

**IN THE COURT OF MUHAMMAD SARFRAZ AKHTAR  
DISTRICT AND SESSIONS JUDGE/PRESIDING OFFICER,  
DISTRICT CONSUMER COURT MANDI BAHA-UD-DIN**

Case No. 42 of 2015  
Date of institution 23.04.2015  
Date of decision 07.02.2019

*Dr. Sajid Mahmood son of Muhammad Latif Saleem, resident of Mohalla Kiman, Near Hajveri Mosque, Phalia, District Mandi Baha-ud-Din.*

Vs.

1. Rana Burhan, MS Singer Pakistan Ltd, Heelan Road, Phalia;
2. Mubashar, AMS Singer Pakistan Ltd, Heelan Road, Phalia.

**Present:** Mr. Muhammad Khan Tarar Advocate with claimant.  
Mr. Waqas Azmat Advocate counsel for defendants.  
Arguments heard.

**ORDER:**

Initially complaint under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as the Act) was filed by the complainant on 23.04.2015 in the District Consumer Court Gujrat. The respondents were proceeded against ex-parte on 07.05.2015 whereafter ex-parte evidence was recorded on 03.06.2015. At the time when matter was fixed for final arguments the complaint was dismissed due to non-prosecution on 01.07.2015. The petitioner filed application for restoration of complaint that was also dismissed due to non-prosecution on 27.09.2017. The petitioner again filed application for restoration of that application that was allowed on 25.10.2017. In the meanwhile District Consumer Court at Mandi Baha-ud-Din was established and the complaint was transferred to this Court.

Muhammad Sarfraz Akhtar  
DISTRICT & SESSIONS JUDGE  
Presiding Officer  
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7.2.2019

**ATTESTED**

*[Signature]*

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Earlier the matter was decided vide order dated 15.01.2018. That order was assailed in RFA No. 163863/2018 and that was accepted by the hon'ble Lahore High Court Lahore vide order dated 02.10.2018 in the following terms:-

*"At very outset, learned counsel for the petitioner submits that the Presiding Officer, District Consumer Court accepted the application without restoring the main petition for recovery of miscellaneous expenditure vide order dated 13.01.2018. When confronted, learned counsel for the respondents submits that order cannot be passed without restoration of the main petition.*

*2. In view of the above, the instant appeal is accepted. Order dated 13.01.2018 is hereby set aside and the matter shall be deemed to have been pending before learned Presiding Officer, District Consumer Court who shall resume the proceedings from the date of order dated 12.01.2018 and decide the same strictly in accordance with law."*

2. After remand of the case application for restoration of complaint was accepted and complaint was restored vide order dated 03.12.2018. Thereafter, fresh written statement was submitted on behalf of defendants and fresh evidence recorded.

3. In the complaint stance of claimant, Dr. Sajid Mahmood, is that on 30.10.2014 vide receipts Ex.PB and Ex.PC he purchased Geyser (SG35D) from the outlet of Singer Pakistan Ltd situated at Heelan Road Phalia after making full payment that was got installed by the defendants. After installation on the third day geyser stopped working. Upon complaint defendants sent representative who after checking reported that the thermostat was defective. Even after replacement of thermostat defect was not removed and the leakage started from body. Thereafter the defendants were repeatedly approached who kept on lingering the matter on various pretext and ultimately refused to repair or replace the product. Legal notice (Ex.PD) was issued through postal receipt (Ex.PD/1) that was received by the defendants on 25.3.2015 vide AD (EX.PD/2). As the grievance of the claimant was not redressed, instant complaint under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as

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the Act) has been filed. Due to failure of the defendant to do the needful, the claimant suffered damage and loss and now he claims return of price of the product alongwith other charges as well as compensation of Rs.50,000/-

4. In the written statement submitted in the earlier round on 29.11.2017 stance of defendants was that there was warranty of two years for geyser that became defective after fifteen day of installation and its thermostat was replaced by the company and repair work was done. It was maintained that geyser became defective due to installation on motor. It was specifically mentioned in that written statement that the company is still ready to get the geyser repaired. However, in the written statement submitted by and on behalf of defendants after remand of the case the stance is that even Rs.3000/- are still outstanding against the claimant for the repair work of geyser whereby thermostat was replaced. In para 3 of written statement it is mentioned that the claimant merely complained once regarding defect of geyser and thereafter he never complained and as a matter of fact geyser is working and is being utilized by the claimant. An objection has also been taken that complaint has not been filed against the company rather against the employees of company that is not maintainable.

5. In the evidence claimant appeared as PW.1 and produced his affidavit as Ex.PA. In documentary evidence original receipt of purchase Ex.PB & Ex.PC, copy of legal notice Ex.PD, postal receipt Ex.PD/1, AD EX.PD/2 and receipt of purchase of second geyser by the claimant dated 21.10.2015 have also been produced as Mark-A..

6. On the other hand Sajid Rasul and Tayyeb Zul Noreen both AMS M/S Singer Pakistan Ltd. appeared as DW.1 & DW.2 and submitted their respective affidavits as Ex.DA & Ex.DB. Copy of specimen warranty card as Ex.DC has also been produced.

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7. Before proceeding further I would like to address the objection with respect to maintainability of the claim. Learned counsel for defendants maintained that complaint should have been filed against the company and not against the employees who even otherwise have left the job. Evidently, the complaint has been filed against Rana Burhan MS and Mubashar AMS in their capacity as representative and office holder of Singer Pakistan Ltd. Further, as mentioned supra on 29.11.2017 written statement on behalf of defendants was submitted by MS Singer Pakistan Ltd in representative capacity. Even after remand of the case application for setting aside ex-parte order and subsequently written statement has also been filed by both the DWs in their representative capacity. In this scenario, objection taken in this respect is left with no force and is without any merits that cannot be given any weight.

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8. In this case as mentioned supra two written statements on behalf of defendants are available. One was submitted on 29.11.2017 i.e. prior to remand of the case and second is submitted 17.12.2018 i.e. after remand of the case. No doubt that after remand of the case earlier written statement dated 29.11.2017 is left with no legal status as written statement but for the purpose of appraisal of evidence keeping in view the rule of estoppel that written statement can be looked into. The stance of defendants in the earlier written statement was that there was warranty of two years for geyser that became defective after fifteen day of installation and its thermostat was replaced by the company and repair work was done. It was maintained that geyser became defective due to installation on motor. It was specifically mentioned in that written statement that the company is still ready to get the geyser repaired. But in the written statement submitted on 17.12.2018 the stance is that on the first occasion when defect was reported thermostat was replaced but the claimant did not make payment of Rs.3000/- as charges. It has further been maintained that thereafter no defect was ever reported and geyser is working and being utilized by the claimant.

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9. The claimant in his affidavit Ex.PA supported the stance mentioned in the complaint. In his cross examination he replied that geyser was got installed by the defendants from their mechanic, geyser was not got checked from any private mechanic, geyser was never installed on motor, on 3.1.2018 when representative of defendants came to his house he was told that new geyser has already been got installed as he could not wait for three years.

10. Sajid Rasul DW.1 in his affidavit Ex.DA supported the stance mentioned in written statement dated 17.12.2018. In his cross examination he replied that geyser was not got installed form the mechanic of company; on complaint of defect he alongwith mechanic went to the house of claimant and replaced the thermostat. The mechanic who subsequently went to the house of claimant informed him that geyser is still working and on the basis of said information this fact was mentioned in the written statement. Same was the stance of DW.2 in his affidavit and cross examination. DW.2 however, conceded his signature on receipts Ex.PB and Ex.PC.

11. Inconsistent pleas with regard to operation of geyser in both the written statements have been found. In the earlier written statement it was mentioned that geyser became defective due to act of defendant who installed the same on motor and it was mentioned that the company is ready to do repair work. In the second written statement it has been maintained that geyser became defective due to act of defendant who is under obligation to pay Rs.3000/- as charges and it was maintained that geyser is still working, though no evidence with respect to working of geyser was produced.

12. The stance of DW.1 on 03.01.2018 before the court was to the effect that the staff of defendant went to the house of claimant for the purpose of repairing of the product but the claimant did not allow the same. Like suggestion was put to the

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claimant in his cross examination to which he responded that he has already got installed new geyser as he could not wait for three years. The claimant maintained that due to conduct of the defendants he has already purchased new Geyser and offer of the defendants to repair their product at that stage was of no worth. Evidently, the defendants opted to bother for repair of geyser after three years of purchase despite the fact that this complaint remained for about three years merely to raise the objection that it was claimant who refused offer of repair. But this smart move on the part of defendants is of no help at this stage when as per material available on record new geyser has already been purchased and installed by the claimant.

13. There is no dispute in between the adversaries with respect to date of purchase, date and nature of defect, price and warranty of the product. The only dispute as is evident from the written statement is regarding operation of the product on motor. But there is no evidence in the form of any report or inspection by the defendants. There is no change in the status even after remand of the case and recording of evidenced afresh. Rather inconsistent stances of defendants in both the written statements on record speaks volumes about the conduct of the defendants especially with respect to their "after sale service".

14. Obviously, Geyser is a necessity and one cannot wait for repair of the same for years as in the instant case. A person of ordinary prudence would definitely go for other options such as purchasing of new one as has been done by the claimant in the instant case. In this scenario the claimant prudently acted and purchased new geyser as is evident from receipt Mark-A.

15. In the above mentioned scenario when the claimant in his evidence has substantiated the stance and inconsistent pleas on behalf of the defendants are on record those have not been substantiated, the claim cannot be rejected. The liability of the defendant company and its representatives in respect of defective

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product cannot be avoided. It was the duty of defendant to provide defect free product and even if it became defective during warranty period then defendant was bound to either get it repaired or replace the same or receive it back and to return price thereof to claimant. That was not done at the relevant time causing unrest and agony to the claimant. The ground taken in the written statements in light of above discussion is not sufficient to avoid liability for defective product within the meanings of section 4 or for that matter to avoid liability for defective or faulty service within the meanings of section 13 of the Act ibid.

16. In view of the above there is no reason to refuse the claim in this case. At the same time it is relevant to see as to what extent relief can be accorded to claimant. Rs. 50,000/- (fifty thousands) has been demanded as compensation and damages in addition to return of price of the product and other charges. Needless to mention that wherever compensation or damages are demanded that must be appropriate and keeping in view facts and circumstances of transaction in question and product which was sold. In this case, as mentioned supra this is second round and claimant has to suffer further costs of litigation. Considering the facts of this case the appropriate compensation for claimant in the given situation is assed at Rs. 30,000/- (thirty thousand) besides relief of return of price of product.

17. Therefore, in terms of section 31 of the Act, I issue an order and direct defendant Singer Pakistan Ltd as well as its representatives MS/AMS (or whatever title they use) of Outlet at Heelan Road Phalia to take following actions within fifteen days from today:-

- a) To receive back the product from the claimant and return the total price of Water Heater (SG35D) to the claimant.
- b) To pay Rs. 30,000/- (Thirty thousand) as compensation to claimant for agony suffered by him due to conduct and behavior of defendant.

**ATTESTED**

*M.B. Din*

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18. The compensation already paid to the claimant, if any, shall be adjusted and outstanding amount shall have to be paid to the claimant. In case of failure to comply with the order, the defendant shall have to face the consequences mentioned in section 32(2) of the Act *ibid*. Copy of the order be provided to the claimant and representative of Singer Pakistan Ltd. in line with Rule 17 of the Punjab Consumer Protection Rules, 2009. The Registrar of this Court shall transmit copy of this order for the purpose of Rule 25 of the Rules *ibid*. Order accordingly. File be consigned.



Announced  
07.02.2019.

**(Muhammad Sarfraz Akhtar)**

District & Sessions Judge/ Presiding Officer,  
District Consumer Court Mandi Baha-ud-Din



Certified that this Order consists of eight (08) pages and each page has been dictated, read, corrected and signed by me.



Dated: 07.02.2019

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