

**IN THE COURT OF MR. ABDUL HAFEEZ  
DISTRICT AND SESSIONS JUDGE / PRESIDING OFFICER  
DISTRICT CONSUMER COURT, RAWALPINDI**

(Case No. 79 of 23.05.2019)

Aamir Hussain, S/O Ameer Zaman, R/O Khalsa  
Kalan, Post Office Same, Tehsil & District,  
Rawalpindi.

(Complainant)

**Versus**

Electro Mart, Opp. Lodh Masjid, Munawar  
Colony, Main Adyala Road, Rawalpindi through  
its Proprietor Mr. Mian Waseem Nasir.

(Defendant)

**SUIT UNDER SECTION 25 OF PUNJAB CONSUMER PROTECTION  
ACT, 2005 FOR RECOVERY OF RS. 1,70,000/-**

**EX-PARTE ORDER  
02-01-2020.**

Briefly stated facts of the case are that complainant is law abiding citizen, whereas the defendant is running a electronic items shop with the name and style of Electro Mart and deals in sale of Electronic Items;- that complainant purchased original Samsung LED TV 32" vide cash memo # 8250, dated 19.01.2019 from the defendant against the consideration of Rs. 20,500/-;- that the complainant took the LED TV home but on 10.04.2019 it became out of order, complainant contacted the defendant for the solution of the issue, who refused to take any responsibility and showed rude behavior and used

filthy language and burst over the complainant;- that after such behavior of defendant complainant took the LED TV to the customer services center of the Samsung company to claim the warrantee, but the representative of the customer services center of the Samsung Company told that the LED TV is not original LED TV of Samsung company, so they could not claim the warrantee;- that the complainant tried to settle the dispute in peaceful manner and requested the defendant number of time to give back his valuable consideration despite the fact that the defendant mislead the complainant and concealed the real circumstances;- that few days ago from the sending of legal notice the complainant personally approached the defendant and requested to return back his valuable amount. However, despite of accepting the mistake or irresponsibility, started misbehaving and used filthy language towards the complainant so the complainant has no other option except to left the premises to save her grace and dignity and adopt the legal procedure;- that the complainant has suffered a huge loss, which cannot be calculated in amount but the loss seriously caused to the complainant is as follows:-

a)	Amount paid to defendant	Rs. 20,500/-
b)	Loss to mental pain and agony	Rs.
	1,25,000/-	
c)	Legal fee	Rs. 20,000/-
d)	Transportation expenditure	Rs. 3000/-
e)	Miscellaneous Expenses	Rs. 1500/-

**TOTAL: Rs. 1,70,000/-**

That the notice under section 25 of The Act, 2005 was sent to the defendant at his business address regarding compensation / damages amount, but defendant intentionally did not received the notice (copy of legal notice and returned envelope dated 9-05-2019 of TCS is enclosed;-that the cause of action firstly accrued on 19.01.2019 when complainant purchased the said LED TV and thereafter when the said LED TV was affixed by complainant at home was got out of order 10.04.2019;- that the cause of action accrued at Rawalpindi, hence this Hon'ble court has the jurisdiction to entertain and try the suit;- that the valuation of suit is fixed as Rs. 1,70,000/- for the purpose of court fee and jurisdiction. Lastly prayed that while allowing the claim of the complainant with cost the defendant may be directed to pay the damages /

compensation amount i.e. Rs. 1,70,000/- to the complainant, in the best interest of justice. Any other relief which this Hon'ble court deems just and proper, may also be awarded.

2. Upon the institution of complaint the defendant was summoned and notice was issued to the defendant, he appeared in court and submitted written reply, and took various preliminary objections that:-

**NOTE:-** Aamir Hussain claimant has triggered the machinery of law into motion by filing instant claim under section 25 of the PCPA, 2005 against the defendant with the assertion that he purchased original Samsung LED TV 32" from the defendant vide cash memo # 8250 dated 19.01.2019 for consideration of Rs. 20,500, after a period of approximately 3 months use, the product became defective and he is liable to be tried under relevant provisions of the Act and accordingly he has to bear financial loss cost of product & other affiliated damages. He in his preliminary objections stated that as section 28 of the Punjab protection of Consumer Act, 2005, a consumer who has suffered damage should file his claim within 30 days time in the consumer court having jurisdiction to hear

the claim. Whereas, the present plaintiff/ Complainant has filed his claim after about 79 days. Under Provision of section 28 (4) of the Act 2005, the consumer court can condone the period up to 60 days only if it is satisfied that there was sufficient cause for not filing the complaint within the specified period. However, such extension shall not be allowed beyond a period of sixty days from the date of purchase of the product;- that the complainant does not qualify the definition of consumer as pr section 2 of the Punjab Protection of Consumer Act,2005, thus, the complaint filed by the plaintiff / complainant may be dismissed with cost. Reliance is being made on a cause law: PLD 2015 Lahore 204;-that the plaintiff has no cause of action to file the instant complaint against the answering defendant hence, the complaint under reply is liable to be dismissed;- that the plaintiff has not approached this Honourable court with cleans hand and he suppressed the material facts from this Honourable court, hence the complaint under reply is liable to be dismissed under the provisions of Order 7 rules 11 CPC;- that plaintiff has no locus standi to file the instant complaint against the answering defendant hence the complaint/ suit filed by

the plaintiff is not maintainable;- that the plaintiff filed this complaint, just to harass and blackmail the answering defendant;- that the plaintiff has not affixed the requisite court fee upon the complaint thus, liable to be rejected under order 7 11 CPC;- that the complaint / suit filed by the consumer does not fall within the definition of consumer and also on factual grounds which were concealed in the assertions of the plaintiff/ complainant. That this Honourable court has not jurisdiction to entertain the matter subjudice before this Honourable court being barrd by law of the Punjab Protection of Consumer Act, 2005, and The Punjab Defamation Ordinance 2002;- that in the "Application for condonation of delay" it was alleged against the defendant that the respondent promised that he will change the mobile or return the payment. No such item was purchased by the plaintiff from the answering defendant thus, the contention raised in the application for condonation of delay is false, frivolous and against the law and facts;- that the plaintiff only purchased LED TV 32 vide case memo 8250 dated 1901-2019, from the answering defendant and no mobile phone was purchased as alleged in the application for condonation of delay;- thus

this Honourable court lacks, jurisdiction to entertain and adjudicate upon the complaint/ suit filed in this court in accordance with the Punjab Protection of Consumer Act 2005, that no express warranty was given to the plaintiff at the time of purchasing LED TV 32 since same was not providing by the manufactured. Thus, this product cannot be termed as defective since at the time of purchasing the plaintiff was informed that categorically that this product is A+ copy of the original SAMSUNG and does not have express warranty. Thus, he was not induced to use the product. The plaintiff damages claim is not based under the express provisions of law Section 8 of the Punjab Consumer Protection Act 2005, The suit filed by the plaintiff, is hopelessly barred by law;- that in the light of above discussion, the suit filed by the plaintiff, is hopelessly barred by time and the delay in filling the application cannot be condoned, therefore, the same may be dismissed on this score alone;- that the complaint under reply is false, vexatious and frivolous, and merits to be rejected. On facts he replied that para NO. 1 is admitted. Para no. 2 is denied. On 19-01-2019, at the time of purchasing of LED TV 32 size, the plaintiff was told categorically that the cost of original

LED TV 32 is Rs. 36500/- having a warranty period whereas, the cost of China made Copy A+ is Rs. 24900/- which is without warranty period. Further, on request of plaintiff, he was given a discount of Rs. 4400/- and was charged only Rs. 20500/-. The plaintiff himself agreed to the sale proceedings and has been using the same for about 3 moths. Para NO. 3 is denied. The facts of the case are that the, plaintiff / complainant himself came at the store of defendant with the name and style "Electro Mart" located of Adyala Road, Rawalpindi and demanded replacement of LED TV 32". He was told that the original SMSUG LED TV 32" was not purchased by him thus, this item / product was not covered under Warranty period". Moreover, he was explained the cost of original LED TV 32: Rest of the Para is denied vehemently. The allegation of rude behavior and use of filthy language by the defendant is abused and incorrect. Rather, the plaintiff himself indulged in shouting, use of abusive language with the sale's man and giving criminal threats to the proprietors of Electro Mart. However, for the satisfaction of the plaintiff, the LED TV 32 was got examined by the defendant from authorized technician who reported that the penal of LED TV was damaged. Thus

accordingly, the plaintiff/ complainant was told that electro Mart will not take any liability / responsibility for TV screen panel damaged resulted due to negligent and improper handling of consumer himself. NO warranty claim can be entertained for the copy of the SAMSUNG original products; Para NO. 4 need no reply / comments. Para NO. 5 is denied. The detail answer has been given in Para No. 2 & 3 above. Para No. 6 is denied. AS per section 8 of Punjab Protection of Consumer Act 2005, the defendant is not responsible for a product which does not have expressed warranty. At the time of purchasing LED TV 32" the plaintiff was categorically informed that cost of original SAMSUNG LED TV 32" size of Rs. 36500/- whereas, the cost of copy of SAMSUNG LED TV 32" is Rs. 20500/-. Once the plaintiff demanded copy of the original having no express warranty. Thus, the plaintiff as a consumer cannot claim damages. Moreover, the proprietor will also not take any responsibility or liability of replacement of product upon becoming defective due to mishandling. Para no. 7 is denied the defendant is not liable for the so call financial loss suffered as enumerated in this paragraph. The detail reply has been given in above mentioned paragraphs.

Para NO. 8 is denied since no notice has been served to the defendant , thus, suit / complainant filed by the plaintiff may be dismissed under the provisions of Section 28 of the Punjab Protection of Consumer Act, 2005, since, the present Plaintiff as a consumer failed to serve written notice to the defendant if he suffered damage due to faulty service or fault of manufacturer. The attached notice and returned notice are fabricated just to fulfill the legal formalities. Para NO. 9 is denied since no cause of action accrued to the plaintiff. NO prima facie case is being made out against the defendant. Para No. 10 needs no reply being legal. Para NO. 11 is denied the plaintiff has not affixed requisite court fee as per his claim at Rs. 170000/- thus, the suit of the plaintiff is liable to be rejected on this sole ground. Lastly it is prayed that the suit/ complaint under reply may be dismissed with costs.

2. After filing the written statement defendant absented himself and thereafter did not bother to appear in the court and was proceeded ex-parte.

3. The complainant got recorded his ex-parte evidence. complainant Mr. Aamir Hussain himself appeared as PW-1, he submitted his statement on affidavit

Exh-PA/1, he also submitted documents i.e. copy of legal notice dated 06.05.2019 Mark-PA, original TCS courier receipt Exh-PB, sealed TCS envelope Exh-PC, Track Result of TCS courier Exh-PD, Cash memo / bill Exh-PE, counsel for the complainant produced legal fee certificate Exh-PF, and closed the evidence.

4. The learned counsel for the complainant contended that the complainant has successfully proved his case against the defendant, sale of LED TV is admitted by the defendant, 3 years warranty period is mentioned on the invoice receipt dated 19-01-2019, Exh- PE, copy legal notice dated 06-05-2019, TCS receipt Exh-PB, delivery report Exh-PD, and envelop undelivered due to not accepted are attached, on 23-05-2019, within 30 days the delivery of legal notice, complaint has been filed which as per law laid down 2019, CLC1041, is within limitation period. Defendant has no defense after filing written statement, he said good bye to the proceeding ,complaint may kindly be accepted and defendant be punished under section 32 of PCPA, 2005 in the interest of justice and any other relief, which this Hon'ble court may deems fit also be granted to the complainant.

5. Arguments heard record perused.

6. In the light of the contentions of the learned counsel for the complainant I have gone through the evidence which shows that the complainant himself appeared as PW-1, beside above mentioned documents he submitted his statement on affidavit (Exh-PA) and in it he reiterated the facts mentioned in the complaint, his complaint shows that complainant purchased original Samsung LED TV 32" vide cash memo # 8250, dated 19.01.2019 from the defendant in consideration of Rs. 20,500/-, but on 10.04.2019 it became out of order, complainant contacted the defendant for the solution of the issue, who refused to take any responsibility and showed rude behavior and used filthy language and burst over the complainant. Complaint further shows that after such behavior of defendant complainant took the LED TV to the customer services center of the Samsung company to claim the warrantee, but the representative of the customer services center of the Samsung Company told that the LED TV is not original LED TV of Samsung company, so they could not claim the warrantee, complainant tried to settle the dispute in peaceful manner and requested the

defendant number of time to give back his valuable consideration despite the fact that the defendant mislead the complainant and concealed the real circumstances. Complaint further shows that for the redressal of his grievance on 06-05-2019, complainant sent legal notice to the defendant and rather complainant personally approached the defendant and requested to return back his valuable amount but defendant refused so the complainant has no other option except to left the premises to save his grace and dignity and adopt the legal procedure. The evidence shows that sale of LED TV is admitted by the defendant, the invoice Exh-PE, shows that it has 3 years warranty, the documents Mark-PA, Exh-PB, Exh-PC and Exh-PD, shows the defendant refused to receive the legal notice. The legal notice is dated 06-05-2019, whereas the complaint has been filed on 23-05-2019, which in the light of 2019CLC1041 is within limitation period there is no evidence in rebuttal to said evidence, therefore in view of above said it is held that the complainant has successfully proved his case against the defendant. Consequently complaint is hereby accepted as under.

The evidence shows that the complainant has demanded Rs. 20500/- the price of the product vide receipt Exh-PE as stated above to prove this fact the complainant furnished evidence before this court on oath, which is not rebutted by the defendants, therefore, the claim of the complainant towards price of product Rs. 20500/- is hereby accepted. Furthermore, the contents of the complaint shows that the complainant has demanded / claimed Rs. 125000/- towards loss to mental pain and agony, but the evidence shows that he did not produce any medical evidence to prove the said claim hence the same being unproved is hereby denied, however the perusal of the section 31(e) of PCPA, 2005 shows that it authorizes the court to direct the defendant to pay reasonable compensation to the complainant, since in this case defendant badly failed to perform his obligations, gave defective product to the complainant. The complainant could not utilize the said product, therefore, in view of the above said and in the light of the facts and circumstances of the case, the defendant is directed to pay Rs10,000/- as compensation to the complainant.

The contents of the complaint further shows that the complainant has demanded / claimed Rs. 20,000/- cost of legal fee and in this respect he produced counsel fee certificate Exh-PG, which in my opinion is exorbitant to the actual claim of the complainant. Moreover section 31(g) shows that it authorizes the court to award actual costs including lawyers fee incurred on the legal proceeding, to the complainant therefore, defendant is further directed to pay Rs15000/- towards actual costs including lawyers fee incurred on the legal proceeding and remaining is hereby denied.

The contents of the complaint further shows that complainant has demanded Rs. 3000/- towards Transport Expenditure and Rs. 1500/- Miscellaneous expenses, but the evidence shows that to prove the above said facts he did not product any evidence before the court therefore, the said claims being unproved are hereby denied.

7. The upshot of the above said discussion is that claim of the complainant is hereby ex-parte partly accepted and partly rejected against the defendant and defendant is directed to pay Rs. 20500/- towards price of the product, Rs. 10,000/- towards compensation and Rs.

15000/- towards actual costs including lawyers fee incurred on the legal proceeding total: Rs. 45500/- to the complainant within 30-days of the passing of this order, and receive defective LED TV from the complainant in the court. File be consigned to the record room.

**Announced:**  
**02.01.2020**

**ABDUL HAFEEZ**  
**District & Sessions Judge/**  
**Presiding Officer**  
**District Consumer Court**  
**Rawalpindi**

It is certified that this order consists upon 16-pages. Each page has been dictated, read, corrected and signed by me.

**District & Sessions Judge/**  
**Presiding Officer**  
**District Consumer Court**  
**Rawalpindi**