

**IN THE COURT OF SOHAIL NASIR DISTRICT AND SESSIONS**  
**JUDGE/JUEGE CONSUMER COURT,**  
**RAWALPINDI**

*(Case No. 13 of 06.03.2012)*

*Mohsin Raza son of Malik Maqsood Ali, resident of Sector-II, Samarzar Housing Society, Adiala Road, Rawalpindi.*

**(Claimant)**

**Versus**

- 1. Italian Shoes through its Proprietor/Manager, Shop No. 62/2, Bank Road, Sadar Rawalpindi.*
- 2. Mr. Muhammad Nasir, Farhaj foot Wear (Distributor of Hush Puppies), 21 Kilometer, Feroz Pur Road, Lahore.*

**(Defendants)**

**Present:** *Claimant with Malik Muhammad Asif Advocate*  
*Mr. Muhammad Nauman Khalid Advocate for defendants*

**JUDGMENT**

*01. By filing this claim under section 25 of The Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) claimant has asserted that he purchased one pair of shoes of 'Hush Puppies' for a consideration of Rs. 4200/- from defendant No. 1; while he used the shoes, after a short span of time shoes started to give voices which was irritating for claimant; when problem aggravated, claimant contacted defendant No.1 with complaint on 26.01.2012; shoes were received by defendant No. 1, who assured its repair till 03.02.2012 as mentioned on visiting card (Ex. PA); since than claimant made repeated visits but defendant No.1 failed to honor its commitment; neither shoes were returned nor repair was made; claimant also approached through telephonic calls to defendant No. 2 but of no avail; claimant served legal notice (Ex. PC) to defendants but they did not bother to respond.*

*2. Claimant has setup his claim for breach of trust Rs. 100,000/- (one lac) price of shoes Rs. 4200/-, (forty two hundred) litigation charges Rs.20,000/- (twenty thousand), and mental torture Rs.100,000/- (one lac), total of which is Rs. 2,24,200/- (two lac, twenty four thousand and two hundred).*

*3. In pursuance to notices issued by this Court both defendants appeared and submitted their independent written statements.*

*4. Defendant No. 1 by contradicting the facts maintained that claimant had purchased shoes after satisfaction of comfort of product; defendant No. 1 made offer to claimant for replacement of shoes but said request of him was turned down.*

5. Defendant No. 2 had taken the objections about maintainability, jurisdiction and limitation in filing claim by claimant. On facts most of the paragraphs were denied or not commented due to want of knowledge.

6. Both defendants had prayed for dismissal of claim.

7. Vide an order dated 09.07.2012 my learned predecessor had framed following issues: -

1. Whether the instant claim is neither proceedable nor maintainable? OPD No. 1
2. Whether the claim is false, frivolous and vexatious, malafide, and liable to be dismissed, with costs? OPD.
3. Whether the claim is bad for non-joinder and mis-joinder of parties and as such liable to be rejected? OPD No. 2.
4. Whether the claimant has no cause of action or locus standi to file this claim in view of preliminary objection No.4? OPD. No.2.
5. Whether no legal notice has been served by the claimant under section 28 of the Punjab Consumer Protection Act, 2005? OPD No. 2.
6. Whether the defendant No. 2 is neither necessary party nor proper party and as such the claim deserves to be rejected with compensatory cost? OPD No. 2
7. Whether the claim is barred by time? OPD No. 2.
8. Whether this Court has no jurisdiction to grant the claimed relief of damages? OPD No.2.
9. Whether this Court has no territorial jurisdiction to try that suit in view of preliminary objection No. 9 OPD No. 2.
10. Whether the shoes purchased by the claimant from the defendant No. 1 were defective as highlighted in claim and as such the claimant is entitled to recover Rs. 2,24,200/- on account of breach of trust, original amount of pair of shoes, litigation charges, mental torture and agony? OPP.
11. Relief.

8. Claimant got his statement recorded as Pw-1 with support of documents Ex. PA to PD.

9. On the other hand, Mr. Shahid Nadeem Manger of Defendant No.1 appeared as Dw-1 who also produced claim policy as Ex. D1.

10. I have heard arguments of both sides. My findings on issues are as under: -

**Issues Nos. 1,3,4,6 & 7 to 9**

11. Learned counsel for defendants did not argue on these issues hence these are decided against defendants.

**Issue No. 5**

**12.** Claimant in examine-in-chief through his affidavit vide paragraph No. 4 asserted about serving of legal notices to defendants but in cross-examination said particular portion was not brought under challenge by adverse party. Receipt of dispatch of notice is Ex. PD on which too no exception was taken by other side.

**13.** Defendant No. 1 admitted receipt of notice but it was denied by defendant No.2. No one on behalf of defendant No. 2 came in witness box because learned counsel for both defendants had closed the evidence on 12.09.2012, after producing only Dw-1. It means that there is no denial from defendant No. 2 about receipt of notice; therefore, this issue is decided against defendant no. 2.

**Issue Nos. 2 and 10**

**14.** Both issues are interlinked, hence decided together. Undisputed facts in this case are as under: -

- i.** On 20.11.2011 claimant had purchased shoes for Rs. 4200/- from defendant No. 1.
- ii.** Receipt (Ex. P-B) was issued by defendant no. 1 which had provided six months period for repair in case of defect.
- iii.** On 26.01.2012 claimant first time had contacted defendant No. 1 with a complaint that shoes were giving voices.
- iv.** Defendant No. 1 had received shoes and issued visiting card (Ex. PA) with an endorsement that product would be returned on 31.02.2012 after repair.

**15.** Dispute between parties is that defendant No. 1 did not return/replace pair of shoes in spite of repeated requests of claimant and that due to such action as well as male-treatment of defendant No. 1 claimant had suffered financial loss.

**16.** At the time of purchase of shoes there was no express contract between parties to the fact that what defect would be covered under claim policy? Admittedly, shoes were neither broken nor damaged because of their use and at the most complaint was that shoes started to create voices which had irritated the claimant. This is a matter of common sense that repair of product can be only in case of damage to product or to all if there is an express contract covering each eventuality. So claimant was under obligation to prove that defendant No. 1 had assured that shoes would not give any voice in case of use. On this aspect the claim filed before this Court and the statement of Pw-1 is completely silent.

**17.** *The conduct of claimant is of much importance in this case. This was his version that after a very short span of time voices started to come from soles of shoes. Admittedly, shoes were purchased on 20.11.2011 and if it was so then why claimant approached defendant No.1 with his complaint on 26.01.2012 that means after about two and half months. When claimant was confronted with this situation he replied that his mother was ill so he could not approach defendant No.1. This explanation is of no value because claimant did not produce any evidence about ailment of his mother. Even if it is presumed as stated, even then explanation has no worth because today claimant admitted before me that he had been observing other normal pursuits of his life during that period including attending of classes in his law college. He resides at Adiala Road whereas shop of defendant No. 1 is in Sadar that means at a very short distance of three or four kilometers so to go there for him was not a challenge at all.*

**18.** *Instead of immediate approach to defendant No.1, claimant kept on using the shoes for further about two months, which means that the voice if there was, it was not an element of discomfort to claimant.*

**19.** *No doubt that defendant no. 1 had received shoes for repair but it does not means that on this analogy the product shall be deemed to be defective. The companies, who enjoy good reputation, normally do not enter in such disputes but try to resolve the issue raised by their consumers. To my mind voice in shoes was not a defect but defendant No.1 agreed for repair for keeping good relations between consumer and trader.*

**20.** *I cannot ignore conduct of defendant No.1 who has consistent stand from filing of written statement till today. As a good gesture defendant No.1 made repeated offers to claimant for providing new shoes but he refused this offer continuously. Even during cross-examination made on claimant same offer was made by defendants' side but again it was refused by claimant.*

**21.** *In these circumstances I am confident to say that voices in shoes never lost utility of product or caused any discomfort to claimant.*

**22.** *In view of above I hold that this is not a case of provision of defective product or faulty services; hence issue No. 10 is decided against claimant.*

**23.** *The discussion made above also takes me to a view that by no means can claim of claimant be said to be frivolous or vexatious but based on bonafide, hence issue No. 2 is decided against defendants.*

**24.** *Whatever has been discussed above, in the light of that ultimate result is that this claim is hereby dismissed with no order as to costs. File shall be consigned to record room after its due completion.*

**Announced**  
13.09.2012

**(SOHAIL NASIR)**  
District & Sessions Judge/  
Judge Consumer Court,  
Rawalpindi.

*It is certified that this judgment consists of five pages. Each page has been dictated, read, corrected and signed by me.*

**(SOHAIL NASIR)**  
District & Sessions Judge/  
Judge Consumer Court  
Rawalpindi