

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

(Case No. 88 of 13.10.2012)

Muhammad Manzoor son of Hajji Abdul Hameed, Senior Engineer
Transmission Kashmir Road, Rawalpindi

Vs.

Thekadar Manzoor Nawaz Malik son of Bahadur Malik, estate builders
and Property Manger Palm City, Khurram Plaza near Umar Colony Market
Khyaban-e-Tanveer, Chaklala Scheme III, Rawalpindi

Present: Claimant with Mr. Muhammad Farooq Awan advocate
Defendant with Syed Mumtaz Hussain Sheerazi advocate

JUDGMENT

1. By filing this claim under Section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) Mr. Muhammad Imran/claimant has asserted that through an agreement (P-1&P-2) he got services of Mr. Manzoor Malik/defendant for construction of house over plot no. 94 measuring 35x70 situated at Palm City near Chaklala Scheme III, Rawalpindi; rate of construction was settled as Rs. 1100/- per square foot including raw material; total measurement of plot was 2100 square feet; claimant paid consideration of Rs. 23,80,000/- to defendant; after residing in house claimant had noted certain defects hence services provided by defendant were not in accordance with contract; defects noted were as under: -

- There were cracks on outer and inner walls.
- Slope of bath room tiles was not proper which was a reason for restraining drainage and it resulted stay of water in bath rooms.
- Fitting in bath rooms was not made and material used was of substandard despite the fact that for his personal choice claimant had paid Rs. 15,000/- extra.
- Defective marble was used which was detached from walls. Slabs of some rooms were also under process of detachment.
- On various points over rooftop due to improper slope and less use of iron there was stay of water.
- In windows and grills less gauge of iron was used.
- Paint of ICI and weather sheet was not used hence it was destroyed after few rains.
- Main whole pipe of sanitary was of four inches instead of six inches due to which sewerage line remains block.
- Due to use of less quantity of cement, plaster was separated from floor. Digging of foundation was 1.5 feet instead of 2 feet.

- *Wet wood was used which caused cracks in windows.*

2. Claimant further asserted that on 29.09.2012 he sent a legal notice (P-4) to defendant but he did not respond. He has prayed for recovery of Rs.12,00,000/-(twelve lacs) without specifying either as damages or compensate.

3. On appearance, defendant filed written statement. He had taken preliminary objections about cause of action, suppression of facts, maintainability, rejection of claim and special costs. On facts it was asserted that claimant got possession of house 1½ year earlier; he used to check quality of construction on daily basis; work was being done as per satisfaction of claimant; while receiving possession claimant raised no objection; claimant purchased all material of his own choice; he himself had misused the house; still an amount of Rs. 80,000/- is against claimant; all was done as per agreement between parties; in agreement make of cable was Muzaffar Cable and not Pakistan Cable; at any stage of construction claimant did not object on standard and quality of material as well as services. Dismissal of claim was prayed for with costs.

4. In evidence claimant got his statement recorded as Pw-1. He had also produced Mr. Muhammad Ramzan and Mr. Asghar Ali as Pw-2 and Pw-3 respectively. Documents Ex. P-2 to P-5 was brought on record.

5. On the other hand, defendant came in witness box as Dw-1 and he too produced Mr. Kafeel Ahmad and Mr. Hazrat Hussain as Dw-2 and Dw-3 respectively. Documents Ex. D-1 to D-4 was also produced.

6. As this case was requiring expert opinion so vide an order dated 26.11.2012, I had appointed a Civil Engineer of Building Department Rawalpindi named Syed Arshad Raza SDO as a commission with following directions/references: -

- *On every visit of house in question he shall inform both the parties prior in time so both may be available to facilitate him.*
- *In view of agreed contract between parties he shall ascertain quality of work, use of material and product etc.*
- *Other area which he deems proper but confining to contract between parties.*
- *He may also sent any material to any Government Laboratory for analysis if found necessary for which fee shall be paid also by claimant.*

7. Learned expert after visiting house in question on various occasions in presence of parties besides procuring some technical reports (Cw-1/A to Cw-1/E) had submitted his report (Cw-1/A) in Court. Both sides had filed objections on this report.

8. To do complete justices and to arrive at a just decision of this case I also examined Syed Arshad Raza expert as a Court witness.

9. Learned counsel for defendant contends that possession of house was delivered to claimant on 30.04.2012 whereas claim was filed on 13.10.2012 hence it is time barred.

10. Under section 28 of the Act, a claim can be filed before Consumer Court within 30 days of arising of cause of action. Undisputedly, possession of house was handed over to claimant at the end of April 2011 and claim was filed after about 1½ year. Whether this fact is sufficient to hold the claim as time barred? My answer is in negative because it has to be seen that when final cause of action had accrued to claimant. This is a case on the allegations of provision of defective and faulty services for construction of a house. It cannot be said that on taking of possession of newly constructed house the defects as pointed out in claim were there. Of course, when claimant started to reside in the house and used it, in a natural course with the passage of time defects started to occur. On discovery of every defect claimant got new cause of action so when he saw all defects in existence he got final cause of action and thereafter he sent legal notice to defendant. Therefore, I hold that claim filed by claimant is well within time.

11. Learned counsel for defendant further maintains that under section 28 of the Act, it was the duty of claimant to server legal notice to defendant but it was not done hence violation of mandatory provision shall result into dismissal of claim.

12. Perusal of claim shows that claimant had categorically stated about issuance of legal notice (P-4) to defendant in terms of Section 28 of the Act. Although, in written statement this fact was denied but during evidence position was different. Claimant had specifically stated about sending of notice on 26.09.2012 to defendant but this fact was not challenged during cross-examination. Not only this, defendant also did not deny about issuance of notice by claimant or its receipt by him / defendant in his affidavit. This argument in these circumstances is of no force.

13. *Learned counsel for claimant has pointed out a clerical error in very first line of cross-examination made on claimant where instead of August 2010, August 2008 was written. As it is an admitted fact that agreement was executed between parties on 11.08.2010 and defendant started work thereafter in the same month so correction as requested is allowed. August 2008 shall be read as August 2010.*

14. *Learned counsel for claimant also contends that contract between parties should have been fair and all conditions were required to be in the knowledge of consumer but claimant was misled by defendant which is a relevant fact being conduct of defendant. This argument has no basis because neither in claim nor in evidence this was the case of claimant.*

15. *Learned counsel for claimant further maintains that in view of expert report, it is established that construction of first floor over the house in question is not possible in view of defective foundation so this is an irreparable loss. This contention has also no weight. There was no clause in agreement between parties that foundation would be of such standard which would bear load of construction of another floor. Even approved site plan (P-5) shows that it is single story foundation hence now it will be in surmises and conjunctures to say that foundation was also for construction of another floor on the house.*

16. *Now I come to real controversy between parties. Admitted facts are that claimant got services of defendant for construction of his house; both parties for this had entered into an agreement (P-1); specification of structure and material were also described with signatures by rival sides; defendant constructed the house and delivered its possession to claimant on 30.04.2011.*

17. *Claimant is of the view that certain defects had crop up when he started to reside in the house and those defects are due to defective services besides use of defective products in material. On the other hand, defendant's case is that every assignment was as per standard and specification agreed by both parties in view of admitted agreement.*

18. *Evidence was produced by both sides but none of the witnesses including claimant and defendant were expert in civil engineering or having any diploma or qualification. So referring the evidence produced by both sides will amount to wastage of time of this Court in presence of best evidence of an expert who is Civil Engineer.*

19. Learned expert had visited house in question in presence of both sides on various dates and submitted his detail report. On this report, as mentioned earlier, both sides had filed objections. However learned counsel for claimant during course of arguments has opted not to press his objections and he accepts the report without any reservation.

20. Defendant on this report has raised objections that after measurement by expert it is proved that that claimant has caused damage of about Rs. 2,00,000/- to defendant; commission had gone beyond the reference directed by this Court; proper digging to examine the foundation was not made; cracks noted by commission were of minor nature; commission had suppressed certain facts; defendant told the commission that there was proper drainage of water in bath rooms but commission changed its findings; there was no mention of size of sewerage pipe in agreement hence no findings could be given in this regard; no sample of paint for test in laboratory was secured; electric wires were sent to Taxila despite the fact that test laboratory is also in Rawalpindi therefore, fake reports were obtained.

21. Of course, expert in presence of direction of this Court had to submit its report keeping in view admitted agreement between parties and if he had exceeded to the extent of one or two items that cannot be taken into consideration.

22. Expert report is very comprehensive. On the basis of examination of said report there can be a comparison that what was in contract and what was at spot. Following table will clarify this position: -

S. No	Agreed Standard	At Spot Position	Remarks By Court
1	DPC Excavation 2ftx 2ft	Foundation was 4.5 inches less wide than as shown in approved plan.	Violation
2	1:4:8 PCC bedding (6 inches thick as per approved plan) (Normally 3 to 6 inches PCC pad is required below first course of brick work in foundation)	Only 1.5 inches thick. 1:4:8 PCC bedding is in existence.	Violation of approved plan
3	FFL 2.5 feet above road level	OK	OK
4	Cement sand ratio 1:4. (It is not mentioned what is this ratio for brick work mortar, cement plaster or cement concrete)	Plaster on walls was found satisfactory and according to prevailing standards. However edges of external plaster were found out of plumb at few points	OK

5	Bricks. In foundation over burnt brick (Kheengar) Quality Class one. (Absence of specification)	Keeping in view gauge of quality of bricks available in local market, appearance, edges and ringing sounds same were of good condition.	OK
6	Height of ceiling from 10 to 10.5 feet	At one place it was found 9ft 9 inches and on other place it was 10 ft. It was slightly lesser than agreed standard	Slight difference
7	Wood work. Door of solid wood, Bayar and Kail. Bed Almirahs, Lamination and Lasani	Doors are made of Kail wood; almirahs are made of lamination and Lasani Sheets. Overall quality of executed wood work is satisfactory	OK
8	Electric Work. Pipe and other items of Popular Company. Wire of Pak Muzaffar Company 7/26, 7/29 and 3/29	Electric cable samples were taken from house and got tested from University of Engineering and Technology Taxila and found defective. PVC pipes for wiring were found defective and were not of brand "Popular".	Violation
9	Iron for windows etc 17 swg gauge	Gauge of windows were 18 swg. Such minute variation in size is permissible as per prevailing practice	Slight violation
10	Color Paintex ICI	It was not as per prevailing market standard. Proper filling of plaster before painting work was not done Poor quality paints (Emulsion and distemper) was used	Violation

23. Another comparison is relevant keeping in view defects pointed out in claim by claimant. What is in claim and what the expert had observed and noted that is also evident from following table: -

Sr. No	Defects pointed out in claim	Observations of Expert	Remarks By Court
1	Appearance of cracks on internal and external walls	Cracks have appeared in walls at few places. These cracks are due to 1. Poor workmanship 2. Insufficient curing 3. Low quality mortar and differential settlement 4. Uneven settlement in foundation (No serious threat to stability of structure. There is negligence on part of contractor during execution of works	Defective

2	<i>Due to improper slope in bath room floors drainage of water is a problem</i>	<i>There is uneven floor of one bath room. This is a result of poor workmanship.</i>	<i>Defective</i>
3	<i>Bath room fittings are not as per contract agreement. Low quality material has been used despite additional payment</i>	<i>Bath room tiles and fittings are as per prevailing market standard and contract agreement.</i>	<i>OK</i>
4	<i>Defective marble has been used. It has detached from walls. Water pond is observed and few pieces of marble slab have started detaching</i>	<i>Quality of marble used is as per contract agreement and prevailing market standards. However skirting has been found detached at few places. Few pieces of marble have been found cracked and settled in rooms. This is a result of poor compaction of refill material</i>	<i>Defective</i>
5	<i>Water pounding on roof observed because of uneven surface and insufficient steel</i>	<i>Thickness of slab is ½ to 1 inch less than required at site. Wobbling of slab has been noticed</i>	<i>Defective</i>
6	<i>Gauge of steel work is less</i>	<i>18 swg sheet has been used instead of 17 swg sheet as per contract agreement which is permissible due to variations in market materials.</i>	<i>OK</i>
7	<i>Painting work is not as per agreement. ICI and weather sheet has not been used. Paint is detaching from walls and weather sheet has been destroyed after few rains</i>	<i>Internal painting work is defective. Whereas on outer side Graffito has been applied. So there is no issue Weather sheet on external walls. Contractor should rectify internal painting work</i>	<i>Defective</i>
8	<i>Sanitary pipe is of 4 inch dia. It should be 6 inch dia. As a result sewerage line is often blocked</i>	<i>As per prevailing engineering standards sewerage pipe should have been at least of 6 to 9 inches dia for such house.</i>	<i>No specification in contract</i>
9	<i>Defective electric cables have been used instead of Pakistan cables. Resultantly 50% higher bill is being paid</i>	<i>Report of UET Taxila is attached with. Overall quality of electric work is poor and rectification is required</i>	<i>Defective</i>
10	<i>Cement sand ratio 1:4 as a result plaster is deteriorating at wall</i>	<i>Plaster on walls and found those satisfactory at site according to prevailing standards. However edges of external plaster were found out of plumb at few points</i>	<i>OK</i>
11	<i>Poor quality Kail wood has been used and doors are defective. Poor work of almirahs</i>	<i>Wood work executed at house is as prevailing market standards and as per contract agreement.</i>	<i>OK</i>

24. Test reports (Ex. Cw-1/B to Cw-1/D) about electricity wires shows that those were defective and substandard. No doubt that on these reports it is written that these are not technological reports and cannot be used in Court of Law but it makes no difference on the reason that Expert got these reports for support of his findings and not for Court use. Even otherwise by mentioning in reports about not using in Court of law shall not deprive the Court from its powers to examine the same. These reports are from Government Laboratory which is 'University of Engineering and Technology, Taxila Electrical Engineering Department Testing & Advisory Services'. If defendant had serious objections about genuineness of these reports he could ask this Court for summoning of concerned expert but said demand was never made. Therefore, these reports cannot be held to be doubtful or fake.

25. The learned expert had finally concluded as under: -

- Cracks in walls (But these cracks are only cosmetic problem)
- Less thickness of 1:4:8 PCC pad in foundation
- Settlement in marble flooring at few places
- Improper flooring of one bath room
- Defective Internal painting work
- Insufficient roof slab thickness at few places
- Defective electric wiring work
- Poor workmanship in external plastering
- Lesser dia of main sewer pipe

26. I will also like to reproduce some pictures which Expert had drawn at spot and these are as under: -





27. In cross-examination on expert made by learned counsel for defendant, he replied that he did not cut iron of his own but by his sub engineer on his direction; digging of foundation was according to agreement; he had checked thickness of PCC bed only from one point which can be different at different places but only one point was settled with the consent of parties; there can be some change on filling marbles with passage of time; paint and distemper also get changes with passing of time, however, in this case distemper and paint were not in accordance

with agreement; there was no mention of sewerage pipe in contract. He denied that he made a favourable report for claimant.

28. Syed Arshad Raza SDO is an officer of Government department. He is an independent person having no relation with any of the parties. He made his best efforts for doing needful which is evident on perusal of report. This report itself shows that it is based on justices because work which was in accordance with agreement, the Expert had noted that in same manners. There is nothing in objections or in cross-questioning or otherwise which could persuade me to hold that report is biased or prejudiced or against position in existence at spot.

29. The Act, is a special enactment. Such technical issues are brought before Consumer Court arising between Consumer and Services Provider or between Consumer and Manufacturer, therefore, under section 30 (c) of the Act, power is available to the Court to decide a dispute on the basis of evidence by inviting expert evidence. It is settled principle of law that an expert's evidence if found true in all respect and submitted by a qualified person, it shall prevail upon other oral pieces of evidence.

30. The purpose of law for inviting expert evidence is also under wisdom because in most of the matters like in hand no one can be in a better position than an expert whose observations and opinion are always relevant for Court to do complete justice. So after discussing the case from all angles and in particular considering the report of expert, it is established that defendant had provided defective and faulty services which was due to poor workmanship and the fact that defendant although provides services of construction by running estate house but he did not poses any qualification in this field. This results to rejection of objections also.

31. Whatever has been discussed above in the light of that I hold that claimant has succeeded in his claim. Coming to question of relief, claimant did not plead that how he is entitled for compensation of Rs. 12,00,000/-. Even Expert did not give opinion that what was the loss in terms of money to claimant due to defective and faulty services. It is worth mentioning that the expert had categorically observed that 'this house is a stable structure under normal circumstances. However repair and rectification works for the above mentioned defective works are required at this house'. It means that there is no permanent loss and defects can be cured and when this is the situation then entire responsibility comes on

the shoulders of Court to determine the compensation which must be reasonable. Therefore, I pass an order to defendant under Section 31 of the Act and direct him to take following actions within the period of one month from today: -

- a) To pay Rs. 5,00,000/- (five lacs) as compensation to claimant for loss suffered by him due to defective and faulty services and use of of defective product/electric wires.*
- b) To pay Rs. 30,000/- (thirty thousands) to claimant. (Fee paid by him to local commission).*
- c) To pay Rs. 9000/- (nine thousands) to claimant. (Fee for Laboratory test paid by claimant)*

File shall be consigned to record room after its due completion.

Announced
07.02.2013

(Sohail Nasir)
District & Session Judge
Judge Consumer Court
Rawalpindi.

It is certified that this judgment consists of eleven pages. Each page has been dictated, read, corrected and signed by me.

(Judge Consumer Court)
Rawalpindi.