

**IN THE COURT OF MR. TARIQ MEHMOOD IQBAL KHAN,**  
**DISTRICT & SESSIONS JUDGE /PRESIDING OFFICER,**  
**DISTRICT CONSUMER COURT,**  
**SIALKOT/NAROWAL**

Case No.50 /2009

Date of Institution: 31-05-2008

Date of Decision: 27-01-2009

Muhammad Arshad S/O Allah Rahem, Gujjar by caste, R/O Postal Colony, GPO, Sialkot.

*(Consumer-Complainant)*

*Versus.*

1. The Manager, Wateen Telecom, (Pvt.) Ltd; 4<sup>th</sup> Floor, New Auriga Center, Main Boulevard, Gulberg II, Lahore Pakistan.
2. The Manager, Wateen Telecom (Pvt.) Ltd; Paris Road Franchise Sialkot, Pakistan.

*(Service Providers-Respondents)*

**O R D E R.**

This order disposes of instant complainant, brought under Sec.25 PCP Act 2005 (bearing No.50/2008), launched at the instance of Ch. Muhammad Arshad (herein complainant-consumer) against the Manager, Wateen Telecom (Pvt.) Ltd. and another (herein respondent-service providers) for the allegations that he had purchased services of fixed line Wateen telephonic connection No:0092-52-8055199 alongwith Wimax Customer Premises Equipment on, 15-01-2008, vide agreement Ex-AW1/B, from respondents, while paying total consideration in sum of

Rs.5,850/-, vide receipt No.9357, appended herewith, whereas Rs.5,400/- were paid as monthly charges, till the institution of complaint. It was also pleaded that respondent had promised the complainant to offer free calls till 31-03-2008, however, within the

short span the services of the respondents regarding Telephony and Internet proved defective and faulty, even, proved absolutely useless, consequently the complainant-consumer failed to get any benefit from the special and regular service offered and agreed by the respondents which resulted to suffer precious time, cause mental torture and financial loss which constrained the complainant-consumer to lay several complaints to the respondents which met with no effect.

It was further pleaded that the complainant-consumer not only laid oral complaints to the respondents while appearing in person but also laid via helpline 111-65-111 but on each and every time the respondents failed to take any action whereas complainant-consumer had already paid usual charges in advance for one year in the form of cheques (since surrendered in favour of consumer-complainant, as many as nine). Whereafter, the complainant was constrained to serve a requisite postal registered A.D notice to the respondents with no action at all as reflected from their written reply dated 8 May, 2008, hence,

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the complaint for the claim of refund of amount already paid to the respondents alongwith compensation in sum of Rs.300,000/- besides litigation charges.

2. Respondents while submitting contesting writing reply and raising as many as five legal objections viz-a-viz bar of complaint by law of limitation, non-maintainability of complaint in view of clauses 8-A and 12 of the agreement (Ex-AW1/B) etc, and claimed the

dismissal of the case. The respondents also apposed the factual grounds vehemently and claimed heavy compensatory costs.

3. In view of the divergent pleadings of the parties the court invited the parties to prove their pros and contra allegations while leading their respective evidence.

4. The complainant-consumer examined himself as AW1, in support of his claim and produced his documentary evidence comprising affidavit (Ex-AW1/B) and original letters alongwith their respective envelopes at the instance of respondents addressed to complainant-consumer (Ex-AW1/C to Ex-AW1/F) respectively.

5. In rebuttal respondents side failed to produce any oral or documentary evidence while closing their evidence, however, this court in the fair interest of justice, examined Waqar Aslam,

Ex-Sale Coordinator, Wateen telecom, Sialkot as CW1, previously enlisted as witness by respondents who placed his reliance upon a draft in his hand dated 28-05-2008 (Ex-CW1/A), declaration (Ex-CW1/C) and his affidavit (Ex-CW1/D).

6. The learned counsels, on invitation of the court, advanced their respective arguments in support of their respective versions.

7. Respective arguments have been heard and record also examined.

8. It is worth to mention that issues emerged out of allegation contained in the pleadings of the parties and introduced through evidence which need evaluation by this court are as under: ~

- i) Whether this court lacks jurisdiction in to adjudicate this matter in view of clauses 8-(a) and 12 of the contract (Ex-AW1/B)?

- ii) Whether the respondents had provided all due and uninterrupted facilities/services to the complainant-consumer, in view of agreement (Ex-AW1/B)?
- iii) Whether consumer is entitled for any compensation, and costs etc, if so, to what extend?

9. On valuation of the entire record and evidence of the parties available on the record, it is transpired that complainant-

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consumer in support of his allegations and claim submitted his affidavit (Ex-AW1/A) which was not seriously dented or shaken or discredited except that respondent side mainly laid thrust that according to terms No. 12 of the contract (Ex-AW1/B), arrived at between the parties, the consumer must have resorted to the reconciliation at first, instead of proceeding to ensue the respondents. No matter this term was so incorporated in the chart of terms and conditions on the reverse of contract and was made integral thereof but this term or argument is insufficient to non-suit the consume or to throw out of the legal area in as much as Sec.3 PCP Act empowers this court to proceed with the consumer claim in addition to other prevailing laws, while further elaborating this issue the avowed object of the Act is to provide cheap, speedy and efficacious remedy to the consumers and it is with this object that section 3 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being

in force. The provisions of this Act, therefore, do not come in conflict with the provisions of any other law for the time being in force and are in addition to the provisions of any other laws for the time being in force. Accordingly it is for the consumer to

choose a forum convenient to him to seek remedy for the loss suffered because of 'deficiency in service'. As the provisions of this Act are in addition to and not in derogation of any other law for the time being in force. The reliance can be well pleased upon (i) Chief general Manager, Calcutta Telephones v. M.K Gupta, II (1991) CPJ 116 (120 and 123) (WB); (ii) Santokh Singh v. D.E. Telephones, shillong, AIR 1990Gua 47; (iii) Makhani Devi Banka (Smt.) v. Union of India, AIR 1981 Ori 11; (iv) Union of India v. Usha Spinning and Weaving Mills Ltd., AIR 1982; (v) Del 111; Nityanand Sahu v. P.M.G., Orissa, AIR 1977 Ori 48; (vi) Pritiviraj Kohli v. Union of India, AIR 1988 J&K 17 and (vii) District Manager, Telephone v. Niti Saran, I (1991) CPJ 48 (NC).

10. Undisputed, to rebut or dislodge the allegations levelled at the instance of consumer-complainant, no volume of oral or documentary evidence was ever brought on the record by the respondents/service-provider, thus, it can be validly held that the consumer evidence remained unshaken and un-rebutted. No matter, long course of cross-examination on consumer (AW1) was subjected but respondents/service-providers failed to extract any fruit. Besides during the course of his testimony

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(AW1)-consumer produced and referred two distinct letters alongwith envelopes (Ex-AW1/C) to (Ex-AW1/F) at the instance of respondents while deposing that in the support of his grouse of interrupted services, the respondents/service-providers had duly transmitted their apology to their customers inclusive consumers. Although during the course of cross-examination as well as arguments learned Counsel for respondents/service-provider laid emphasis that there letters were not in response to the allegations of consumers but this court is afraid to persuade the contention, which is devoid of any force in as much as consumer is also a customer of respondents/service-providers.

In addition to it, another argument was raised that afore-said letters (Ex-AW1/E) to (AW1/F) were received by the consumer, during the proceedings of this case which are not part of the pleadings of the complainant-consumer and can not be validly pressed into service before the court as subsequent events regarding the matter-in-issue can be well considered by a court of law while determining the rights and liabilities of the parties, in the fair interest of justice. On further evaluating the evidence of parties, it is also depicted from the deposition of

(CW1)-Waqar Aslam, an ex-sales coordinating officer of respondents/service-providers, previously enlisted as witness of respondents, also supported the telephonic complaint launched at the instance of respondent/service-

providers Whereafter, (CW1) visited the house of consumer in order to redress his complaint and disclosed that his complaint was so redressed. Thus, the claim and allegations of consumer-complainant stand proved and established.

11. It appears that after the deposition of (CW1)-Waqar Aslam, the respondents/service-providers, decided to place reliance upon his evidence and did not opt to bring independent evidence on the record to prove their version and to dislodge the consumer's allegations which legally leads the court to draw irrebuttable presumption that respondents side had nothing to damage the consumer's claim and allegations.

12. It is worth to discuss the question, at the instance of learned counsel for respondents/service-provider whereby, he had suggested to (AW1) consumer (Muhammad Arshad) that it was heavy load shedding of electric power during the period when interruption was complained, which resulted into faulty

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service as claimed by consumer. Be that as it may, the agreement (Ex-AW1/B) or any other document available on the record does not show that electric load shedding's effect on the service of respondents, even, no point was ever raised that in case of load shedding such responsibility or liability could not be attributed to the respondents, particularly, such organizations their alternate arrangements have alternate arrangements for round the clock convenience of his customers-subscribers, thus, it was a lame excuse,

at the part of respondents/service-providers. Apart from this such plea was never raised in the written reply. Of course, it is a sham defense emerged for the first time during evidence whereas it is held by Superior Courts of Pakistan, time and again that no volume of evidence can be considered by the court of law, at the tie of final adjudication of rights ad liabilities of the parties, which is in conflict with the version initially set up through pleadings. Consequently, this version raised up by respondent's side is, hereby, disbelieved; even otherwise, this aspect reinforces the allegations of consumer that from the day first there was continuous interruption in the Wateen Telecom service and thus, it is held that consumer has successfully proved the faulty/defective service provider by Wateen Telecom.

13. Another important feature of this case, as reflected from the record, is, evident from the evidence of (CW1)-Waqar Aslam, ex-employee of respondent, documents (Ex-CW1/A) and (Ex-CW1/B) as well as trend of, cross-examination that in response to the allegations and intention of non-subscription by the consumer, any further, the service-providers agreed with the refund claim of consumer which finally resulted into approval in favour of consumers, alongwith the delivery of cheque valuing Rs.8,550/- (Rupees, eight thousands five hundreds and fifty only) before the court, on even date. All this shows, would that the service of respondents, Wateen Telecom was upto the mark, there was no chance of approval of refund claim in favour of consumer-complainant, which also joins with the seriousness of allegations and claim.

14. It is also in the evidence of (AW1) Muhammad Arshad that he was offered Rs.25,000/- (Rupees, twenty five thousands) as



compensation, during the proceedings of this case which fact was never challenged or negated by the other side and thus, this tendency also leads this court to gather that the respondents side is fully agreed with the allegations and claim of complainant-consumer. Accordingly this court has no other option to hold that consumer-complainant has proved its allegations and claim against respondents/service-providers while producing

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creditworthy and confidence inspiring oral as well as documentary evidence.

15. While concluding discussions, it is held that consumer-complainant has successfully proved and established his allegations and claim against the respondents/service-providers and, thus, is entitled to Refund Claim in sum of Rs.8,550/- (Rupees, Eight Thousands Five Hundred and Fifty only) as explicitly admitted by respondents/service-providers, duly paid to consumer-complainant, before the court on even date, besides compensation in sum of Rs.30,000/- (Rupees, thirty thousands only) on account of mental torture, inconvenience and other financial loss which occasioned to the complainant-consumer due to in-ability of non-availing of uninterrupted communication facilities. The litigation charges, borne by the consumer, are assessed in sum of Rs.5,000/- (Rupees, five thousands). Hence, instant complainant is, hereby, allowed against respondents/service-providers and in favour of consumer-complainant with costs in sum of Rs.5,000/- (Rupees, five Thousands only) with the direction that respondents/service-providers will be bound to pay compensation, litigation expenses and costs in sum of

Rs.40,000/- (Rupees, forty thousands only) to the consumer-complainant, within twenty (20) days positively, failing which the respondents/service-providers will be dealt in accordance with provisions of sec.32 PCP Act 2005. The Wimax Equipment of respondents is already surrendered in favour of the respondents, at the instance of consumer-complainant, on 22-01-2009, before the court, vide receipt duly executed by Mohammad Ali Naqvi, C.S.O.

16. Before parting with the order this court is mindful to express that as per terms of Sec.30 (5) PCP Act 2005, this court is bound to adjudicate such matter within six months but as revealed from the order sheet, the proceeding of this case were protracted on account of frequent adjournments due to strikes observed by the advocates. File be consigned to the record after its due compilation.

Announced:  
27-01-2009.

*Presiding Officer*  
District Consumer Court  
Sialkot/Narowal.

### C E R T I F I C A T E

Certified that this Order covers twelve pages, each of which is dictated, corrected and signed by me.

Announced:  
27-01-2009.

*Presiding Officer*  
District Consumer Court  
Sialkot/Narowal.