

**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	13.01.2018

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.

ORDER:

The stance of claimant, Dr. Sajid Mahmood, is that he on 30.10.2014 purchased Water Heater (SG35D) of Singer Pakistan Ltd from the outlet situated at Heelan Road Phalia after making full payment; it was got installed by the defendants; receipts (Ex.P3 & Ex.P4) on behalf of Singer Pakistan Ltd were issued; on the third day of installation it stopped working; the matter was reported to the defendants and they sent representative who after checking reported that the thermostat was defective and promised to replace the same; the defect even after replacement of thermostat was not removed and the body started leakage; 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 (Mark-A) was issued through postal receipt (Ex.P1) that was received by the defendants on 25.3.2015 vide AD (EX.P2). As the grievance of the claimant was not redressed, instant complaint under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as the Act) has been filed. Due to failure of the defendant to do the needful, the claimant

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product alongwith other charges as well as compensation of Rs.50,000/-

2. The complaint was filed before District Consumer Court Gujrat. Defendants despite service did not turned up and were proceeded against ex-parte on 07.05.2015 whereafter ex-parte evidence of the claimant was recorded. The claimant himself appeared as PW.1 and also produced copy of legal notice (Mark.A), postal receipt (Ex.P1), AD (EX.P2), receipts (Ex.P3 & Ex.P4).

3. After establishment of Consumer Court at Mandi Baha-ud-Din, the complaint was transferred to this Court. During the proceedings on 05.07.2017 Tayyab Zулnoreen Manager Outlet Heelan Road Phalia of Singer Pakistan Ltd appeared and maintained that Singer Pakistan Ltd is ready to get the product repaired. Subsequently, on 29.11.2017 without getting ex-parte order set aside written statement on behalf of defendants was submitted by MS Singer Pakistan Ltd wherein it was stated that the defect in the product was caused due to the act of the claimant of operating the product on motor, however, again willingness to repair the product was maintained.

4. On 03.01.2018 Sajid Rasool AMS Singer Pakistan Ltd appeared and maintained 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. The adversaries were then directed to appear in person. On 12.01.2018 Sajid Rasool AMS Singer Pakistan Ltd and claimant appeared in person. 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 is of no worth at this stage. He further stated that the product of the defendants was never operated on motor. Sajid Rasool AMS maintained that as per policy of the company merely repair could be offered. He further raised the objection that complaint has been filed against employees of the company with

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subsequently left the job and now the same is no more proceedable.

5. Firstly I would like to address the objection with respect to maintainability of the claim. 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. As such, oral objection taken on 12.01.2018 is without any merits and cannot be given any weight.

6. 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. The offer, though at belated stage, with respect to repair of the product in peculiar circumstance of this case speaks volumes about stability of the product sold to the claimant. Had there been any bona-fide in this respect the product would have been repaired upon receipt of legal notice that was actually received by the defendants. The conduct in this respect is further fortified as even the defendants did not opt to appear before the Court despite service of the process and were proceeded against ex-parte. Further, without seeking setting aside of ex-parte order written statement was submitted and offer was made at final stage.

7. 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 offer of repair of the product at this stage is worth less and amounts to adding insult to injury.

8. In the above mentioned scenario when the claimant in

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the liability of the defendant company and its representatives in respect of defective 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 statement 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*.

7. 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. Considering the facts of this case the appropriate compensation for claimant is Rs. 25,000/- (twenty five thousand) besides relief of return of price of product.

8. 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. 25,000/- (Twenty five thousand) as compensation to claimant for agony suffered by him due to conduct and behavior of defendant.

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9. 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
13.01.2018.

(Judge Muhammad Sarfraz Akhtar)

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



Certified that this Order consists of five (05) pages and each page has been dictated, read, corrected and signed by me.

Dated: 13.01.2018

(Judge Muhammad Sarfraz Akhtar)

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

Copy of Order Received by:

30/1/18
13-1-18
Claimant

30/1/18
13-1-18
Defendant