

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

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

Farman Ali Mughal versus Malik Mohammad Tufail & 2 others

Old Complaint/ Case No:	1345 / 48 / 11.
Date of Institution:	25-01-2011.
Date of 1 st Decision:	18-10-2011.
New Complaint/ Case No:	1804 / 507 / 11.
Date of Restoration:	20-10-2011.
Date of Decision:	02-03-2012.

COMPLAINT ABOUT ORIGINAL REGISTRATION BOOK

ORDER:

The claimant is represented by Mian Tariq Mehmood Advocate while defendant No.2 is represented by Malik Talib Hussain Babbar Advocate and ex-parte defendants No.1 & 3.

1. The case is at the stage of the arguments which have been heard as such I proceed to dispose off the complaint by discussion in the following paragraphs.

2. Briefly stated the grievance of the claimant is to effect that he was charged extra payment of Rs.3,000/- for registration of the motor cycle purchased from the defendants on payment of total sale price of Rs.45,000/- but the defendants have demanded additional amount of Rs.5,000/- for providing registration book and refused to hand over the required book to non payment of additional amount; that the copies of the receipt and form F were given to the claimant but original documents were kept by the defendants; that the defendants have not bothered to respond to the legal notices issued on behalf of the claimant. It is requested by the claimant that the defendants should be directed to hand over original receipt of sale, tax invoice, original registration book and to pay damages amounting to Rs.50,000/- and counsel fee Rs.15,000/- and any other admissible relief may also be granted.

3. Defendant No.1 has remained ex-parte from the beginning of the trial while defendant No.3 has been proceeded against ex-parte after he absented himself from the proceedings of the case w.e.f. 25-01-2012. The version of ex-parte defendant No.3 in his contesting written statement was to the effect that defendant No.1 was the actual owner of the disputed scheme about sale of motor cycles; that he had not received any payment towards sale of motor cycle or registration; that he has no concern with the alleged scheme. The version of contesting defendant No.2 in his separate written statement is the same as of ex-parte defendant No.3 about no role in the dispute. Both have requested for dismissal of the complaint in their separate written statements.

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; 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 evidence has been recorded through affidavits of the parties as examination-in-chief with oral cross examination as sufficient compliance of said requirement.

5. Evidence of the claimant consists of original postal receipt as Ex.P-1; original acknowledgment receipt as Ex.P-2; copy of legal notice as Ex.P-3 (under objection); original registration receipt as Ex.P-4; original registration book as Ex.P-5; detailed affidavit of the claimant as Ex.P-6; photo copy of the license of the counsel as Mark P.1; photo copy of CNIC of the claimant as Mark P.2.

6. Evidence of contesting defendant No.2 consists of his original affidavit in lieu of examination-in-chief as Ex.D-1 and cross examination recorded through appointment of learned local commissioner (LLC) as DW-1.

7. I am conscious of legal position of the prize schemes about which the law expounded by the decisions of Indian origin is to the effect that the disputes relating to lottery tickets have been held to be out of jurisdiction of Redressal Forum. It is however clarified that the legal position of the draw of prizes in the lottery is different than the schemes having attraction of prizes during the installments because constant installments are required to be deposited in such schemes whereas no such installments are involved in lottery ticket which is purchased in one payment and kept for waiting about the draw of lots to observe that if there is any outcome of the same.

8. The installments schemes having prizes as attraction are therefore proper to be treated as valid agreements between the parties which are enforceable by the process of consumer court as the case of faulty service and even non-providing of such prizes amounts to bait advertisement enforceable u/s 22 of PCP Act, 2005.

9. I have observed that although the claimant had nominated all the three defendants in the complaint being responsible for the sale of the motor cycle and payment of sale price to the defendants jointly and receiving of extra payment of Rs.3,000/- was also attributed to all and demand of Rs.5,000/- was also alleged to be made by all but astonishingly he exonerated defendants No.2 & 3 in his detailed affidavit produced as Ex.P-6. It was very proper for the contesting defendants to opt that they would not cross examine the claimant on the basis of such affidavit in which he specified only ex-parte defendant No.1 as responsible for the whole affair without any allegation against the remaining defendants as mentioned in order dated 16-06-2011. No relief can be granted against defendants No.2 & 3 in the given circumstances.

10. The evidence of contesting defendant No.2 is to the effect that defendant No.1 has committed fraud with lot of people without any involvement of contesting defendant No.2. Defendant No.2 has admitted in his cross examination that the partners are equally responsible both for the profit and loss of the business however denied about being partner of the disputed business. The claimant is therefore restrained to seek his remedy only against defendant No.1 accordingly.

11. As far as the request 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.

12. 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.

13. 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 recovery of the damages and counsel fee is proper to be kept conditional with non-providing of original registration book and original papers.

14. It is therefore observed that the claimant would be entitled to recover the damages and counsel fee after failure of defendant No.1 to deliver the original registration book and original papers after one month of the filing of execution petition.

15. Since the claimant has not claimed any relief in evidence against defendants No.2 & 3 and since whereabouts of ex-parte defendant No.1 are not known as such I find that it is proper for the claimant to get duplicate registration book from ETO office by showing copy of this order instead of original papers for the time being till original registration book if issued to defendant No.1 is recovered from said defendant in due process in addition to the recovery of the damages and counsel fee from defendant No.1. Due to delay in obtaining the registration book, attributed against defendant No.1 only, the claimant is also entitled to recover Rs.50,000/- as damages from defendant No.1 in addition to counsel fee in case of non-providing of the original registration book and original papers.

16. 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 when the same is specifically pleaded in the complaint and affidavit while the appearance of the learned counsel to conduct the case is the acknowledgement of the receipt of the said amount as legal fee, therefore the claimant is entitled to recover counsel fee from defendant No.1. In the present case, the claimant has demanded the fee in the complaint and affidavit as Rs.15,000/- therefore he is entitled to recover the same from defendant No.1.

17. In accordance with above discussion, the complaint is partly accepted in ex-parte manner against defendant No.1 to the extent of recovery of the registration book and original papers within one month failing which the claimant would be entitled to recover Rs.50,000/- as damages and Rs.15,000/- as counsel fee from defendant No.1 as such defendant No.1 is directed to hand over the registration book and original papers or to pay the damages and counsel fee amounting to Rs.65,000/- to the claimant, while the ETO is directed to hand over original registration book to the claimant if not yet issued and to issue duplicate book if previously issued.

18. *This order would become final u/s 34 of PCP Act 2005, if the appeal or application 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.*

19. *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 defendant No.1 that the costs to be incurred for and during the application for implementation would also be liable to be recovered from him.*

20. *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:
02-03-2012.

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