

In the Court of Syed Maruf Ahmedali Presiding Officer/ District & Sessions Judge District Consumer Court, Lahore

MOHSIN ALI MALIK V/S VILLAGE RESTAURANT

ORDER:

This is a petition for compensation under the Punjab Consumer Protection Act 2005 filed by Mr. Mohsin Ali Malik against Village Restaurant, Lahore.

2 Brief facts according to the petition are that the petitioner along with his two friends namely Muhammed Afzal and Faisal visited Village Restaurant situated at M.M Alam Road Lahore on 2-5-2007 at about 10:00 P.M for dinner. The petitioner paid the bill of the dinner from his Credit Card. It is alleged that the petitioner after taking dinner at about 2:00 A.M started vomiting and loose motions. On the next morning the petitioner visited the Doctor who diagnosed that the petitioner had taken inferior and substandard food. The petitioner further alleged that his two friends also faced the same situation and lodged a complaint with him and he was humiliated by his guests / friends and suffered mental torture and embarrassment. The petitioner issued a notice dated 8-5-2007 to the respondent and claimed compensation amounting to Rs. 300000/- for physical suffering and Rs. 200000/- for mental suffering and has prayed that the petitioner be granted compensation and the respondent be proceeded against under the law.

3 The respondent was summoned who contested the suit through his written reply and took a number of preliminary objections. On the divergent pleadings of the parties following issues were framed.

ISSUES:

- i Whether the petition is not maintainable as cooked food does not fall under the definition of “product” as envisaged under the Punjab Consumer Protection Act 2005? OPR
- ii Whether the Petitioner has no cause of action as the same is not covered under sections 5,6,7 and 8 of the Act? OPR
- iii Whether the petition is malafide and has been filed by the petitioner to black mail and harass the respondent and is liable to be dismissed under Section 35 of the Act, being frivolous and vexatious? OPR
- iv Whether the petition is liable to be rejected for want of ad.valoram Court Fee? OPR

v Whether the petitioner is entitled to compensation/ damages as claimed by him? OPP.

4 Evidence of the petitioner was recorded as PW1 and the respondent produced RW1 Syed Gulfam Shahzada and RW2 Mr. Kenneth David.

5 It is contended by the petitioner that it has not been denied by the respondent that he has not visited the restaurant of the respondent and took dinner. He has further contended that legal notice has also been admitted by the respondent and he has placed on record. Copy of the prescription dated 3-5-2007 and 5-5-2007 which proves that the petitioner suffered from vomiting and loose motions due to the substandard food provided by the respondent and he had been humiliated in the eyes of his friends as well. He further contended that it has not been rebutted in evidence that the petitioner did not suffer from vomiting and loose motions after taking food from the Restaurant of the Respondent. He as further contended that the onus of issue No. 5 which was on the Petitioner has been proved and has prayed that the claim of the petitioner be accepted.

6 On the other hand the Learned Counsel for the Respondent has contended that cooked food does not fall under the definition of “product” as envisaged under The Punjab Consumer Protection Act 2005 and therefore the suit is not maintainable. He has further contended that the petitioner has no cause of action and the suit has been filed by the petitioner to black mail and harass the respondent and is liable to be dismissed under section 35 of the Punjab Consumer Protection Act 2005. He has further contended that ad-valorem Court Fee of Rs. 15000/- to be fixed on the suit which the petitioner has failed to fix and the suit is liable to be dismissed on this sole ground. He has further contended that it is a case of no evidence. There is no corroboration of the evidence of the petitioner and his two friends who accompanied him to dinner has not been produced as witnesses. On the other hand the respondent has proved that their cooking is hygienic and about 800/900 customers daily take food from their Restaurant and not a single complaint has been received by them. He has further contended that the petitioner has failed to prove Issue No: 5. Onus of which was on him and has prayed that the suit be dismissed.

7 After hearing the arguments for both the parties and carefully scanning the evidence produced by them, my issue wise findings are as follows:

ISSUES NO. 1 and 2.

The onus of both these issues is on the Respondent, which are interlinked therefore they are being taken up together. The definition of product has been clearly given in section 2(J) of the Punjab Consumer Protection Act 2005 which proves that cooked food falls under the definition of “product” and other than cooked food i.e animals, plants, natural fruits and other Raw products in their natural state that are derived from animals or plants does not fall under the definition of “product”. The case of the petitioner is covered under Section 5 of the Punjab Consumer Protection Act 2005 and he has a cause of action against the Respondent. The respondent has failed to prove both these Issues. Hence they are decided against the Respondent.

ISSUE NO.4

The onus of this issue was on the Respondent. Special Law has been promulgated and Special Courts i.e District Consumer Courts have been established to redress the grievances of the Consumers. Other wise the petitions and suits which are being filed in this Court could have been filed and adjudicated by the Civil Courts where Court Fee was leviable . This special forum has been established so that the Consumers are not burdened with Court Fee. Other wise the mere concept of establishing Consumer Courts would have been frustrated. This being a special law petitions / suits filed under this Act are exempt from advalorem court fee. The respondent has failed to prove this issue and the same is decided against the Respondent.

ISSUE NO.5.

The onus of this issue is on the petitioner. He has appeared as PW1 and had categorically stated that on 2-5-2007 at about 10.P.M he along with his two friends visited the Restaurant of the Respondent and took food and thereafter at about 12:00 / 1:00 mid night, he felt vomiting and at 2:00 A.M he started vomiting and loose motions. In the morning of 3-5-2007 he went to the Lahore High Court dispensary where the Doctor diagnosed that due to the quality of food he has suffered from vomiting and loose motions. The Doctor prescribed him medicines for two days. Both his friends also complaint about the same problem. He felt insulted and suffered from mental and physical torture. During cross-examination it has been proved by the Respondent that the Petitioner suffered from vomiting and loose motions and the same was not rebutted during cross examination. It has also been proved that on 2-5-2007. The Petitioner did

not take lunch from anywhere else and took dinner from the Respondent's Restaurant at 9:00/10:00 P.M.

RW1 Syed Gulfam Shahzada and RW2 Mr. Kenneth David Chef and Manager respectively had tried to prove during their evidence that they prepare food hygienically and purchase food items on daily basis. And daily 800/900 customers take food from their restaurant and no one has complained. During cross-examination RW2 has stated that if there is any surplus vegetables and mutton leg , they throw it away which is not believable. Instead of throwing they can hand over the same to their staff, which proves that RW2 is not a trust worthy witness and is a liar.

The respondent has failed to shatter the evidence of the petitioner during lengthy cross examination. The petitioner has also placed on record copies of the prescription dated 3-5-2007 and 5-5-2007 which proves that the petitioner after taking food from the Restaurant of the Respondent suffered from Gastro-Enteritis and took medicines for about three days and could not follow his daily pursuits. The contention of the Respondent that 900 / 1000 customers daily take food from their Restaurant and no one has ever made a complaint against them. It does not mean that if no one had made a complaint against the Respondent then every thing was well. As generally people do not enter into litigation and avoid going to courts. The petitioner being a lawyer had brought his case to the Court. The petitioner has proved Issue No. 5 which is decided against the Respondent.

ISSUE NO.3.

The onus of Issue No.3 was on the Respondent. The Respondent has failed to prove that the suit of the Petitioner is malafide , frivolous and vexatious and has been filed to black mail and harass the Respondent. This Issue is decided against the Respondent.

Relief:

In view of the above findings the petitioner is entitled for compensation as he had suffered from Gastro-Enteritis due to the substandard and defective food served by the Respondent to the petitioner and his guests and he is entitled to compensation amounting to Rs. 30000/- along with Costs of the suit amounting to Rs. 10000/- and the bill of the food amounting to Rs. 1890/-. The suit of the Petitioner is accepted for a total amount of Rs. 41890/- The Respondent is directed to pay the said amount to the Petitioner within ten (10) days from the date of this Order.

File be consigned to record room after due completion.

Announced
27-09-2007

Presiding Officer
District Consumer Court
Lahore

Certificate:

Certified that this Order consists of 5 pages which has been dictated, read, corrected and signed by me.

27-09-2007

Presiding Officer
District Consumer Court
Lahore