

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

(Case No. 119 of 04.12.2012)

Muhammad Bilal son of Zaheer Hussain resident of House No. CL-9A,  
Mareer Hassan Rawalpindi

**Vs.**

Manager Cosmo cash and carry Jinnah Park, Rawalpindi

**Present:** Claimant with Qazi Azhar Mahmood advocate.  
Defendant Ex-Parte.

**JUDGMENT**

1. By filing this claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) claimant has maintained that on 12.10.2012, he went to defendant and purchased an air freshener against a consideration of Rs. 130/-; a receipt (P-1) was issued in this regard by defendant to claimant; on use of product claimant felt irritation as well as headache; when claimant examined product it was found that same was an expired item with expiry date of 11.11.2011; thereafter, claimant approached defendant many a times but no one listened him; claimant suffered mental agony and torture besides facing disgrace due to insulting behavior of defendant; on 19.12.2012 claimant served a legal notice to defendant. Claimant has prayed for award of RS. 50,000/- (fifty thousands) as compensation and Rs. 25,000/- (twenty five thousands) as cost of litigation (lawyer's fee) to be paid by defendant to him.

2. In response to process issued by this Court, Mr. Asad Mumtaz Manger/representative appeared along with Mr. Abdur Rasheed Sheikh Advocate. Vakalatnama was submitted and case was adjourned to 08.12.2012 on request of defendant's side. It is important to mention here that in view of submission of learned counsel for defendant claimant was directed to produce product in Court as it was a desire of defendant to examine it before filing of written reply.

3. On 08.12.2012 product was produced in Court. It was examined by learned counsel for defendant as well as representative. Undoubtedly, it was having an expiry date as 11.11.2011. Product was sealed and ordered to be retained in custody of Registrar of this Court. Thereafter, next date was fixed as 13.12.2012. On this date despite repeated calls no

one came forwarded on behalf of defendant; hence it was proceeded ex-parte.

4. In ex-parte evidence claimant got his statement recorded as Pw-1. He produced documentary evidence comprised of receipt of purchase (P-1), copy of legal notice (P-2), fax receipt for service of legal notice (P-3) and copies of payment of fee to advocates (P-4 & P-5).

5. I have heard arguments of learned counsel for claimant.

6. Before I proceed to discuss evidence I want to clarify confusion about date of purchase of product. In receipt (P-1) said date is recorded as '10/12/2012'. In ordinary practice it has to be read as 10<sup>th</sup> of December 2012, which is not possible because claim was filed on 04.12.2012. On probe it was found that format of this date was 'M-D-Y' and not 'D-M-Y' so this date has to be read as 10<sup>th</sup> of October 2012.

7. In claim and copy of legal notice (P-2) date is recorded in same manners as mentioned in receipt, hence it shall also be read as 10<sup>th</sup> of October 2012.

8. Copy of legal notice is having its date of drafting as 19.12.2012. I was astonished to see it because still this date has to come. When confronted learned counsel for claimant stated that it was an unintentional error on his part and in fact this date was 19.10.2012. His reply appears to be logical because as mentioned earlier that date '19.12.2012' has still not arrived and when fax receipt (P-3) is examined it is dated 19.10.2012 so the figure of month '12' is wrongly written instead of figure '10'. Negligence is on a higher side that in claim date of notice is again written as 19.12.2012. But when I have believed the version of claimant about mistake of figure of month, than I am also bound give same finding in this regard.

9. Receipt (P-1) shows that on 12.10.2012 besides two other items product was purchased from defendant. When product was examined in Court, it transpired that its manufacturing date was 11.11.2009 and expiry date was 11.11.2011. So there remains no question for further discussion but to hold that defendant sold a defective product to claimant.

10. In terms of section 11 of the Act defendant was also under obligation to disclose date of manufacture and expiry of product because it is always material to decision of consumer to enter into a contract for sale but receipt is completely silent in this regard.

11. In view of above this claim is accepted.

12. Coming to question of relief this Court feels that whatever claimant has prayed that cannot be awarded to him. Certificate of two learned advocates are available on file for which there is no rebuttal. These are showing payment of Rs. 5000/- to one advocate for sending legal notice to defendant and Rs. 20,000/- to other learned advocate for filing the claim hence claimant is entitled for said amount. However, demand of compensation of Rs. 50,000/- is in-appropriate, which should be a reasonable one keeping in view facts and circumstances of each case. Defendant is a known Cash and Carry Centre of Rawalpindi and if such company is so negligence that expired items are sold then what to say about others. Therefore, Rs. 25,000/- (twenty five thousand) shall be an appropriate compensation in this case.

13. I, therefore, in terms section 31 of the Act issue an order and direct defendant to take following actions within fifteen days from today: -

- a) To pay Rs. 25,000/- (twenty five thousand) to claimant as compensation.
- b) To pay Rs. 25,000/- (twenty five thousand) to claimant as cost of litigation (lawyers' fee).
- c) To return price of product to claimant.

14. The product shall be returned to defendant by Registrar if he is approached for this. File shall be consigned to record room after its due completion.

**Announced**  
17.12.2012

**(Sohail Nasir)**  
District & Session Judge  
Judge Consumer Court  
Rawalpindi.

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

**(Judge Consumer Court)**  
Rawalpindi.