

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

(Case No. 133 of 12.12.2012)

Muhammad Riaz Asim, G.M Credit, National Bank of Pakistan. Regional Office, Rawalpindi.

**Vs**

The Cell Com, Shop -10 Ground Floor, Shahbaz Plaza, Bank Road Sadar Rawalpindi.

**Present:** Claimant with Mr. Muhammad Safeer Mughal Advocate.  
Defendant Ex-parte

**JUDGMENT**

1. This claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) was filed against The Cell Com, Mr. Muhammad Mudassar and M/S Teletec Mobile (defendants Nos. 1,2 & 3). At the stage of hearing of preliminary arguments it was found that defendant's Nos. 2 & 3 were not necessary or proper parties so their names were deleted from memo of parties. Hence for the purpose of this judgment defendant shall mean only 'The Cell Com'.

2. It was maintained in claim that claimant had purchased a mobile set of Samsung (86102) on 09.07.2012 from defendant against a consideration of Rs. 15000/-; receipt No. 038 was also issued in this behalf by defendant; on very first day of use there was a defect of software in product because of which SMS service was not carried out, facility of forwarding of SMS was not available and name and contact numbers were deleted automatically; claimant approached defendant many a times and he was informed that there was no solution and defendant could resale product for Rs. 10,000/- or 11000/-; despite repeated visits of claimant his problem was not solved and behaviour of defendant was not like commercial/prudential which caused mental torture and agony to claimant; he/claimant served legal notices to all concerned but it was received only by Mr. Mudassar (deleted defendant No.2); defendant, however, had refused to receive the notice; cause of action first time accrued on 09.07.2012 and thereafter on 10.09.2012 to 23.09.2012 when product remained in possession of defendant for its repair. In prayer clause claimant had set up his claim as under: -

Price of set:	Rs. 15,000/-
Actual expenses occurred due to visits:	Rs. 2,000/-
<u>Mental torture</u>	<u>Rs. 10,000,000/-</u>
<b>Total</b>	<b>Rs.10, 017, 000, 00/-</b>

3. Defendant was summoned through process server of this Court which was effected through Mr. Muhammad Mudassar its proprietor. As none appeared from defendant's side so it was proceeded ex-parte.

4. Rule 14 (5) of the Punjab Consumer Protection Rules, 2009 empowers this Court to decide a claim ex-parte on the basis of documents available on record if defendant fails to appear on the day of hearing. Hence I have heard ex-parte arguments of learned counsel for claimant and I have also examined documents which are part of file.

5. Learned counsel for claimant was asked that if legal notice was not served to defendant which was a requirement of law then how can this claim proceed? He contends that no doubt that notice sent to 'The Cell Com' which was in the name of shop was not received by it but Mr. Muhammad Mudassar who is proprietor of said shop and was defendant No. 2 in claim had received notice and also contacted claimant. Therefore, it will be deemed that 'The Cell Com' had received legal notice through its proprietor hence technical aspect has to be ignored.

6. I find quite force in above arguments. In fact to the extent of names of defendants it was not a well drafted claim because if Mr. Muhammad Mudassar was proprietor of 'Cell Com' then there was no need to implead Cell Com and Mr. Muhammad Mudassar as two separate defendants. Simple way was that 'Cell Com' had to be through its proprietor Mr. Muhammad Mudassar. However, the postal receipts have confirmed that notice was also send to Mr. Muhammad Mudassar so it will be strongly and safely presumed that 'Cell Com' had received legal notice.

7. Perusal of copy of receipt shows that defendant had sold product to claimant on 09.07.2012 against a consideration of Rs. 15000/-. A warranty was also issued copy of which is available on file.

8. As per contents of claim which are verified on oath and have no rebuttal it is found that defect was evident on the day one when claimant started using the product. He was very specific about said defects. Claim also indicates that defendant had refused and stated that defects could not be cured.

9. It was the duty of defendant to provide product as per its specification and if it did not work in accordance with such specification; defendant was bound to receive it back and to return price thereof to claimant. Unfortunately, in this society it has become a fashion particularly for traders that at the time of sale they go to any extent that consumer

*must purchase product but they forget that if they introduce a product in a way which in fact is not in existences, that amounts to unfair practices within the meaning of section 21 of the Act.*

**10.** *In view of above this claim is accepted.*

**11.** *Coming to question of relief I am astonished to see that Rs. ten cror has been demanded for mental torture for which there is no evidence in shape of documents like medical prescription etc. The compensation or damages whichever may be, must be appropriate and keeping in view facts and circumstances of transaction in question and product which was sold. Considering the facts of this case the appropriate compensation for claimant is Rs. 50,000/- (fifty thousand) besides relief of return of price of product.*

**12.** *Therefore, in terms of section 31 of the Act, I issue an order and direct defendant to take following actions with fifteen days from today: -*

- a)** *To return Rs.15000/- (fifteen thousand) price of product to claimant after receiving the same.*
- b)** *To pay Rs. 50,000/- (fifty thousand) as compensation to claimant for agony he suffered by approaching defendant again and again and due to its behavior.*

**13.** *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.