

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

(Phone: 0642474100. Fax: 0642470496)

Abdul Malik Versus Meezan Bank & 1 other

Complaint / Case No: 1678 / 381 / 11.
Date of Institution: 13-09-2011.
Date of Decision: 19-03-2012.

COMPLAINT ABOUT FAULTY SERVICE

ORDER:

The claimant is represented jointly by Syed Haider Ali Bukhari Advocate, Hashim Sher Khan Advocate, Mohammad Haroon-ur-Rasheed Khan Advocate while defendants are represented by Saqlain Sadiq Advocate.

1. This case is at the stage of final arguments after recording of evidence. I have heard the arguments and perused the file in the light of the arguments. I proceed to dispose off the complaint by discussion in the following paragraphs.

2. Briefly stated the grievance of the claimant as described in the complaint is to the effect that he deposited Rs.5,000/- for opening new his bank account at D.G.Khan branch of Meezan Bank on 28-06-2011 and Account No.02-3570 was allocated to him but after a few days the same was allotted to some other without notice; that the claimant was insulted by defendant No.2 when he complained about the same; that the claimant was again insulted on 19-07-2011 and forced him out of the bank. The claimant has requested for restoring the account and recovery damages and counsel fee from the defendants according to the detail mentioned in the complaint.

3. The defendants have jointly contested the complaint by filing their joint written statement in which they have raised certain preliminary objections and denied the deposit of any amount and also denied the allotting of account number with the assertion that the claimant wanted to open salary account without salary slip which could not be opened due to absence of salary slip. They have requested for dismissal of the complaint with costs.

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 can be recorded through affidavits of the parties as examination-in-chief with oral cross examination as sufficient compliance of said requirement.

5. The evidence of the parties was recorded by appointment of learned local commissioners (LLC).

6. Evidence of the claimant consists of the statement of the claimant as cross examination being AW-1; original detailed affidavit as Ex.P-1; copy of legal notice as Ex.P-2; original postal receipts as Ex.P-3 & Ex.P-4; original postal acknowledgment receipt as Ex.P-5; original deposit slip as Ex.P-6; original fee certificate as Ex.P-7; copies of the licenses of all the three learned counsel as Mark-PA to Mark PC.

7. Evidence of the defendants consists of the statement of the branch Manager as DW-1; copy of the "Guidelines and procedures for account opening and documentations" as Ex.D-1.

8. The claimant has not produced any evidence in rebuttal.

9. As far as the objection about derogation is concerned, I find that it is provided in S. 3 of PCPA 2005 that "the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force". The intent of the legislature is therefore deemed to be to the effect that the provisions of consumer law are in addition to the remedies provided in other laws and that the plenary jurisdiction of the consumer court should not be DEROGATED by any other law being special law. The objection is accordingly rejected.

10. Another objection is to the effect that legal notice has not been issued whereas the claimant has produced a copy of the joint legal notice and original postal receipts and original postal acknowledgment receipt in his documentary evidence therefore the sending of notices is proved by postal receipts while receiving of the notice by defendant No.1 is proved by postal acknowledgment receipt. The objection is therefore rejected.

11. As far as the jurisdiction of the Honourable Banking Court is concerned, it is observed that I am conscious of the ruling of Honourable High Court cited as 1988 CLC 1718 in Para 22 to the effect that; "It is settled law that once the Legislature has made any special law for a particular purpose prescribing a forum or a Tribunal for decision of any dispute the Courts should not encourage deviation from such course." It is however observed that the jurisdiction of the respected Banking Court comes into operation when the matter relates to the loan or mortgage while the present matter relates to the services alleged to be faulty and such dispute can be validly determined by the Consumer court.

12. A thorough study of the Banking laws shows that the history of legislation of the Banking Laws consist of the previously repealed laws namely Banking Companies (Recovery of Loans) Ordinance, 1979; the Banking Tribunals Ordinance, 1984; the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 succeeded by the Financial Institutions (Recovery of Finances) Ordinance, 2001 as the latest law in the field.

13. It is pertinent to point out the relevant provisions of the existing law for the facility of reference. The terms defined in S.2 consist of the Financial Institutions, Banking Court, Customer, Finance, Obligation, Rules. It is provided in S.3 that the costumer shall be liable to fulfill his obligation "apart from such other civil and criminal liabilities that he may incur under the contract or rules or any other law for the time being in force". It is provided

in S.4 that “the provisions of his ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the being in force”. The Banking Court is established u/s.5. The powers of the Banking Court are provided in S.7. The old cases pending under Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 have been transferred to the Banking Courts established under the new law also under S.7. The procedure for the filing of the suits for recovery of written off finances etc is provided in S.8. The procedure of the Banking Courts is provided in S.9. The disposal of the suit is provided in S.13. The decree in suit relating to mortgages is provided in S.14. The sale of mortgaged property is provided in S.15. Attachment before judgment, injunction and appointment of receivers is provided in S.16. Attestation of Banking Documents is provided in S.18. Execution of decree and sale with or without intervention of Banking Court is provided in S.19. The provisions relating to certain offences are provided in S.20. The restriction on transfer of assets and properties is provided in S.23. Saving clause about the Limitation Act is provided in S.24. No court is allowed to call in question any decision of the Banking Court and finality of the order of the Banking Court is attached in S.27. Indemnity is provided in S.28. The Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 is repealed by S.29 but S.15 of the said Act is still applicable on the old cases according to said section.

14. 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.

15. 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.

16. 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 except the recovery of the deposited amount and counsel fee.

17. As far as the deposit of Rs.5,000/- is concerned, the same is proved by payment slip containing stamp of the bank. The defendants have not produced any other

stamp to show that it was not their stamp which is affixed on the deposit slip. The allegation of forgery of the receipt is therefore not proved.

18. I have observed that the defendants are estopped to deny the deposit when they have admitted in the written statement that the claimant was not allowed to open the account due to objection about non salaried person. It is provided in the copy of guidelines produced as Ex.D-1 that the account is to be opened after approval of head office. It is however faulty service to allocate temporary account number due to which the defendants have become liable to refund the deposited amount and to pay the counsel fee to the claimant. The claimant is therefore not entitled to challenge the refusal to open the account but he is entitled to recover the deposited amount although he is not entitled to recover the damages or compensation in the given circumstances.

19. 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 the defendants jointly and severally. In the present case, the claimant has demanded the fee in the complaint and affidavit Ex.P-1 and certificate Ex.P-7 as Rs.60,000/- therefore he is entitled to recover the same from the defendants.

20. In accordance with above discussion, the complaint is partly accepted to the extent of recovery of Rs.5,000/- as deposited amount and Rs.60,000/- as counsel fee while the complaint is dismissed to the extent of the damages and compensation and litigation charges and also dismissed to the extent of the restoration of the bank account.

21. *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.*

22. *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 also be liable to be recovered from them.*

23. *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.*