

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

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

Atta Mohammad Versus ETO Excise & Taxation Officer

Complaint/ Case No: 2280 / 201 / 12.
Date of Institution: 06-03-2012.
Date of Decision: 14-05-2012.

COMPLAINT ABOUT FAULTY SERVICE

ORDER:

The Claimant is **represented** by Mohammad Azhar Khan Chandia Advocate while the defendants are represented by the Inspector of the ETO as representative.

2. The court is on tour at **Layyah**. I was not on tour on previously fixed date i.e., 03-05-2012 and this case was adjourned to this date by the Secretary of this court on my standing instructions without recording formal order of previous date.

3. The case is at the stage of the filing of para-wise comments which have been filed today. I have heard the **arguments** and perused the record in the light of the arguments. Now I proceed to discuss and **dispose off** the complaint in accordance with the findings in the following paragraphs.

4. Briefly stated the **grievance** of the claimant is to the effect that he is owner of one property but being directed to pay the tax of two properties and he has been humiliated by the defendant on his protest. It is requested by the claimant that action should be taken against the defendant and Rs.25,000/- be granted as damages for the alleged mental and financial tension along with any other admissible relief.

5. The defendant has **contested** the complaint by filing the para-wise written statement in addition to ordinary reply in which it has been contended that the claimant has not filed any complaint before the defendant; that two houses are entered in his name in the record bearing numbers '182-F' and '182-F-A' having total tax of Rs.3015/- due for nine years @ Rs.335/- per year; that notice for the tax is issued in every year; that no such word has been used by the defendant to humiliate the defendant. (Copies of the concerned pages of the Register PT-1 have been filed by the defendant relating to the both properties in the name of the claimant).

6. 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 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.

7. It is proper to be observed that since the defendant is performing the **services** about keeping the record and registration of the urban immovable properties of

the public as such falls within definition of the **service provider** and answerable to the individual for any defect in the services, therefore I find that this court has jurisdiction to adjudicate the present case.

8. 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.

9. 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.

10. 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 the recovery of the damages or compensation or litigation charges or counsel fee.

11. The quick overview of the law with reference to the request about grant of **any other admissible relief**, is to the effect: that return of the consideration or a part thereof and the costs is provided in the law where the consumer has suffered the loss of utility or lack of benefit only while the manufacturer or service provider is also liable for the damages where the consumer has suffered any damage from the defective product u/s 10 & faulty service u/s 15; that the manufacturer or service provider is liable to a consumer for damages proximately caused by the defective product u/s 4 & faulty service u/s 13; that the liability of the manufacturer or service provider is not limited or excluded by the terms of any contract or notice about the defective product u/s 12 & faulty service u/s 17; that the disclosure of the details has been made essential about the product and service where the nature of the same is such that it is material to the decision of the consumer to enter into the contract with reference to the product u/s 11 & service u/s 16; that the standard for the provision of services is determined as such which a consumer could reasonably expect to obtain in Pakistan at the time of the provision of the service u/s 14; that the court is authorized to direct the defendant to pay reasonable compensation for any loss suffered due to negligence of the defendant u/s 31(e); that to award damages where appropriate u/s 31(f); that to award costs including lawyer's fees incurred on the legal proceedings u/s 31(g) of PCP Act, 2005.

12. I have observed that the claimant is not expected to disown one urban immovable property of considerable price just to avoid the payment of Rs.335/- per year as property tax. He has annexed the copy of the registered deed of correction dated 04-04-1993 by which the boundaries mentioned in the previous registered sale deed dated 20-02-1973 have been modified by correction but it appears that the property containing previously mentioned incorrect boundaries is also being counted as another property of the claimant in the record of the defendant which is liable to be corrected in accordance with

the deed of correction.

13. It is also observed that even otherwise the property being abandoned by the claimant is proper to be taken into possession by the defendant as unclaimed property, if permissible under the law and to be auctioned after proclamation in newspapers and the sale proceeds to be deposited in the government treasury.

14. As far as the question about exemption from payment of tax on one house measuring ten Marlas is concerned, the law and the rules are clear and the defendant is bound to follow the law and the rules.

15. In accordance with above discussion, the complaint is **partly accepted** and direction is issued to the defendant to make the correction in its record by marking the alternate property bearing No.182-F-A as unclaimed and to treat the claimant as owner of only one house bearing No.VIII-182-F situated in Mohallah Eidgah while the complaint is dismissed to the extent of the remaining relief about grant of damages or any other relief.

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

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

18. *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 defendant that the **costs** to be incurred for and during the application for implementation would be liable to be recovered from his salary.*

19. *One attested **copy** each of this order is directed to be provided to the parties on filing the applications without **court fee tickets** even if 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.*

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:
14-05-2012.

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