

IN THE COURT OF MIRZA JAWAD A: BAIG, DISTRICT & SESSIONS JUDGE,
PRESIDING OFFICER, DISTRICT CONSUMER COURT,
DISTRICTS: D.G. KHAN; LAYYAH; MUZAFFARGARH; RAJANPUR,
50/Z, MODEL TOWN, DIVISIONAL HEAD QUARTER, DERA GHAZI KHAN.

(PHONE: PTCL No. 0642474100) (VNTC No. 0649239094) (FAX No. 0642470496).

Atta Moeen V M.D Gourmet Foods & 2 others

COMPLAINT ABOUT BAIT ADVERTISEMENT / EXCESS CHARGING

Original Complaint No:	700/42/10.
Restored Complaint No:	1183/525/10.
Date of Institution & Restoration:	15-02-2010 .
Date of Restoration:	15-10-2010.
Date of present Order:	14-09-2011.

ORDER:

Present: Learned counsel for the claimant and no body on behalf of the defendants.

1. The case is at the stage of the arguments. It is observed that defendants No.1 & 2 are already being proceeded against exparte while the complaint was being contested on behalf of defendant No.3 upto previous date but since nobody is present today on its behalf as such the said defendant is also being proceeded against exparte.

2. Exparte arguments have been heard and the file has been perused by going through the documents on the record as such I proceed to dispose of the complaint in exparte manner by discussion in the following paragraphs:-

3. The version of the claimant as alleged in the complaint is to the effect that the claimant was charged with Rs.100/- as mentioned in the receipt for two bottles of Gourmet Apple by defendant No.3 at his shop although the sale price was Rs.45/- per bottle on 16-01-2010; that the claimant was treated with misbehavior on his protest; that the notice issued on 22-01-2010 has remained unanswered; that the claimant demands the recovery of Rs.1,00,000/- as damages and Rs.15,000/- as counsel fee.

4. Defendants No.1 & 2 are already being proceeded against exparte while defendant No.3 is also being proceeded against exparte today. The version of defendants No. 1 & 2 is not on the record however defendant No.3 has contested the complaint by filing the written statement to the effect that the complaint is not maintainable, that the name of sold product is not mentioned in the alleged receipt, that the stamp & signature are not present in the alleged receipt; that the alleged loss has not been explained; that the claimant is himself a lawyer having no justification to engage the counsel and to pay the fee to the counsel; that the complaint is ambiguous; that it is misuse of the consumer law; that the disputed bottles were not sold by defendant No.3; that the list of all products of Gourmet Cola is duly displayed on the bakery of defendant No.3; that the claimant should be burdened with the special costs of Rs.20,000/- for damaging the good will of the business of defendant No.3; that all the contents of the complaint are denied; that the complaint should be dismissed with costs.

5. It is pertinent to note that although evidence is necessary to be recorded under S.30 of PCP Act 2005 for disposal of the complaints by the Consumer Courts but since the procedural laws known as the Code of Civil Procedure, 1908; the Code of Criminal Procedure, 1898; the Qanun-e-Shahadat Order, 1984, the Bankers' Books Evidence Act, 1891 are not strictly applicable to the proceedings of the Consumer Courts, as such the propriety demands that the regular evidence should not be recorded in such cases where the points for determination are mostly based on the copies of the admitted documents available in the file of the complaint or admitted in the pleadings.

6. I am of the view that certain cases can be effectively disposed off without recording regular evidence and by reliance upon the copies of the documents annexed in the file of the court for quick disposal so as to avoid the technicalities and unnecessary delay in the disposal of cases. It is further observed that it is proper and necessary to treat the copies of the documents annexed with the complaint and written statement including the documents filed during the pendency of the complaint, as prima facie proof and evidence of the parties for reaching to the safe and just conclusion in such cases which are capable of disposal without recording regular evidence.

7. A perusal of one empty and one full bottle available with the Private Secretary of this court shows that the same contain the endorsement of Rs. 45/- each as consumer price being Rs.38/- as original price plus 06/21 as Sales Tax, total Rs.45/-.

8. The main objection in the written statement of defendant No.3 is to the effect that the receipt is not a proof of the purchase of the disputed bottles because it is not written in the same that the sale price related to the purchase of disputed bottles. I have observed that the receipt included in the file is on the printed pad of contesting defendant No.3 who has nowhere suggested that said receipt was meant for any other product as such said defendant is bound by said receipt. Issuance of proper receipt is basic duty of the seller. No benefit can be taken by defendant No.3 due to incompleteness of the said receipt.

9. It is mentioned in 9th preliminary objection contained in the written statement of defendant No.3 that list of all brands is displayed at his shop including Gourmet Cola therefore it is admitted fact that the soft drink purchased by the claimant is being sold at the shop of defendant No.3. It is settled law that admitted facts are not required to be proved by evidence.

10. It is provided in Part IV containing Ss. 18 to 20 of PCP Act 2005 that the "prices are to be exhibited at the business place" (S.18), "Receipt is to be issued to purchaser" (S.19), "Return and refund policy should be specified" (S.20).

11. It is required by law for a receipt to be treated as a proper receipt to contain (a) the date of sale, (b) description of goods sold, (c) the quantity and price of the goods, (d) the name and address of the seller.

12. It is also observed that keeping the product on display by showing less price than the price on which the same is to be sold comes under the definition of "BAIT ADVERTISEMENT" which is prohibited u/s 22 of PCP Act 2005 and the same amounts to a liability the infringement of which is an offence punishable u/s 32(1) of PCP Act 2005 "with imprisonment which may extend to two years or with fine which may extend to hundred thousand rupees or with both in addition to damages or compensation".

13. I have observed from perusal of the record and perusal of the disputed bottles that the original receipt about receiving the price of Rs. 100/- on account of the sale of two bottles on the pad containing letter-head of the shop of defendant No.3 is sufficient to point out that the actual consumer price comes to Rs.45/- being Rs.38/- as original price plus 06/21 as Sales Tax, total Rs.45/- as consumer price but the price of Rs.10/- was received in excess of the written price according to the receipt making the proprietor of the shop namely Kashif Sweets & Bakers being the name printed on the sheet of letter-head pad filed by the claimant specifically when there is no defense plea in the written statement to the effect that the disputed bottles were in chilled condition and that excess price was charged as surcharge for chilling the disputed bottles.

14. As far as the prayer about the recovery of the damages is concerned, it is hereby observed that: the return of the consideration or a part thereof and the costs is provided in the law where the consumer has suffered the loss of utility or lack of benefit

only while the manufacturer or service provider is also liable for the damages where the consumer has suffered any damage from the defective product u/s 10 & faulty service u/s 15; that the manufacturer or service provider is liable to a consumer for damages proximately caused by the defective product u/s 4 & faulty service u/s 13; that the liability of the manufacturer or service provider is not limited or excluded by the terms of any contract or notice about the defective product u/s 12 & faulty service u/s 17; that the disclosure of the details has been made essential about the product and service where the nature of the same is such that it is material to the decision of the consumer to enter into the contract with reference to the product u/s 11 & service u/s 16; that the standard for the provision of services is determined as such which a consumer could reasonably expect to obtain in Pakistan at the time of the provision of the service u/s 14; that the court is authorized to direct the defendant to pay reasonable compensation for any loss suffered due to negligence of the defendant u/s 31(e); that to award damages where appropriate u/s 31(f); that to award costs including lawyer's fees incurred on the legal proceedings u/s 31(g) of PCP Act, 2005.

15. It is settled law that the manufacturer or service provider is not liable for any damages except a return of the consideration or a part thereof and the costs, specifically where the consumer has not suffered any damages from the product or provision of service except lack of utility/benefit. Since there is no explanation in the present claim about any other damages except the loss of utility or lack of benefit as such I find that the claimant is not entitled to recover the damages in the given circumstances.

16. The prayer for recovery of Rs.1,00,000/- as damages is therefore refused.

17. It is pertinent to note that defendants No. 1 & 2 being the manufacturer and distributor respectively have fulfilled the requirement of mentioning the consumer price on the disputed bottles, therefore they cannot be burdened with the act of defendant No.3 for charging excess price as such the complaint is liable to be dismissed to the extent of said defendants while defendant No.3 is responsible to refund the excessive price in addition to the payment of the costs of the complaint and counsel fee. The claimant is therefore entitled to recover Rs.10/- paid by him in excess of actual price of the disputed bottles from defendant No.3 along with the litigation charges and counsel fee being determined in following paragraph.

18. As far as the litigation charges are concerned, it is observed that the claimant belongs to the respectable profession of law having his professional obligations being himself an Advocate but he had to engage a counsel and to spend his own time and money on the prosecution of the present case due to refusal of defendant No.3 to admit his mistake at the initial stage and his legal notice was also not responded by the said defendant. Copy of postal receipt included in the file is sufficient to establish that the notice was posted to the contesting defendant. The claimant is therefore held entitled to recover Rs.10,000/- as litigation charges of the claimant in lump-sum as well as Rs.15,000/- as counsel fee as provided in S. 31 (g) of PCP Act 2005.

19. As far as the penalties u/s 32 of PCP Act 2005 are concerned, the same cannot be imposed in the present case because there is no prayer for awarding the same in the complaint. The proprietor of defendant No.3 would however be liable to the imprisonment up to three years with fine of Rs.20,000/- in case of delay in compliance of this order u/s 32(2) of PCP Act 2005.

20. For what has been discussed above, the complaint is hereby accepted to the extent of recovery of Rs.25,010/- against defendant No.3 while the complaint is dismissed to the remaining extent and also dismissed to the extent of defendants No.1 & 2.

21. Defendant No.3 is directed to pay the said amount to the claimant under intimation to this court within one month. The claimant is held entitled to recover the same by filing the application for implementation if the order remains un-complied after the said period u/s 32(2) read with S.36 of PCP Act 2005 through arrest, detention, attachment and auction.

22. The disputed bottles are to be kept in safe custody during the period required for appeal and during the pendency of the appeal if filed and if appeal is not filed then the bottles would be liable to be delivered to the claimant through the messenger of this court if not received by himself.

23. *A copy of this order is directed to be made available for publishing on the internet to the website of Punjab Consumer Protection Council Secretariat, 135-J, Model Town, Lahore for public disclosure and easy access of information to the consumers relating to the products and services in accordance with Rule 25 of PCP Rules, 2009.*

24. *The file of this complaint is to be consigned to the record room duly page marked with proper index and after due completion and made available for issuance of attested copies and kept under safe custody till the period fixed for destruction in accordance with the Rules & Orders of Honourable Lahore High Court.*

Announced:
14-09-2011.

(MIRZA JAWAD A. BAIG)
D. & S.J./P.O., D.C.C., D.G.K.,
PUNJAB, PAKISTAN.