IN THE COURT OF MALIK KHIZAR HAYAT KHAN (DISTRICT & SESSIONS JUDGE)
PRESIDING OFFICER, DISTRICT CONSUMER COURT
SARGODHA.

Case No. ***102/2018***
Date of institution: ***12.07.2018.***
Date of Decision: ***12.07.2019***

Muhammad Saleem *Son of Muhammad Siddique,*
Resident of House No.259 Block-B, Satellite Town, Sargodha.

(claimant)

Versus

1.Muhammad Faraz Hassan,
Stockist/Franchiser MNM Motorcycle Pvt Ltd.
Jindran Plaza Basement, 47-Pul Chowk Sargodha.
At present Main 48 Road, Street No.7 Mehr Colony, Sargodha.

2.Asif Javed Butt,
Sales Executive MNM Motorcycle Pvt Ltd.
Resident of House No.107 Street No.3 Mohallah Ghani Park, Sargodha.
(Defendants)

Rana Muhammad Ayub Advocate for the claimant.
Ch. Arshad Mehmood Advocate for the contesting defendant No.2.
Defendant No.1 already proceeded ex-parte.

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JUDGMENT
12.07.2019

This is a claim/complaint by Muhammad Saleem claimant with the grievance that he initially got booking four motorcycles through defendant No.2, Sales Executive of the MNM Motorcycle (Pvt) Ltd Sargodha and paid Rs.130000/- as price of the same as per receipt dated 15.10.2017 (Mark-PA) with promised date of delivery as 15.11.2017. On the promised date, the petitioner approached the defendants but the same could not be delivered to him till today. He further asserted that he contacted the defendants time and again but they linger on the matter on one pretext or the other. Then, the claimant issued his legal notice dated 21.11.2017 (Exh.P-2) to the defendants.

2. By receiving the notice dated 21.11.2017 (Exh.P-2) the defendants adjusted the price paid by the claimant by issuance of fresh booking receipt/invoice dated 03.12.2017 (Exh.P-3) for seven Motorcycles with fresh date of delivery i.e. 06.01.2018.

3. Initially, the claimant instituted his instant claim jointly with four other aggrieved persons having identical claims on 08.12.2017 seeking relief of recovery of Rs.357500/- as a price of all the motorcycles (@ Rs.32500/- per motorcycle) alongwith damages of Rs. 100000/- per head.

4. The defendants were summoned, who appeared and filed their joint written statement, denying the claim of the petitioner with various legal objections i.e. the lack of jurisdiction of this court, alleging that the petitioners have not come to the court with clean hands, the alleged liability stands against the MNM Company and not the defendants, locus standi and cause of action and also prayed for dismissal of the petition with costs.

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5. It is pertinent to mention here that before proceeding for recording of evidence, all the aggrieved Consumers/Claimants were permitted to file their separate claims vide order dated 27.06.2018, thus, this is a separate claim filed by Muhammad Saleem claimant No.2 through his amended petition.

6. Later on, the defendant No.1 became absent, therefore, was proceeded ex-parte vide order dated 04.09.2018.

7. In order to prove his case, the claimant appeared as Pw-1 and also produced his documentary evidence i.e. his affidavit as Exh.P-1, Certified copy of legal notice dated 21.11.2017 as Exh.P-2, postal receipt as Exh.P-2/1, Second Invoice for booking of seven motorcycles dated 03.12.2017 as Exh.P-3,

and Photocopy of First Invoice dated 15.10.2017 for booking of 04 motorcycles as Mark-PA and then closed his evidence.

8. On the other hand, Asif Javed Butt contesting defendant No.2 was examined as Dw-1 and produced his documentary evidence i.e. copy of Sale Invoice dated 29.08.2017 as Exh.D-1, his affidavit as Exh.D-2, Photocopies of booking invoices of motorcycles issued in favour of defendant No.2 as Mark-DA, DA/1 to DA/21, Photocopy of "Certificate of Incorporation" of MNM Motorcycle Company as Mark-DB, Photocopy of Membership Certificate of Chamber of Commerce Faisalabad in favour of MNM Motorcycle Company as Mark-DC, Photocopy of Taxpayer Online Verification of MNM Motorcycle (Pvt) Ltd issued by FBR as Mark-DD, Photocopy of Dealership Certificate of Mr. Faraz Hassan issued by MNM Motorcycle (Pvt) Ltd as Mark-DE, two public notices published in Daily Newspaper issued by National Accountability Bureau Lahore as Mark-DF & Mark-DG and Photocopy of receipt of booking of four motorcycles dated 29.08.2017 as Mark-DH and then closed his evidence.

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9. Arguments heard and record perused.

10. Learned counsel for the claimant has argued that the main transaction in this case is regarding booking of Motorcycles which has not been denied by either of the defendants. The payment of initial price as well as genuineness of the sale invoices is also admitted. The issuance of receipt of legal notice is also not denied and the status of the claimant as consumer and existence of his cause of action is proved. He further argued that the defence of the contesting defendant No.2 Asif Javed Butt is that he is an employee of the company, therefore, he is not under obligation for the liability to the claimant while the claimant has proved his case

against the defendant No.2 that due to his role in the transaction he is equally liable for the amount paid by and loss suffered by the claimant. He further argued that defendant No.1 being Motorcycle dealer, by receiving the price and issuance of the sale invoice by him is also liable for the amount paid by the petitioner and for the loss suffered by him. He also argued that the claimant has proved his loss and his entitlement for the compensation by way of recovery of the damages with incidental charges sought for, through a cogent and impeachable evidence, therefore, his petition may be accepted.

11. On the other hand, learned counsel for the contesting defendant No.2 has argued that the petitioner is an investor and not a consumer as he not only failed to prove his locus standi as a consumer but to substantiate his cause of action also. He also argued that the claimant has concealed the material facts of the case, therefore, neither he is with clean hands nor entitled for any relief. He further argued that the liability alleged by the claimant is against the MNM Company Motorcycle (Pvt) Ltd. and his dealer but not against the contesting defendant No.2 whose status is only of an introducer and he is neither a party to the contract nor beneficiary of the transaction or guarantor in the transaction, therefore, he has unnecessarily been impleaded in this case. He finally argued that the claimant has failed to implead the said company as defendant, therefore, his case is not competent.

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12. I have considered the contention of both the sides in the light of record and law on the subject.

13. The alleged transaction of booking of four motorcycles is admitted but the liability alleged against the defendant No.2 is denied. The booking receipts produced by the parties are admittedly issued by the defendant No.1 Fraz Hassan as dealer/stockist of the company

(who became absent and proceeded ex-parte), however, there is a controversy regarding the figures of the amount paid by the claimant; whether it is Rs. 102000/- as shown in the receipt Exh.D-1 or Rs. 130000/- as shown in Mark.PA? It is observed that Exh.D-1 is more reliable being admitted by the claimant when confronted during his cross examination as Pw-1. Obviously, Exh.D-1 is issued by the office of the defendant No.1 as stockist. The receipt/invoice Exh.D-1 is showing the name of Muhammad Saleem claimant as customer/consumer while name of defendant No.2 Asif Javed is mentioned in column C/O, which probably means care of i.e. an introducer. The receipt of legal notice dated 21.11.2017 under section 28 (1) of the Punjab Consumer Protection Act, 2005 (Exh.P-2) was initially denied in the joint written statement of the defendants but during his cross examination as Dw-1, the defendant No.2 had admitted the delivery of said legal notice in the office of defendant No. 1 as per his address given in the caption of the case.

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14. Now, there is question of liability inter se the defendants of this case, as the court is obliged to decide the case between the parties before it. Though the claimant has tried to involve the defendant No.2 as introducer but there is neither an assertion that he is a party to the transaction of sale and purchase nor any reliable evidence in this regard, hence, it is held that he is only an introducer but neither a party to the contract nor a service provider or a guarantor in this transaction, therefore, the instant claim against him, is dismissed.

15. As for as the question of liability of defendant No.1 is concerned, admittedly, he is a dealer who received the amount of Rs. 102000/- for the sale of four motorcycles as per invoice dated 29.08.2017 (Exh.D-1) and the said motorcycles have never been

delivered to the claimant, therefore, the claimant is entitled to recover the said amount from the defendant No.1 as service provider whose faulty service has caused loss of the said amount to the claimant. It is further held that the claimant is also entitled for the litigation charges @ Rs. 30000/-. Keeping in view the restriction on grant of damages since mentioned in Section 15 of the Punjab Consumer Protection Act, 2005 the claimant is not entitled for remaining relief sought for. Finally, Muhammad Saleem claimant is held entitled for the recovery of total amount of Rs. 132000/- from the defendant No.1, therefore, the same is awarded in favour of the claimant against the defendant No.1 (since proceeded ex-parte).

16. The amount awarded to the claimant shall be paid by the defendant No.1 immediately. In case the same are not paid by him, the claimant/decree holder may file an execution petition for the recovery of the decretal amount against the judgment debtor.

17. The copies of this judgment shall be communicated /handed over to the parties, free of costs, as required under Rule 17 of the Punjab Consumer Protection Rules, 2009.

18. File of the case be consigned to record room after its due compilation.

Announced
12.07.2019

Presiding Officer,
District Consumer Court,
Sargodha.

Certified that this Judgment is consists of 06 pages, which have been dictated, corrected and signed by me.

Presiding Officer,
District Consumer Court,
Sargodha.