

**In The Court Of Syed Maruf Ahmedali Presiding Officer
District & Sessions Judge District Consumer Court
Lahore.**

Faisal Hanif Bukhari V/S Faysal Bank Etc.

Order.

The Petitioner has filed a claim for damages of Rs.50000/- against the Respondents.

2 Brief facts, according to the Petition, are that the Petitioner purchased Suzuki Cultus Car Model 2007 on lease from the Respondent Bank on 31.03.2007. The Respondent Bank undertook to get the Registration formalities completed within a short period. The Petitioner deposited all the Registration expenses and is paying installments regularly. Six months have lapsed but the Petitioner has not been issued the Registration Book. The Petitioner has been constantly approaching the Respondent Bank for issuance of Registration Book, but to no avail. It is alleged that the services of the Respondent Bank are faulty and defective which have resulted in mental torture, discomfort, and financial loss to the Petitioner. On inquiry the Petitioner came to know that Excise and Taxation Department Lahore had prepared the Registration Book and the same was dispatched to Respondent No. 2 on 05.04.2007, but the same has not been delivered to the Petitioner. The Petitioner issued a Legal Notice to the Respondents on 08.09.2007 Reply to Legal Notice was also received by the Petitioner. Hence this Petition in which the Petitioner has claimed Rs. 50000/- as damages for providing faulty and defective service.

3 The Respondent Bank was summoned. Who contested the claim of the Petitioner through their Written Statement. In order to prove his claim, the Petitioner appeared in the witness box as PW-1 and produced documents Ex-C/1 to Ex-C/8. From the evidence of the Petitioner it transpired that the Excise and Taxation Department Lahore and Speedex Courier Services are also a proper party, who were impleaded as Performa Respondents No 4 and 5. Evidence of CW-1 Muhammad Tahir and CW-2 Bakar Ali was also recorded. Who produced documents Ex-C/9 and Mark C/2. The Respondent Bank produced RW-1 Mirza Kamran Baig (Vice President) who produced documents Ex-R/1 to Ex-R/7. Both the parties closed their evidences on 14.05.2008.

4 It is contended by the counsel for the Petitioner that admittedly Suzuki Cultus Car Model 2007 was obtained on lease from the Respondent Bank by the Petitioner on 31.03.2007 who received the Registration charges and undertook to get the car registered and hand over the Registration Book to the Petitioner within a few days. But the Respondent has failed to provide the Registration Book to the Petitioner and now they have taken a new plea that the Registration Book has been lost and a duplicate Registration Book has been prepared on 03.05.2008 i.e. after about 14 months of the delivery of the car which proves the faulty and defective service of the Respondent Bank. Admittedly the duplicate Registration Book has diminished the value of the car and the Petitioner has suffered a tremendous loss, as when his car is sold after the period of lease it will not fetch the market value. Therefore, he is entitled to damages of Rs. 50000/- and has prayed that his Petition be accepted.

5 On the other hand the counsel for the Respondent Bank has contended that this Court has no territorial jurisdiction to adjudicate upon the matter. He has further contended that

the Respondent Bank is neither a service provider nor the Petitioner is a Customer as defined by the Punjab Consumer Protection Act 2005. He has further contended that Legal Notice under Section 28 of the Act *ibid* was not served on the Respondent Bank and the Petition is barred by time. He has further contended that the Registration Book was lost during transit when the same was dispatched by the Motor Registration Authority Lahore and therefore, the Respondent Bank is not at fault. He has further contended that the duplicate Registration Book has been prepared which is with the Bank and the Petitioner may receive the same. He has further contended that the Petitioner has failed to prove his case and the Petition be dismissed.

6 After hearing the arguments of both the learned counsel for the Parties and perusing the record. According to the evidence of the Petitioner who has appeared as PW-1, admittedly Suzuki Cultus Car Model 2007 was delivered to him on 31.03.2007. Admittedly the car was registered at Lahore and its Registration Number is LEC-07-6939. Admittedly the Registration charges were also paid to the Respondent Bank who undertook to provide the Registration Book in one week. After about four days the Number Plate of the car was delivered to the Petitioner but the Registration Book of the car was not delivered to him. He had been contacting the Respondent Bank to provide him the Registration Book of the car. On 05.05.2007 he came to know from the Registration Authority Lahore that they had dispatched the Registration Book to the Bank. But the same was not delivered to the Petitioner. He has prayed that his car be replaced or the Registration Book be provided to him and he may also be granted compensation amounting to Rs. 50000/-

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CW-1 Muhammad Tahir was summoned who admitted that he had received the Registration Book of the car from Speedex Courier Respondent.No.5 on 03.05.2007 and handed over the documents to CW-2 Bakar Ali the Agent of Faysal Bank .It is pertinent to mention there that CW-1 Muhammad Tahir S/O Muhammad Anwar who was delivered the Registration Book by Respondent. No.5 Speedex Courier Service., is an unauthorized person. He has admitted that he is neither an employee of Excise and Taxation Department, nor Faysal Bank nor Speedex Courier Service. CW-2 Bakar Ali has admitted that he had received the Registration Book from CW-1 Muhammad Tahir on 04.05.2007 and he had further stated that the Registration Book was delivered to Zeeshan Employee of Faysal Bank Branch at old Bahawalpur Road Multan on 06.05.2007. During cross examination CW-2 Bakar Ali has admitted that he is not an employee of Faysal Bank. But he has admitted that he is an authorized representative of Faysal Bank. He has placed on record his Authority Letter Mark C/2, which proves that the Registration Book was delivered to Faysal Bank.

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RW-1 Mirza Kamran Baig (Vice President) of the Respondent Bank had stated that he did not receive the documents of the Registration of the car from the Excise and Taxation Department. There after they applied for the duplicate Registration Book and also advertised in the Newspaper the loss of the Registration Book which is Ex-C/6 and also lodged a Report with the Police Station which is Ex-C/7.Now they have received duplicate documents and duplicate Registration Book which is Ex-R/4 , Ex-R/5 and Ex-R/6. He has admitted during cross examination that CW-2 Bakar Ali is their authorized agent at Lahore who received the Registration Book from Excise and Taxation Department Lahore for onward transmission to the concerned Branch. He has also admitted that the Registration Book was handed over by the

Excise and Taxation Department to CW-2 Bakar Ali. He has also admitted that if the original Registration Book is lost and Duplicate Registration Book is issued the market value of the car diminishes.

9 From the evidence on record it has been proved that the Registration Book of the car was delivered by CW-2 Bakar Ali authorized agent of Faysal Bank to Faysal bank Multan and dispatched to by Zeeshan to Bahawalpur Branch from where the car was leased by the Petitioner. It is also proved from the Advertisement Ex-C/6, in the Newspaper that on 09.05.2007 the Registration Book was lost by Faysal Bank Branch near Farid Gate Bahawalpur. This fact is also proved by the Report Ex-C/7 lodged with the Police Station. The duplicate Registration Book has been issued after about 14 months of the delivery of the car, which shows the defective and faulty service of the Respondent Bank. Admittedly according to RW-1 Mirza Kamran Baig Vice President who has appeared on behalf of the Respondent Bank has admitted that Duplicate Registration Book has diminished the market value of the car.

10 As far as the territorial jurisdiction of this Court is concerned, Respondent Bank applied for the Registration of the car with Excise and Taxation Department Respondent No.4 at Lahore. Registration Number of the car i.e. LEC-07-6939 was also issued from Lahore and the documents of the Registration were dispatched by Respondent No 4 through Respondent No.5 from Lahore. Therefore, this Court has territorial jurisdiction to adjudicate upon the matter. Notice under Section 28 of the Punjab Consumer Protection Act 2005 Ex-C/4 and reply issued by Respondent Bank Ex-C/5 proves that the Legal Notice was served on the Respondent Bank.

11 According to the definition given in the Act *ibid*. The Respondent Bank is a service provider and the Petitioner is a Consumer Reliance is placed on 2003 CLD 1843 (Karachi). In this case it was held that Banking Court in circumstances has no jurisdiction over the matters. The Petitioner has claimed compensation /damages based on a Tortious act which would fall under the Act *ibid*. As one area of Tort has been codified in the Act *ibid*. The Bank being a Service provider has failed to provide proper service to the Petitioner. Section 3 of the Act *ibid* says “That this Act shall be in addition to and not in derogation of the Provisions of any other law for the time being in force”.

12 As far as the question of Limitation is concerned. Admittedly the car of the Petitioner was delivered to the Petitioner on 31.03.2007 but the Registration Book was not delivered to him for the last 14 months. A duplicate Registration Book has been prepared on 03.05.2008 during the pendency of this Petition. The Petitioner time and again have been approaching the Respondent Bank for delivery of the Registration Book. A Legal Notice was also issued to the Respondent Bank by the Petitioner on 08.09.2007. Reply to this Notice was given by the Respondent Bank. This Petition was filed by the Petitioner on 01.11.2007. As the Registration Book was never delivered to the Petitioner for the last 14 months, therefore, the Petitioner has a continuing cause of action .This Petition is well within time. As the limitation would start from the preparation of the duplicate Registration Book, which was prepared on 03.05.2008.

13 Before parting with this Order, the Petitioner had filed an Application for amendment of the plaint on 10.05.2008 the same was not pressed and the amendment sought

through this Application would change the nature and complexion of the suit and will give rise to a new cause of action. Hence this Application is dismissed.

In view of the aforesaid reasons, the Petitioner has proved his case and it has also been proved that the duplicate Registration Book would diminish the market value of the car. Hence the Petitioner is entitled to damages/compensation amounting to Rs. 50000/-.The claim of the Petitioner is accepted. The Respondent Bank is directed to pay compensation/damages to the Petitioner amounting to Rs. 50000/- and is also burdened with costs of Rs.5000/- The Respondent Bank shall deliver the Duplicate Registration Book to the Petitioner within 10 days from the date of this Order.

File be consigned to record room after due completion.

Announced
29.05.2008

Presiding Officer
District Consumer Court
Lahore.

Certificate

Certified that this Order consist of Eight (8) pages which have been dictated,read,corrected and signed by me.

29.05.2008

Presiding Officer
District Consumer Court
Lahore.