

18-01-10 Present: Counsel for the parties.

Arguments heard.

ORDER:

Through this order I intend to decide application alongwith preliminary objections filed by respondents seeking summarily dismissal of the complaint.

According to complainant he runs a Rice Commission shop and deals in sale of rice in and out side the country. On 13-04-09 he hired the services of respondent's transport company for carrying on 250 bags of rice amounting to Rs. 565744/- from Gujranwala to Sangarh against a builty No. 452 for a consideration of Rs. 13200/-. The bags were loaded in truck No. DNL-1437 which could not reach its destination and in this way complainant suffered such a huge loss. Respondents appeared and submitted reply to the complaint stating that the truck in question was provided to the complainant for transportation of rice which, according to the truck driver, were stolen at Okara bypass road and a case F.I.R No. 331/09 under section 379 PPC was got registered. Respondents pointed out that complainant has also got registered F.I.R of the same occurrence vide F.I.R No. 312/09 under section 420, 406 P.P.C at Gujranwala. In which respondents have been declared innocent by the Police. Respondents took plea that they are not responsible for the misappropriation or theft of rice.

Learned counsel for the respondents submitted that when the respondents have declared innocent during the investigation of a criminal case registered against them complainant has no cause of action to invoke the jurisdiction of Consumer Court. I have given my anxious consideration to the point. There can be no denying the fact that proper place for determination of person's guilt or innocence is a criminal forum but there can be no two opinions that Civil and Criminal cases can be proceeded side by side. A person aggrieved can avail the proper remedy from the Court of Civil jurisdiction simultaneously. The next point agitated on behalf of the respondents is that complainant is not a consumer as defined in section 2 of the Punjab Consumer Protection Act, 2005. I would like to reproduce this provision as under:-

Consumer means a person or entity who-

- (i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose; or
- (ii) hires any services for a consideration and includes any beneficiary of such services;

Explanation:- For the purpose of sub-clause (i), "commercial purpose" does not include use by a consumer of products bought and used by him only for the purpose of his livelihood as a self-employed person.

According to Para one of the complaint, complainant is a commission agent who deals in rice at wholesale level. Admittedly complainant dispatched a commercial consignment for Sangarh Sindh. The business carried on by the complainant even cannot be considered, by any stretch of imagination, to be a self employment so the objection in this regard is sustained.

It was also argued by the respondents that complaint is barred by time. I have gone through the record minutely. Admittedly consignment was dispatched on 13th of April 2009 which was to have found its destination within four days meaning thereby upto 17-04-09. Complainant lodged F.I.R No. 312/09 under section 406, 420 P.P.C at Police Station Civil Line Gujranwala on 28-05-09. The mandatory legal notice was dispatched by the complainant on 20-08-09. If, 'for the sack of arguments' by all means the limitation period is counted from the date of dispatch of legal notice the complaint was filed on 02-10-2009 which was required to be filed within thirty days from the arising of cause of action as per subsection 4 of the section 28 of Punjab Consumer Protection Act, 2005.

The upshot of the discussion is that complaint is dismissed for the forgoing reasons. File be consigned to the record room after its due completion.

Announced:
18-01-10

(SOHAIB AHMED RUMI)
PRESIDING OFFICER
District Consumer Court,
Gujranwala