

IN THE COURT OF MIRZA JAWAD A: BAIG,
DISTRICT & SESSIONS JUDGE,
PRESIDING OFFICER, DISTRICT CONSUMER COURT,
50-Z, MODEL TOWN, DERA GHAZI KHAN.

(PHONE: PTCL: 0642474100. FAX: 0642470496. VNTC: 0649239094).

Abdul Rehman Versus Malik Mohammad Behzad Jamil & 1 other

Complaint/ Case No: 2284/205/12.
Date of Institution: 07-03-2012.
Date of Decision: 19-05-2012.

COMPLAINT ABOUT FAULTY SERVICE

ORDER:

The claimant is represented jointly by Mohammad Talib Khan Daudi Advocate & Mohammad Ajmal Khan Chughtai Advocate & Atta-u-Rehman Khan Shedai Advocate while the defendants are represented jointly by Sheikh Faisal Noor Dewan Advocate in addition to the joint representation of defendant No.2 by A.D.Khan Mashori Advocate & Sajjad Hussain Mashori Advocate and initially by Tariq Aqeel Qureshi Advocate.

2. The case is at the stage of the decision while the arguments were heard on the previous date. I have perused the file in the light of the arguments. Now I proceed to discuss the arguments and to dispose off the complaint by the discussion in the following paragraphs.

3. Briefly stated the version of the claimant is to the effect that he was provided by the defendants with Burner spray instead of Seagull Spray for protection of his crop of wheat sown on land measuring 48 Kanals out of total land measuring 60 Kanals taken on lease by the claimant at the address given in the complaint; that the crop sown on about 24 Kanals of land was burnt due to Burner Spray; that defendant No.1 allegedly admitted the mistake of defendant No.2 and promised to compensate the loss when contacted by the claimant; that the loss is estimated at Rs.1,80,000/-; that the defendants have not responded to the legal notices; that defendant No.1 is threatening the claimant instead of making good the loss; that the claimant is entitled to recover the compensation and damages. It is requested by the claimant that he may be awarded with the payment of Rs.1,80,000/- as compensation for the loss of crop; Rs.1,00,000/- as damages for mental and physical agony and tension; Rs.20,000/- as counsel fee, total amounting to Rs.3,00,000/- from the defendants along with any other admissible relief.

4. The defendants have contested the complaint in their joint written statement by raising preliminary objections to the effect that the complaint is baseless and based on false facts; that the claimant is estopped by his own words and conduct; that the claimant has not come to the court with clean hands; that the complaint is time barred; that the loss of crop might have been due to some other mistake of the claimant; that there is no analysis of any laboratory about the cause of loss of crop; that defendant No.1 is not the proprietor of the concerned shop; that he has been impleaded incorrectly; that the complaint has been filed on behalf of some other rival dealer to harass the said defendant; that one liter of the spray purchased by the claimant could not have been used for 24 Kanals of land; that no

legal notice has been received by the defendants; that the spray which was provided to the claimant was of the same brand of Seagull for which the receipt was issued; that entry in the stock register of the defendants is about one liter of Seagull; the claimant has concealed the facts; that the complaint should be dismissed with grant of special costs to the defendants. The defendants have denied the allegation about providing the Burner Spray instead of Seagull Spray and denied the alleged promise about compensation of the loss and also denied the providing of faulty service. They have raised objection against the jurisdiction of this court and denied the claim of the claimant and requested for dismissal of the complaint with special costs.

5. It is pertinent to note that although **evidence** is necessary to be recorded under S.30 of PCP Act 2005 for disposal of the complaints by the Consumer Courts but since the procedural laws known as the Code of Civil Procedure, 1908; the Code of Criminal Procedure, 1898; the Qanun-e-Shahadat Order, 1984, the Bankers' Books Evidence Act, 1891; special rules of evidence u/s 118 of the Negotiable Instruments Act, 1881 are not strictly applicable to the proceedings of the Consumer Courts, as such the propriety demands that the evidence should be recorded by production of the affidavits of the parties and affidavits of the witnesses and documents with option to the parties to cross examine the deponents, if so required.

6. However, in the present case, I have observed that there is no assertion of the claimant about having the laboratory report to determine the reason for the burning of the crop. It is also observed that the claimant has not appended any estimate from the Patwari about the price of the alleged crop, therefore I find that the complaint is not liable to be fixed for recording the evidence due to non availability of the vital evidence and it is proper to be decided by arguments.

7. As far as the objection about the period of limitation is concerned, it is observed that the same is one year from the date of purchase according to 2nd proviso of S.28 of PCP Act, 2005 and the present complaint having been filed within one year is within limitation.

8. As far as the objection against the jurisdiction of this court is concerned, I find that the recovery of the damages on account of alleged humiliation and threats and mental tension and physical agony is certainly no in the jurisdiction of this court and the claimant would have to file civil suit for the redress of said grievance.

9. As far as the jurisdiction of the court of learned Magistrate about the trial of the cases relating to the pesticides or agricultural medicines is concerned, I find that the jurisdiction of this court is not barred by the said criminal jurisdiction which is meant to punish the seller of defective agricultural medicines. I am of the view that the jurisdiction of this court extends to the defective products including agricultural medicines u/s 31 of PCP Act, 2005. The objection against the jurisdiction on this score is therefore rejected while the objection against the jurisdiction about recovery of the damages under the law of torts is upheld.

10. As far as the objection about non issuance of legal notice is concerned, I find that it is sufficient to include the copies of the legal notice and postal receipts to establish that the legal notices were duly issued but it is not the responsibility of the claimant to prove that the notice was actually served on the defendants. The present claimant has filed the required copies as such the objection is rejected.

11. As far as the objection about defendant no.1 not being the proprietor of the shop of Agromart is concerned, it is observed that although one Mohammad Jamil is shown to be the proprietor of the concerned shop according to the Registration Certificate included in the file and since it is alleged in the written statement that Seagull Spray was sold by the defendants to the claimant as such I find that whatever was sold was sold jointly by defendant No.1 as shop keeper and defendant No.2 as salesman making both of them liable for any defect in the product sold by them.

12. As far as the request of the claimant for grant of damages is concerned, it is observed that it is settled law that the manufacturer or service provider is **not liable** for any damages except a return of the consideration or a part thereof and the costs, specifically where the consumer has not suffered any damages from the product or provision of service except lack of utility/ benefit.

13. It is pertinent to note that the **grant of damages** is curtailed even under Contract Act, 1872 in which it is provided in S.73 to 75 that the damages should be proportionate to the loss and not excessive by mentioning that such compensation for loss or damage caused by breach of contract is not to be given for any remote and indirect loss or damage sustained by reason of the breach. It is an embargo placed by the general law of contracts upon the powers of the courts about grant of damages.

14. It is also observed that further embargo on the **quantum of damages** to be awarded by the consumers courts has been placed by the law provided in S. 4, 10, 13 & 15 of PCP Act by declaring that the manufacturer or service provider shall be liable to a consumer for damages proximately caused by anticipated use of the product or provision of services that have caused damage but he shall not be liable for any damages except a return of the consideration or a part thereof and the costs in such cases where the consumer has not suffered any damages from the provision of service except lack of benefit or loss of utility.

15. It is however observed that since the disputed spray was for the benefit of the crop and not for the loss of crop and since the burning of the crop has not been specifically denied by the defendants therefore the defendants are liable to return the price of the spray along with payment of counsel fee to the claimant keeping in view the spirit of S.10 & 15 of PCP Act 2005.

16. As far as the request of the claimant for the grant of Rs.1,00,000/- as damages for alleged mental and physical tension and agony is concerned, I am of the view that whenever tortious act is the subject matter of the consumer complaint instead of the grievance about the quality of the product or services, then the complaint is liable to be returned for filing civil suit because the humiliation and threats constitutes civil remedy therefore the complaint is proper to be returned to the extent of said allegation for filing before the learned civil court.

17. As far as the mode of proof of the counsel fee is concerned, it is observed that the recovery of the lawyer's fee is legalized by S.31(g) of PCP Act, 2005 and the same is not necessary to be proved and no evidence is required from the counsel about the receiving of the same, while the filing of the Wakalatnama and appearance of the counsel to conduct the case is the acknowledgement of the receipt of the amount mentioned in the complaint as legal fee therefore I find that formal proof of the said payment is not required and the claimant is entitled to recover the said amount from the defendants.

18. In accordance with above discussion, the complaint is partly accepted to the extent of the entitlement of the claimant to recover Rs.680/- as the price of disputed spray along with Rs.20,000/- as counsel fee from the defendants while the complaint is dismissed to the extent of the recovery of Rs.1,80,000/- as compensation for the alleged loss whereas the complaint is deemed to be returned to the extent of the recovery of Rs.1,00,000/- as damages for the purpose of filing of civil suit, if so required to be filed.

19. *This order would become final u/s 34 of PCP Act 2005, if the **appeal** is not preferred within period of 30 days under S.33 of PCP Act 2005 & Rule 18 of PCP Rules 2009 in accordance with the Rules of Procedure of Honourable High Court.*

20. *In case of **delay** in compliance, the claimant is entitled to get the order implemented by filing the application for implementation with reference to S.31, 32 & 36 of PCP Act, 2005, if so required with the warning to the defendants that the **costs** to be incurred for and during the application for implementation would be liable to be recovered from them.*

21. *One attested **copy** of this order is directed to be provided to the claimant and one copy to the defendants jointly on filing the applications without **court fee tickets** even if filed on plain papers free of charge by entry with signatures in token of receiving in Dak Register with the clarification that extra copies would be liable to be issued at their own expenses.*

22. *The file of this complaint is to be **consigned** to the record room of this court duly page marked with proper index and after due completion and made available for issuance of attested copies and kept under safe custody till the period fixed for destruction in accordance with the Rules & Orders of Honourable Lahore High Court.*

Announced:
19-05-2012.

(MIRZA JAWAD A: BAIG)
D. & S. J. / P.O., D.C.C., D.G.K.,
PUNJAB, PAKISTAN.