

**IN THE COURT OF MR. ABDUL HAFEEZ
DISTRICT AND SESSIONS JUDGE / PRESIDING OFFICER
DISTRICT CONSUMER COURT, RAWALPINDI**
(Case No. 225 of 18.21.2019)

Atif Bashir Awan S/O Muhammad Bashir R/O House
Near Army Officer Colony Dhok said road Morgah
Rawalpindi.

(Complainant)

Versus

1. Bank Alflah Ltd through its manager complaint
Management unit. 8th floor business avenue PECHS
block 6 Shahrah-e Faisal Karachi.
2. Bank Alflah through its manager Cantt branch
saddar Rawalpindi.

(Defendants)

**CLAIM UNDER SECTION 25 OF PUNJAB CONSUMER
PROTECTION ACT, 2005**

EX-PARTE ORDER
28-01-2020.

Briefly stated facts of the case are that the complainant is very respectable citizen of the state, enjoying very good reputation in the area as well as community, throughout his life, and always respected within Pakistan and his family circle;-that the plaintiff is an account holder bearing number 55145000276142 with bank Alflah Cantt branch saddar Rawalpindi for last more than five years, bank through advertisement and promotion allure plaintiff to install

mobile app of bank Alflah which is easily available at play store of any android cell phone which was installed and being used by plaintiff;- that on 08-11-2019, plaintiff received a foreign remittance through express Money which was transferred / credited to Alflah bank account of plaintiff through mobile application and in this regard the account was properly entered and acknowledged by the bank through the mobile app;- that in the mean while the elder brother of plaintiff fell seriously ill and plaintiff was in the dire need of funds for his medication. Plaintiff hurriedly approached on dated 10-11-2019, at nearby ATM machine but he was taken aback to know that his account was empty. It was very surprising that on one side foreign remittance was crediting and acknowledged by the bank but the same was not drawn by the ATM in this need of hour plaintiff was helpless and has undergone server mental torture;- that on 11-11-2019, plaintiff contacted to the defendant NO. 2 the branch manager was also surprised and admitted that it is due to some technical errors on the part of the bank and the same will be rectified in few hours but the same proved a lame excuse. Despite the lapse of more than two weeks this errors has not been rectified. Plaintiff took up this matter through email to the concern

corner but all was proved useless. All efforts of plaintiff proved the wastage of time and mental agony for plaintiff;- that the bank has acted maliciously and this in action on his part has caused mental torture and agony to plaintiff. All these digital devices are meant to expedite the transaction and facilitate the customer but the bank miserably failed to provide services according to banking standards;-that plaintiff served a notice on 25-11-2019, under the Punjab Consumer Protection ordinance 2005, which was not replied;- that the plaintiff is entitled for damages of Rs. 5 million for this mental torture and agony;- that cause of action accrued when the amount was not credited to plaintiff account;- that the requisite court fee has been affixed on the petition. Lastly it is prayed that a decree for recovery of Rs. 5 million may kindly be passed in favour of plaintiff and against the defendant with costs and interest. Any other relief, which this Honourable court deem fit and proper in the circumstances of the case may also be awarded.

2. Upon the institution of complaint, summons were sent to the defendants on 04.01.2020. Fahad Islam Sales Executive of defendant No.2. appeared before the court, whereas despite service of summon none appeared on behalf of defendant No.1, at this an order for substituted

service through news proclamation was passed and case was adjourned for 13.01.2020 for filing written statement on behalf of defendant No.2. On 13.01.2020 written statement was not filed by defendant No.2 and sought time, whereas news proclamation was also not published, at this complaint was adjourned for 20.01.2020, on 20.01.2020 none appeared on behalf of the defendants and they were proceeded against ex-parte and case was adjourned for complainant's evidence.

3. On 23.01.2020 Atif Bashir complainant himself appeared as PW-1, he submitted his statement on affidavit Exh-PA, he produced copies of legal notices Mark-PA/1-3, and Mark-PB/1-3, he produced postal receipts Exh-PC and Exh-PD, delivery reports Exh-PD & Exh-PE, he produced call record Mark-PC, copy of email dated 14.04.2019 & 15.04.2019 Mark-PD, screen shot regarding the detail of account of complainant Mark-PE/1-3 and closed the evidence.

4. Arguments heard, record perused.

5. The perusal of the evidence shows that complainant is an account holder of bank Alfiah Cantt branch saddar Rawalpindi / defendant No.1 and in the light of Allied Bank Ltd. V.S Khalid Mehmood PLD 2013 Lahore 454, he is a consumer of the defendants and defendants are

service providers, foreign remittance of Rs. 21567/- was received to him which he transferred in his account No. 5514000276142 Bank Alfalah Cantt Branch Saddar, Rawalpindi through express Money to alfalah bank account, the account was proper entered and acknowledged by the bank through mobile application. The elder brother of complainant was seriously ill, and complainant was in the dire need of funds for his medication. When complainant tried to withdraw the cash he came to know that no amount is in the account, at this on the next date on 11-11-2019, he contacted the bank manager, the bank manager also became surprised and asked the complainant to contact the head office, he contacted the head office, they gave 24-hours time to solve the problem but problem was not solved, he again contacted the head office, but till the passing of 12 days matter was not solved and they extended the matter on one pretext or the other, defendant No.1 used to call the complainant in the bank and got sit for four to five hours in the bank due to which the complainant suffered mental torture and agony, having no option on 25.11.2019 he sent legal notice to the defendants, thereafter instituted the complaint. Since despite service of the summons upon defendant No.1, he did not appear before the court and

despite appearing before the court by defendant No.2 he let the case to go by ex-parte and there is no evidence in rebuttal to the evidence produced by the complainant, the statement of the complainant is cogent and trust worthy and there is no reason to disbelieve the said evidence produced by the complainant, therefore, in view of the above said the court has no option except to accept the said complaint, therefore, the complaint is hereby allowed as under:-

The perusal of the complaint shows that complainant has demanded Rs. 5-Million as damages, since the complaint is regarding a subject matter valuing Rs. 21567/-, therefore, the amount claimed by the complainant is exorbitant and not proportionate to the said claim of Rs. 21567/-. However, under section 31(e) of PCPA, 2005 shows that it authorizes the court to direct the defendant to pay reasonable compensation to the complainant, therefore, the defendants are severally and jointly directed to pay Rs. 10000/- as compensation to the complainant. Section 31(g) authorizes the court to award actual costs including lawyers fee incurred on the legal proceeding to the complainant, therefore, defendant are severally and jointly directed to pay Rs. 10000/- towards actual costs including lawyers fee

incurred on the legal proceeding and remaining claim is hereby denied.

6. The upshot of the above said discussion is that claim of the complainant is hereby ex-parte partly accepted and partly rejected against the defendants and defendants are severally and jointly directed to pay Rs.10000/- towards compensation and Rs. 10000/- towards actual costs including lawyers fee incurred on the legal proceeding total: Rs. 20000/- to the complainant within 30-days of the passing of this order. File be consigned to the record room.

Announced:
28.01.2020

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

It is certified that this order consists upon 7-pages. Each page has been dictated, read, corrected and signed by me.

District & Sessions Judge/
Presiding Officer
District Consumer Court
Rawalpindi