



بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

**IN THE COURT OF MALIK PEER MUHAMMAD  
DISTRICT & SESSIONS JUDGE, DISTRICT  
CONSUMER COURT, SAHIWAL.**

**MUHAMMAD ZAHID S/O MUHAMMAD ZUBAIR CASTE  
ARAIN R/O 149/E.B TEHSILE ARIFWALA.**

*Date of institution:-15-11-2010      Dated of Decision :- 11-10-2011*

.....CLAIMANT

**Versus**

1. RACHNA AGRI BUSINESS, SHIKHUPURA ROAD,  
GUJRANWALA.
2. MEHAR MUHAMMAD HASSAN WASEEM HASSAN  
SEED MERCHANT SHOP NO. 1 AL-FLAH  
MARKEET MADINA MASJID ANDROON PORANI  
SABZI MANDI ARIFWALA, PAKPATTAN.

-----RESPONDENTS

**CLAIM U/S 25 OF THE PUNJAB CONSUMER PROTECTION ACT  
2005.**

**ORDER**

1. Petitioner has brought the captioned claim u/s 25 of the Punjab Consumer Protection Act 2005 against the respondents. It is averred in the body of the claim that he relates with the agrarian job. He needed seed for cauliflower as such he darted to the shop of the respondent No. 2 where Mehar Muhammad Hassan Waseem met him and petitioner demanded Twingo Cauliflower seed. Respondent asked to the petitioner that Twingo seed is not good for the purpose of germination and he advised him for to purchase Nickerson Zawan's Hunza F1 seed. Respondent praised for such seed that it shall bear good germination comparing to the Twingo cauliflower. Further it is embodied in the claim that after

sowing the purchased seed it was observed that said seed was substandard as such it bore a little fruit. The said cauliflower bore usual kind of flowers, scattered, as such he approached to the respondent shopkeeper as for to compensate his loss. He further moved an application to Deputy Director Seed Certification, Sahiwal who visited the field and supported the version of the claimant. Petitioner suffered a loss of Rs. 92,600/- due to the substandard cauliflower seed sold by the respondent No. 2 to the petitioner. Claim be accepted to the extent of Rs. 22,57,600/- including mental torture, compensation etc.

2. Suit was resisted by the respondents. It is averred in the written reply that petitioner has no cause of action against the respondents, no relationship of customer and shopkeeper exists between the parties. No receipt for the purchase of the disputed seed has been provided by the claimant in the court. Suit is barred by time and law. Lastly averred in the written statement that the suit of the claimant has already dismissed on 15-10-10 hence suit be dismissed.

3. In order to discharge legal onus probandi Muhammad Zubair Khan Seed Certification Officer Sahiwal appeared as Pw-1, claimant Muhammad Zahid himself appears as appeared as Pw-2, Muhammad Arshad as pw-3, Abdul Sattar as pw-4. On the documentary side he produced report of the Deputy Director as Ex-p1, notice Ex-p2, notice Ex-p2, postal receipts as p3,p4 and closed the documentary evidence. On the other hand Waseem Hassan appeared as Dw-1, Wazir Gul Technical Manager appears as Dw-2. On the documentary side variety description letter Ex-R1, letter dated 28-06-10 as Ex-R2, receipt dated 14-10-09 as R3, letter dated 05-09-11 Rachna Agri as Ex- R4,5,6 and closed the documentary evidence.

4. Arguments heard. Record perused.

5. After hearing lengthy arguments advanced by the learned counsels for both the parties, one pivotal dispute arises between the litigant parties that relationship of customer and shopkeeper do not exist in absence of the documentary evidence (receipt). To answer this complicated question it will be best to resort to the evidence of parties and other documentary evidence relied by both the rival litigants. Body of the claim is most significant for the purpose of reply to this burning question. In the body of the claim petitioner has asserted that on 16-12-09 he purchased the disputed cauliflower seed from the respondent shop. Petitioner being claimant was required to discharge the legal onus probandi lying on his shoulders. Law always requires that a person he who asserts the some fact, he must prove it by producing documentary either oral evidence in his possession. Petitioner himself appeared in the witness box as Pw-2. In the examination chief he specifically deposed in it that one representative of the Company Shafique visited the field and advised him to visit the shop of the respondent alongwith disputed receipt and on the following date petitioner alongwith others Pws went to the shop of the respondent where he returned the disputed receipt alongwith empty seed packet to the respondent. Later on the shopkeeper did not resolve his grievances and procrastinated the matter one pretext to another. I deeply considered the assertion of the claimant/petitioner. The requirement of the law is always, that pleadings of the parties only proves when the claimant falls in the witness box to corroborate the facts of the pleadings. It is further always held by the Honourable High Court and Apex Courts of the Pakistan that when some fact is not mentioned in the plaint later on petitioner pw cannot be allowed to enter new facts in his examination in chief. This case bears such like apparent weaknesses. When the version of the petitioner is not find out in the averments of the claim/petition that he alongwith other pws

approached to the respondent and he returned the original receipt to him. In case receipt was returned back by the petitioner to the respondent he might have mentioned this fact in the body of the claim. It appears to the court that some grain & salt is mixed in the story of the claimant. It is held in the Qanoon-e- shahadat 1984 Article 103 whenever any document is executed between the parties, the original document is required to be produced before the court. In the absence of such document, its averments cannot be proved through oral evidence. It is further held in the PLD 1996 Lahore page 171 a man may lie in order to support his cause but documents cannot. In absence of the documentary evidence oral evidence cannot be given preference over documentary evidence.

6. Apart from this respondent himself appeared in the witness box as dw-2. In his examination chief he specifically deposed that claimant never purchased the disputed seed of cauliflower from his shop, no relationship of customer and shopkeeper is existed. This statement has not been specifically touched by the learned counsel for the claimant nor cross examined on this core issue. Petitioner has advanced another argument before the court that Dw-1 specifically admitted in his cross examination that petitioner previously used to purchase different kinds of seed from his shop. He referred his cross examination in which a receipt was showed to this Dw and he admitted the same. This receipt pertain to the purchase of pepper seed. There is much wait in the argument advanced by the learned counsel for the respondents that if pepper receipt issued by the respondent is admitted and then there was no hesitation for him to admit the disputed receipt. Thus it is clear that petitioner did not possess any receipt nor he purchased the disputed seed from his shop. Judicature always requires documentary evidence rather to believe upon oral evidence. Oral evidence may be accepted in case it is direct, cogent and trust worthy.

7. So far the argument regarding the report of the Deputy Director Seed Certification is concerned, it cannot be helpful to the petitioner as the purchased seed is not proved if it was sold by the respondent or it was purchased from elsewhere. Available record and evidence on file do not support to the claimant's version regarding that relationship of consumer and shopkeeper exist between the parties. For the above said reasons I being disagree with the version of the claimant dismiss the claim. Registrar of this court is directed to dispatch the copy of the orders to the Directorate of Punjab Consumer Protection Council for the purpose of compliance of Rule 25 ibid.

1. File be consigned after its due completion.

**Announced.**

11-10-11

**Malik Peer Muhammad**  
District & Sessions Judge/District Judge  
Consumer Court Sahiwal

Certified that this order consists of five pages which have been dictated and signed by me.

**Malik Peer Muhammad**  
District & Sessions Judge/District Judge  
Consumer Court Sahiwal