

**IN THE COURT OF PERVEZ IQBAL SIPRA,
DISTRICT & SESSIONS JUDGE / PRESIDING OFFICER,
DISTRICT CONSUMER COURT,
FAISALABAD.**

Complaint No 90/2013
Date of institution 22.05.2013
Date of decision 03.07.2018.

Dr. Sohail Farooq S/o Altaf Hussain R/o House No.1411, Station Road, Civil Line, Jhang Sadar.

Versus

1. Messers Ali Akbar Enterprises Pakistan, 192 E Block Valencia Housing Society, Lahore.
2. Fateh Faseeh, representative Messers Ali Akbar Enterprises Pakistan, present office at District Officer Water Management Jhang opposite Railway Station, Jhang Sadar.

Claim u/s 25 of the Punjab Consumer Protection Act, 2005.

ORDER:

By filing this claim, the claimant has contended that he has grown citrus garden in thirteen acres land at Chak No.261/JB, District Jhang. Defendant No.2 contacted with him and persuaded to get “Drip Irrigation System” installed from defendant No.1. He agreed to get the system and defendant No.2 asked him that he was to pay 40% of the total consideration and 60% would be paid by the Punjab Government. He paid the amount and under the Punjab Water Management Consultant Lahore, Punjab Irrigated Agriculture Productively Improvement Project “Drip Irrigation System” was approved and the work order was issued in the name of defendant No.1, on 16.06.2012. He got survey of his land from the experts of defendant No.1. As per work order, defendant No.1 was to manage for all the material for the drip irrigation system within 35 days and within 60 days, the drip irrigation system was to

be made operative. The defendants for completing the work order, bearing No.8261-65/DGA/OFWM/Dev, dated 16.06.2012, showed negligence and the material was not made available at the site and within the prescribed period, the system was also not made operative. When he insisted, the defendants made the material available in November 2012 and started to install the system. He paid the amount of Rs.4,64,095/- through NIB Bank, Jhang, by draft, dated 30.04.2012. Thereafter, in result of review of the project, it was held that the amount of Rs.33,755/- would be refundable. When the system was made functional, it showed its failure and the garden was not properly irrigated. He informed the defendants telephonically and they gave no heeds for redressal of his grievance and always adopted evasive conduct. Ultimately, he gave notice u/s 28 (1) of the Punjab Consumer Protection Act, 2005, to the defendants but no reply, hence, the instant complaint.

2. On institution of the complaint, the defendants were summoned but none of them appeared before the court and they were proceeded against ex-parte. The ex-parte evidence of the claimant was recorded and vide order dated 04.06.2015, the claim was accepted. Lateron, the defendants submitted an application for setting aside the ex-part final order which was rejected vide order dated 24.10.2016. Defendant No.1 filed an appeal before the Hon'able Lahore High Court Lahore against the order dated 24.10.2016, whereby he was given relief and the ex-parte final order dated 04.06.2015 was set aside by the Hon'able Lahore High

Court Lahore. The appeal was accepted and the case was remanded to this court with a direction to decide the complaint afresh after obtaining reply of the appellant (defendant) and recording the evidence, if so needed, on merits in accordance with law. On appearance of the parties before this court, defendant No.1 submitted his written statement whereby he contested the complaint. He has contended that the product was obtained by the claimant for commercial purpose. The claimant only paid 40% of the total consideration and paid nothing for hiring services. The claim is time bared and no application for extension of time has been submitted. No written notice was given to the defendants and that defendant No.1 being a private limited company only may be sued through its Chief Executive. The claim in hand is bad for mis-joinder and non-joinder for necessary parties and this court has no jurisdiction to entertain the matter in dispute as the matter falls within the jurisdiction of Civil and Criminal Courts. It has been admitted that defendant No.1 installed the drip irrigation system, however, the rest paragraphs of the complaint have been denied.

3. At pre-trial stage, no one offered for settlement and then, the evidence of both the parties was recorded.

4. The claimant himself entered into the witness box as PW1 and also examined Bilal Ahmad PW2. The counsel for the claimant produced the postal receipts Ex-P1 to Ex-P3, the copy of notice Mark P/A, the copy of work order Mark P/B, the copy of revised design report Mark P/C, the copy of material verification

report Mark P/D, the copy of scheme (Drip Irrigation System) Mark P/E, the copy of scheme Mark P/F, the copy of material/equipment verification report Mark P/G, the copy of undertaking Mark P/H, the copy of commissioning verification report Mark P/I, the copy of draft Mark P/J, the copy of application for installation of drip irrigation system Mark P/K and the copy of order Mark P/L. On the other hand, defendant No.1 examined Mian Javed Iqbal as DW1. He submitted his affidavit Ex-D1, the authority letter Ex-D2, the copy of satisfaction certificate Mark D/A, the copy of commission verification report Mark D/B, the copy of work completion report Mark D/C, the copy of release of 1st & 2nd installments Mark D/D, the copy of release of 2nd installment (ICR-II) Mark D/E, the copies of excess receipts Mark D/F & Mark D/G, the copy of work order Mark D/H, the copy of material verification report Mark D/I , the copy of revised design report Mark D/J and the copy of test run/commissioning report drip irrigation system Mark D/K.

5. Arguments heard, record perused.

6. First of all, the legal objections raised by defendant No.1 are to be discussed. Defendant No.1 has contended that the claimant is not a consumer as citrus garden has been grown by him for commercial purpose and who one buys the product or hires services for commercial purpose, may not be deemed a consumer as defined u/s 2 (c) of the Punjab Consumer Protection Act, 2005. The claimant has grown citrus garden at the agriculture land owned by

him. A land owner who grows garden at his land, may not be said to have done so for commercial purpose even he earns more than his needs. The hiring of services for commercial purpose does not oust a person from the definition of consumer. Under Section 2 (i) of the Punjab Consumer Protection Act, 2005, a person who buys a product for commercial purpose may not be deemed a consumer and such a condition has not been imposed for the consumer who hires services. Defendant No.1 not only provided product but he also was under an obligation to provide services for making the drip irrigation system operative and functional for a specified time. The claimant obtained the drip irrigation system for his garden grown at his own land, thereby it may not be said a commercial purpose and the claimant, in the situation, may not be excluded from the status of “consumer”.

7. The second objection which defendant No.1 has raised is the point of limitation. The claim in hand was filed on 22.05.2013. The drip irrigation system according to the terms and conditions of the work order, was to be made operative within 95 days from the date of work order. The system was not installed well within time and defendant No.1 did not complete the work till 05.08.2013. On 12.07.2013, Mr. Muhammad Asif Rana, the Field Engineer, Project-Implementation Supervision Consultant, Jhang visited the site and submitted his report by stating that the project was not complete. On 05.08.2013, Fateh Faseeh Khan, ASM, Ali Akbar Group Pakistan, Jhang, submitted his undertaking to the

PSC, Field Engineer, Jhang, whereby he admitted that some of the work of the project was not up to the standard and he undertook to fulfill the deficiency in future. These facts lead to infer that till 05.08.2013, the project was not complete. On 29.04.2013, the claimant sent notice u/s 28 (1) of the Punjab Consumer Protection Act, 2005 to the defendants and till this date, the work was not complete and the system was not functioning properly. Till the date, the claimant had cause of action to file claim. After giving notice, he filed the claim well within time, thereby it may not be held that the claim is time barred.

8. The learned counsel for defendant No.1 also raised an objection that the notice was not sent to defendant No.1 at accurate address, therefore, the notice was not received. The notice was sent to defendant No.1 at the address "M/s Ali Akbar Enterprises Pakistan "192-E Block, Valencia Housing Society Lahore". This is the same address which has been mentioned in the complaint. In para No.5 of the written statement, defendant No.1 has mentioned its address "Ali Akbar Enterprises (Pvt) Ltd 1-KM Ali Akbar Road Raiwind Road, Bhooption Chowk Lahore". The copy of work order which was issued by the Director General Agriculture (Water Management) Punjab, Lahore in the name of defendant No.1 is Mark P/B. At the work order, the address of defendant No.1 has been mentioned "M/s Ali Akbar Enterprises Pakistan 192-E Block, Valencia Housing Society Lahore". At this address, defendant No.1 received the work order and corresponded with the Government of

Punjab, during the completion of the project. The claimant from the record came to know about the address of defendant No.1 and sent notice at such address. The claimant at its own did the best and if now defendant No.1 is doing business at another address, it may not be said that the notice was sent at wrong address. So this very objection of defendant No.1 also has no weight, hence, is refuted.

9. The claimant's contention is that defendant No.2 persuaded him for obtaining the drip irrigation system and also explained him that the Punjab Water Management Consultant Lahore had introduced a scheme (Punjab Irrigated Agriculture Productively Improvement Project) for providing the drip irrigation system to the farmers. Forty percent of the total cost would be paid by the farmers and 60% expenses would be borne by the Punjab Government. He decided to obtain the facility and applied for providing him drip irrigation system. The Government of Punjab approved the project and issued work order in the name of defendant No.1. He paid 40% of the total cost of the project through bank draft, on 30.04.2012. Thereafter, the project was reviewed and its expenses decreased and the amount of Rs.33,755/- was refundable to him but such an amount was not refunded. The work order bearing No.8261-65/DGA/OFWM/Dev, dated 16.06.2012, was issued in the name of defendant No.1 but he did not complete work in accordance with it. The drip irrigation system did not work properly. It is an admitted fact on behalf of defendant No.1 that he installed drip irrigation system at the land of the claimant. As per

his contention, the work was completed according to the work order and the claimant showed his satisfaction in the respect thereto.

10. The work order was issued on 16.06.2012 and defendant No.1 was to complete work within 95 days. The work was not completed within time and defendant No.1 lingered on the completion of the project on one pretext or the other. On 12.07.2013, the Field Engineer visited the site and submitted his report that the project was not complete. The Field Engineer vide his report Mark P/I made the following observations:-

- “Pump installed with 34m head instead of 40m head as recommended in approved design.
- Capacity and brand not mention on Hydrocyclon and Gravel fitter.
- Fertigation tank installed instead of fertigation injector.
- Drippers installed at site not as per BOQ, brand not matched and also pressure variation found in dripper during checking at several points, it is requested SSC to submit the technical data of drippers.
- Leakage found in the LDPE Pipe 16mm where drippers installed and each and every plant 6 mistake plug found and some places mistake plug not found.
- Leakage at joint of suction pipe.
- In Gravel Filter gravel depth in filter is too low.
- 3 UPVC Ball Valves leaked during system running.

The site will remain deferred until the above observations rectified”.

Fateh Faseeh Khan as a representative of defendant No.1 submitted an undertaking against the aforesaid observations, the copy of which is Mark P/H. The undertaking given by Fateh Faseeh Khan (defendant No.2) is as under:-

“It is stated that on behalf of company, I am giving you undertaking regarding your observation as enlist Drippers, Ventury injector, Electric Control Penal and Pump Specifications.

- We have installed imported Pc Drippers instead of Netafim due to unavailability and they are performing well at the mean time. I will provide you the technical data within two days.
- We have replaced the fertigation injector with fertigation tank as per farmer concern and some problem in designing of the system in start to complete pressure.
- Installed pump is according to the required pressure and discharge and on field it provides the required pressure and discharge but its brand plate is mistakenly mention low head by the manufacturer. We will replace it.
- Electric control panel was delivered to the farmer at site but due to farmer concern is not installed and by mutual understanding b/w farmer and company it will be updated by farmer and installed in future himself in the presence of our representative.

It is requested that on behalf of above mentioned observations, do not defer the site as site is working properly with all technical parameters.

Ali Akbar, Group Pakistan is bound to fulfill above mentioned observations as stated above”.

Fateh Faseeh Khan did it as the representative of defendant No.1 and defendant No.1 is bound by the undertaking given by its agent. It was Fateh Faseeh Khan, who dealt with the claimant as an agent of defendant No.1 and that they both may not be relieved from the liability. The undertaking given by the defendants has not been satisfied. The claimant gave satisfaction certificate on 05.08.2013 and it was the day, when Fateh Faseeh Khan submitted undertaking. This very fact shows that the claimant and defendants became satisfied on the point that the project would be deemed complete when the undertaking given by the defendants,

was fulfilled. The satisfaction certificate given by the claimant was obtained for getting the funds released subject to the undertaking and the satisfaction shown by the claimant never released the defendants from the undertaking given on 05.08.2013. As per work order, there was two years performance warranty and free service. Till 05.08.2013, the project was not complete in all the respects. After 05.08.2013, no service was provided by the defendants and the performance of the project was also not ensured. In the circumstances, it may be held without any hesitation that the defendants did not complete the project as per work order and failed to fulfill the undertaking given on 05.08.2013. The defendants are still under an obligation to fulfill the undertaking dated 05.08.2013 and after completing the project by making the faults good therein, to insure two years performance and free service also.

11. For what has been discussed above, the claim in hand is accepted and the defendants are directed to fulfill the undertaking given on 05.08.2013. After doing so, the performance of the project be ensured for two years and for two years also free service must have been provided. If the defendants fail to do so, they will have to return the amount of Rs.4,64,095/- which they received as 40% of the project cost from the claimant. The Government of Punjab will also have a right to recover the amount which was paid to defendant No.1 as project consideration by doing departmental proceedings. Section 10 of the Punjab Consumers Protection Act, 2005, restricts to grant damages, where the consumer has not suffered any damage

from the product except the loss of utility. The claimant only suffered the loss of utility and no further damage was caused, therefore, he is not entitled to damages, however, he is held entitled to Rs.50,000/- as costs incurred on legal proceedings. The defendants are directed to comply with this order within sixty days and if they fail to comply with this order, the proceedings u/s 32 (2) of the Punjab Consumers Protection Act, 2005 will be initiated against them. The Registrar of this court is directed to send a copy of this order to the defendants free of costs and the receipt thereof be ensured and got acknowledged. A copy of this order be sent to the Director General Agriculture (Water Management) Punjab, Lahore and the District Officer (OPWM), Jhang for doing the needful. A copy of this order be also delivered to the claimant. After due completion, the file be consigned to the record room.

Announced
03.07.2018

(Pervez Iqbal Sipra)
District & Sessions Judge/
Presiding Officer,
District Consumer Court, Faisalabad.

Certified that this order consists of eleven pages and each page has been dictated, read, corrected and signed by me.

Dated
03.07.2018

Presiding Officer,
District Consumer Court, Faisalabad.

Short order.**Present:-****Nemo.****ORDER**

Vide order dated even passed in English separately, the complaint in hand is accepted and the defendants are directed to fulfill the undertaking given on 05.08.2013. After doing so, the performance of the project be ensured for two years and for two years also free service must have been provided. If the defendants fail to do so, they will have to return the amount of Rs.4,64,095/- which they received as 40% of the project cost from the claimant. The Government of Punjab will also have a right to recover the amount which was paid to defendant No.1 as project consideration by doing departmental proceedings. The defendants are also to pay Rs.50,000/- to the claimant as costs incurred on the legal proceedings. After due completion, the file be consigned to the record room.

Announced
03.07.2018

(Pervez Iqbal Sipra)
District & Sessions Judge/
Presiding Officer,
District Consumer Court, Faisalabad.