop, due to negligence and non cleanness of the spray machine prior to the use of pesticide. No defect regarding substandard, adulteration is made against the respondent No.1. Respondent No.2 Muhammad Sarwar filed his separate written reply. In his reply he denied any relationship with respondent No.1 but disclosed in his written reply that complainant himself

met to him at Adda where from he took to him for the purpose of spray. Later on he went at the site. He informed to the complainant brother that spray is not suitable to the crop as less moisturizer is in his land and effect of the spray shall not be fruitful for his crop. Brother of the complainant obstinated that he should surly make spray without having no fear regarding its ill result.

This complaint was initially filed in the court of District and Sessions judge Narowal, who adjudicated the matter and relying upon the assessment of the Revenue Officer allowed the complaint through the short order vide dated 14-04-2009. This order was assailed before the Hon,'ble High Court Lahore through the writ petition No. 562 dated 01-06-2009. The Hon,'ble Mr. Justice Minhas (Contd....4)

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set aside impugned order and hold that District and Sessions Judge being ex-officio Director Human Rights and Obligations under Quetta declaration got exercise his jurisdiction for his advancement of the justice in certain cases, but for protection and promotion of the right and interest of the consumer, Punjab Consumer Protection Act 2005 has been promulgated. This complaint was withdrawn from the said court and transferred to this court for its early decision.

After received this file this court issued notice "parvi,, to the both parties. In compliance of the notice "parvi,, complainant and respondent put up their appearance. They were asked to produce their respective evidence. Complainant in order to prove the contents of the complaint himself appeared as A.W1 and no other A.W is produced as for to corroborate his statement. On the documentary side, he produced the map

of assessment produce as mark-A report of the District Officer Mark-B and copy of the Khasra Gardawri Mark-C

and closed documentary evidence. On the other hand Muhammad Latif respondent No.1 put up his appearance as R.W1 and Muhammad Sarwar as R.W2. The learned counsel for the complainant got recorded his statement on 20-10-2009 that respondent No.3 and 4 are the pro-forma respondents, they need no relief more from them, as such respondent No.3 and 4 did not turned up (Contd....5)

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in the court.

Arguments heard.

Record perused.

The first question before the court that if complaint falls within the definition of the consumer, according to the facts described into the complaint and deposition of the A.W1 and R.W, there is no ambiguity that complainant did not purchased pesticide nor the respondent denied the factum that pesticide was not purchase or sprinkled by them. In the light of admission of above said facts it can be easily determined that complainant is a consumer under Act 2005 complainant has rightly knocked the door of the court as a consumer for to redress his grievance.

The next main dispute arising out through the voice of this complaint that if (I) Abdul Latif shop keeper and Muhammad Sarwar both jointly and severely are responsible for the damages sustained by the complainant, (II) the complainant suffered due to the negligence and boldness of the respondent No.1 and No.2 (III) complainant proved his damages in stricto stenos to sensor and discharged legal onus probandy in accordance with the

law. (IV) For which extent compensation or quantum of relief be awarded to the complainant through the decision for this complaint.

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To answer this question I visited the contents of the complaint and gone through the statement of the parties. Instant complaint is moved on the sole ground that respondent No.1 and respondent No.2 having the relation “master and servant,, both jointly and severely are responsible for the damages cause to the “ Masoor” crop of the complainant. In the averment of the complainant it is simply narrated that complainant suffered due to the carelessness in-advertence and boldness, and non- cleanness of the spray machine. For the purpose of decision to complaint, I reproduce significant words narrated in the Para No.2 for the ready reference.

یہ کہ مسئول علیہ نمبر 1، 2 کے ہمراہ دیگر مسئول علیہم کی لاپرواہی، عدم توجہی اور ہٹ دھرمی سے سپرے مشین کو نہ تو خطرناک ادویات سے صاف کیا گیا اور زائد مقدار میں سپرے کر کے مظہر کی فصل تباہ کر دی گئی۔ جس پر مظہر نے مسئول علیہ نمبر 4 کو درخواست دی جس پر مسئول علیہ نمبر 3 موقعہ پر گیا اور رپورٹ دی کہ اوپر والی (Upper Portion) فصل تباہ ہو گئی نیچے دانہ بچا ہے حالانکہ سالم فصل تباہ ہو گئی ہے جو صرف مسئول علیہم کی جان بوجھ کر لاپرواہی سے ہوا ہے۔ جس سے مظہر کو کم از کم ایک لاکھ روپے کا شدید نقصان پہنچا ہے۔

In the light of above said words narrated into the body of the complaint inference can be drawn that there is no allegation against the pesticide regarding its substandard or adulteration. Only grievance is that spray machine which was used as (Contd....7)

for to sprinkle medicine, was not properly washed and secondly it was sprinkled excessively and resultantly crop of the complainant was destroyed. On above said issue respondent No.1 by filing his written reply and entering in to the witness box strictly refused to the allegation that they have relation in the shape of “master and servant. Similarly respondent No.2 have also denied this relation and deposed in his statement that complainant hired his services when he was sitting nearest “Adda,, as for to await some customer. Complainant has not produced sufficient prove in his evidence that respondent No.1 and 2 have closed relations and went at the site at the direction of the respondent No.1. In my judicial opinion liability of the respondent No.2 can not be affixed upon the respondent No.1, who sold the pesticide when there is no allegation against him regarding adulteration and substandard pesticide. So far the arguments that both respondent Nos.1 and 2 are not responsible for the damages, received by the complainant due to the spray of the medicine. It is an admitted fact on behalf of the respondent No.1 that pesticide was sold by him and same after purchasing, sprinkled on the “Masoor” crop. For the ready reference statement of the respondent witness is reproduced the decision of this complaint.

(Contd....8)

In the examination chief he deposed that he objected for the spray as there was less moisturizer in the soil but upon the insistence of the complainant brother he sprinkled the spray upon his crop. Report of the

Deputy Director Officer Agriculture Extension Narowal is placed as mark-B. This report is very much relevant as for to solve controversy between the parties. It is narrated as under: ~

“It was concluded that upper portion of the crop was damaged as the spray machine was not washed properly before spraying some dangerous pesticide might have been sprayed with the machine prior to this spray. Lower part of the crop however bore fruit”.

Apart from the observation embarked by the Deputy Director Officer. Respondent No.1 has filed reply of the complaint, its Para No.2 further fortify that prior to this spray some dangerous pesticide was sprinkled but respondent No.2 did not washed his machine and secondly he sprinkled the pesticide excessively which caused the damage to the complainant crop. Hence, in the light of above said report and written reply of the respondent No.1, it can be easily determined that damage of crop was caused due to the negligence and carelessness of the respondent No.2 who is alone responsible for the agony of the complainant. So far the arguments that complainant is entitle for the damages for Rs. 100,000/-. In this (Contd....9)

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regard I have resorted to the assessment map production prepared by the Revenue Officer which is mark-A. He has shown in its column 14 regarding net profit Rs.71,250/- this assessment is about the total production of filed which allegedly suffered due to negligence of respondent No.2 but the report of the Deputy Director Agriculture Extension, Narowal which is mark-B is an important expert opinion before me. In his report he specifically mentioned that lower portion of the crop

however will bore fruit. If lower part of the crop and upper part could not get fruit then the whole net profit suggested in the report of the Revenue Officer can be imposed for payment of the crop. Hence, for just and equitable justice I allow half net profit as mentioned in mark-A. In the said Revenue report total net profit is Rs.71,250/-. Respondent No.2 is solely burden for payment of the damages as mentioned in the mark-A report. So for the arguments complainant received mental torture and needs proof in this regard not a single word is narrated in the prayer or the body of neither the complaint nor it is claimed. Hence, compensation regarding for mental torture is denied. The half amount Rs.35, 625/- (Thirty five thousand six hundred twenty five rupees) awarded to the complainant shall be realized as land revenue through DCO. Complaint is accepted with cost.

File be consigned (Contd....10)

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to the record room after its compilation.

Announced:
20-11-2009.

Presiding Officer,
District Consumer Court
Sialkot/Narowal.

CERTIFICATE

Certified that this order contains ten pages and each of pages is dictated, corrected and signed by me.

Announced:
20-11-2009.

Presiding Officer,
District Consumer Court
Sialkot/Narowal.