

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

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

Zahid Sher Khan versus Proprietor Nasuha CNG

Complaint/ Case No:	1952 / 655 / 11.
Date of Institution:	28-11-2011.
Date of Decision:	19-01-2012.

COMPLAINT ABOUT FAULTY SERVICES

ORDER:

Claimant is represented jointly by Sardar Tariq Sher Khan Lund Advocate & Naveed Sher Khan Lund Advocate while defendant was being represented previously by Syed Farrukh Bukhari Advocate & then by Malik Jaffar Hussain Babber Advocate and presently by Aqeel Ahmad Khan Ahmdani Advocate alongwith parties in person.

1. The case is at the stage of the arguments. Wakalatnama has been filed on behalf of the defendant by new counsel. I have heard the arguments and perused the file as such I proceed to discuss and dispose off the complaint in accordance with discussion in the following paragraphs.

2. Briefly stated the version of the claimant is to the effect that the defendant is involved in illegal activity of providing gas at his CNG station to the wagons after the time fixed by law even at 6-15 AM but misbehaved with the claimant on objection raised by him and refused to provide gas to the claimant for his car No.MN/11/5412. He has requested that punishment and fine should be imposed against the defendant due to abusive conduct.

3. The defendant has filed his written statement with the version that the sale of CNG was strictly prohibited from 6 AM Monday to 6 PM Wednesday according to the instructions of the Government of Pakistan therefore sale of CNG in these timing is not possible irrespective of any status and that the complaint is not maintainable. He has requested for dismissal of the complaint.

4. 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 are not strictly applicable to the proceedings of the Consumer Courts, as such the propriety demands that the regular evidence should not be recorded in such cases where the points for determination are mostly based on the copies of the admitted documents available in the file of the complaint or admitted in the pleadings just like the present case.

5. As far as the request for action against the defendant 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.

6. 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.

7. 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 as such I find that the claimant is not entitled to recover the damages or compensation or counsel fee or litigation charges through this court under the law of consumers and the claimant would have to file regular civil suit to get the required damages in accordance with general law of torts.

8. It is observed that since there is no request for the grant of damages in the present complaint and the prayer is only about imposing punishment and fine which can only be imposed by criminal court, therefore I find that the claimant can file civil suit in ordinary civil court if he also wants to recover damages in addition to file criminal complaint for punishment while the present complaint is not maintainable in this court and liable to be returned for availing civil and criminal remedies in ordinary courts of civil and criminal jurisdiction.

9. In accordance with above discussion, the complaint is hereby disposed off by way of return.

10. *Parties are left to bear their own costs.*

11. *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:
19-01-2012.

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