

**In the Court of Mahmood Ahmed Shakir Jajja, Presiding Officer/ District & Sessions Judge, District Consumer Court, Bahawalpur**

Mohammad Saleem Akhtar Vs Regional Manager Mobilink.

**Case No.2020/10**

**Dated of Institution: 14-12-2010.**

**Date of Decision: 19-01-2012.**

Present: Parties along with their counsel.  
Arguments heard. Record perused.

Order:-

A facts as narrated by the complainant are that he had got allocated Mobilink connection No.0300-7807573 in 2006 from the respondent and he has been utilizing the said number from 07-12-2006 to onwards but after 4 years, the respondent allotted the number to another person on 02-09-2010 and when the complainant enquired from the respondent, he said that it is up to his will to allot number to another person and now we can do nothing for redressal of grievance of the complainant; that the complainant has suffered mental torture and loss of his business and wastage of his precious time. He has requested that the aforesaid number be allotted to him and he also be compensated with damages of Rs.50,000/-.

On the other hand, the respondent has raised the following preliminary objections; that it is respectfully submitted that the complainant has filed the above titled complaint against defendants which is pending before this court. The defendants is a company incorporated under the Companies Ordinance 1984, this written reply on behalf of defendant is being filed through Mr. Asif Mahmood Khan, who is Franchise Support Executive Customer Care, in the company and is dully authorized in this regard to peruse this case on behalf of company; that Mr. Saleem Akhtar, the complainant, has twisted and concealed facts from this court and rests on frivolous allegation in the instant complaint that his SIM bearing No.03007807573 was transferred to another person without his consent to this effect. We deny all allegations leveled in his complaint, inter alia, on the

following legal grounds; that I customer was facing any issues regarding his SIM misuse / transfer then why he has not informed his operators (Mobilink) by calling over our helpline (1110 or customer care center which is available 24/7 to redress the grievance of our valued customer. It is pertinent to mention here that no such complaint was launched by the complainant about his alleged SIM transfer ever; that customer himself admitted in his complaint that he figured out from someone that alleged SIM is transferred to someone else. He needs to provide proof to this effect for our comments; that according to arbitration clause of SIM purchase agreement between complainant and respondents, complainant is bound to resort arbitration with operator (Mobilink) before invoking jurisdiction of competent court . This clause is replica of Arbitration Act 1940 for the case of reference relevant clause is reproduced herein below;

“If any difference or dispute in any way connect with this contract shall rise between the parties hereto which cannot be settled amicably: shall be settled under the provision of the Arbitration Act 1940, and any amendments hereto, shall apply to such arbitration. Which shall be held in Lahore. The award of such arbitration shall be final and binding on the parties. The arbitration proceedings shall be conducted in the English language”

That according to the application on 02-09-2010 the said SIM was blocked, it indicates that cause of action had been arising on the said date; it would become very much clear that the application is inadequately time barred and likely to be dismissed with orders as to cost; that the petition is not maintainable as being badly time barred, as alleged, the complainant has issued the alleged notice to the PMCL on 03-11-2010 and the complainant was filed on 14-12-2010 before this court, thus, the application of the petitioner is not maintainable as being badly time barred; that under section 28(4) of PCPA 2005, the claim shall be filed within 30 days from the accrual of cause of action, moreover, the court is empowered to grant more 30 days, if the applicant satisfied the court, for not filing the application before the court within 30 days, but in above titled case, the applicant has neither given any sufficient reason for not filing the application within reasonable time nor even sought for condonation of delay. Thus, this badly time

barred , application is not maintainable and likely to be dismissed at the very initial stage; that section 29 of Limitation Act, 1908 is very much clear that where under any special or local law, the period of limitation is prescribed, in any such case the delay cannot be condoned, but in this case, it is badly time barred; that in most of the instances, the higher courts had held that where there is any delay in the institution of any claim, which has not been well explained, the same would be dismissed at the very initial stage. It is well settled law that the question of law should be adjudicated at first and then the matter should be taken on factual basis; that application is liable to be burdened with heavy cost under section 35 of PCPA 2005, for filing false and vexatious claim. The respondent has replied on merits, that contents of the petition are correct to the extent of the petitioner is the consumer of the company and the rest are denied. Respondent never blocked the SIM and nor transfer to any other person. Thus, the complaint of the complainant is not maintainable and likely to be dismissed. Detail reply has already been given above. According to the PCPA 2005, the complainant shall be filed the complainant within thirty days from the date accrual of alleged cause of action, whereas, the complainant is going to file the complaint even after the delay of about 02 months and 12 days. Thus, this badly time barred complaint is not maintainable and likely to be dismissed at the very initial stage. Furthermore, the alleged SIM is and was subscribed in the name of the complainant hence no cause of action arose to him. The respondent has prayed that the claim in hand may please be dismissed with orders as to cost as the claim does not contain any grievance.

After hearing the arguments and perusal of the record, it has been that the complainant has placed on record photo copy of the legal notice Mark-A, receipt of registered post Mark-B, photo copy of the receipt of correction dated 07-12-2006 Mark-C and photo cop of the SIM Mark-D. Original bills issued by the Mobilink Ex-P1 to Ex-P5. The respondent from the other side, has not placed on record any document in rebuttal. The issuance of Mobilink connection No.0300-7807573 dated 07-12-2006 issued to the complainant has been admitted by the respondent. The respondent has raised main objection about the time barred complaint with the version that according to the

complainant, the SIM in dispute was allotted to another person on 02-09-2010 and he has moved this petition on 14-12-2010 after a period of almost 3 and half months. No date has been mention on the legal notice which according to the complainant has been issued on 03-11-2010. I disagree with the version of the respondent that the complainant got cause of action on 09-02-2010 as cause of action will arise under section 35 PCPA 2005, when the respondent will refuse to redress the claim of the complainant after receiving the legal notice. The date of receipt of legal notice has not specified as the legal notice has been sent to the respondent through registered post as the respondent has not admitted that either he has received the legal notice or not. Therefore, the complainant has been waiting for response from the respondent side after the issuance of legal notice. So, he could not file the complaint within the period of 30 days in compliance of 35 PCPA 2005. Although, the complainant has not prayed for condonation of delay under section 5 of Limitation Act but he has orally requested for condonation of delay. Keeping in view, the circumstances of the case, the court is convinced that the complainant was justified in filing the complaint after the due date. Therefore, the delay occurred in filing of the complaint is hereby condone. So for as concern, the objection of the respondent is that the complainant has not made Mobilink Company as part in the complaint, it is observed that the SIM in dispute has been transferred by the respondent himself and there is no fault on the part of the company. He is personally responsible for the faulty service provided to the complainant and loss. Therefore, the company is not necessary part in this case.

On merits, the respondent has put up in justification for transferring the number of the complainant to another person without his consent because under the law, number of another consumer cannot be transferred without his consent. The respondent has also failed to redress the grievance of the complainant on his request. Therefore, the complainant has to file a complaint which has occurred in physical and mental torture and wastage of his precious time and energy of the complainant. Therefore, it is held that the complainant is entitled to get the SIM No. 0300-7807573 and also to get the damages of Rs.20,000/- as costs and compensation of his damages. The respondent is accordingly

directed to allot the said SIM to the complainant and pay him damages of Rs.20,000/-. The respondent will pay the above mentioned amount from his own salary. With these observations, the complaint in hand is allowed in favour of the complainant and against the respondent. Notice be issued for execution till 20-02-2012.

Announced:  
19-01-2012

Presiding Officer