

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

(Case No. 125 of 07.12.2012)

Muhammad Khalid Khan son of Ajab Khan, resident of Tarbela Road, Hazro, District Attock.

Vs.

Nasir son of Mir Afzal, resident of Hameed, Tehsil Hazro, District Attock.

Present: *Mr. Muhammad Orang Zaib Khan advocate for claimant.*
Raja Muhammad Naveed advocate for defendant.

JUDGMENT

1. *By filing this claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) claimant has asserted that Mr. Nasir (defendant) obtained work for installation of wiring in marriage hall of claimant; it was a verbal contract between parties on some agreed rates; work had to be completed within two months but defendant was failed to do so; defendant delayed work without any reason and he also sublet assignment to one Mr. Muhammad Shafiq without consent of claimant; due to non completion of work within time claimant suffered loss as he was not able to provide services to customers for arranging their marriages in said marriage hall; legal notice in terms of section 28 of the Act was issued to defendant but it was not replied; cause of action accrued when defendant obtained work from claimant and finally two weeks ago before filing of claim.*

2. *Defendant submitted his written statement where preliminary objections qua limitation, maintainability suppression of facts, issuance of notice in violation of section 28 of the Act and causing harassment etc were taken.*

3. *Learned counsel for claimant contends that case of claimant of course is not for defective products but is for defective services hence this Court has jurisdiction to adjudicate upon the dispute. He also maintains that when there is no period agreed between parties then limitation for filing of claim shall be one year and not thirty days hence claim is not time barred.*

4. *On the other hand learned counsel for defendant is of the view that as services were under a contract so case does not fall within the ambit of the Act and that limitation for filing of claim in any case is thirty days.*

5. *First of all I take the question of limitation. Admittedly, legal notice issued by claimant is dated 10.10.2012 which means that at least on that*

day final cause of action had accrued to him. Fifteen days time was necessary in terms of section 28 (2) of the Act to enable rival party to make reply. This period expired on 25.10.2012 or 26.10.2012. If it is said that limitation had started to run from 25 or 26.10.2012 even then claimant was under obligation to bring this claim within thirty days that means on or before 26.11.2012. Record shows that claim was filed on 07.12.2012 after about twelve days of expiry of limitation period.

6. I am not agreement with learned counsel for claimant that when there is no period agreed between parties then limitation shall be for one year. With the assistance of both sides I have examined section 28, which I will like to re-produce and same is as under: -

28. Settlement of Claims. (1) A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer or service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the consumer has suffered damage, or cease to contravene the provisions of this Act.

(2) The manufacturer or service provider shall, within fifteen days of the receipt of the notice, reply thereto.

(3) No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section (1) and provides proof that the notice was duly delivered but the manufacturer or service provider has not responded thereto.

(4) A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:

Provided that the Consumer Court, having jurisdiction to hear the claim, may allow a claim to be filed after thirty days within such time as it may allow if it is satisfied that there was sufficient cause for not filing the complaint within the specified period:

Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of services.

7. There remains no ambiguity to hold that a claim must be filed within period of thirty days because last proviso in fact qualifies earlier proviso where discretion has been given to a Court for extension of time after thirty days. If a party desires extension on any reason or on the reason that no period was specified for provision of services for that there must be a written application before Court with grounds showing sufficient cause for delay. No application whatsoever seeking extension has been submitted hence in these circumstances claim is time barred.

8. Coming to question of jurisdiction, a party can approach Consumer Court on the cause of action of defective product, defective services, obligation of manufacturer and unfair practices. Case of claimant as argued by learned counsel for claimant is for defective services. Entire

claim when examined, even by way of imaginations, it is not a case of defective services and at the most it is a case where there was delay for completion of work. What was standard of services agreed between parties, claim is also silent and what should have been the standard in view of section 14 of the Act, for that claimant was under obligation to plead it specifically but claim is again quiet on this aspect.

9. Learned counsel for claimant has admitted before me that only labour services of defendant were obtained. If it is so then I have no hesitation to say that defendant cannot fall within the definition of services provider because under section 2 (K) (i) rendering of any services under a contract of personal service is not included within with the definition of services provider.

10. In view of above it is held that this Court has no jurisdiction to entertain this claim hence it is returned to claimant with the observations that he may approach Court of competent jurisdiction, if so advised. File shall be consigned to record room after its due completion.

Announced
21.12.2012

(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.