

IN THE COURT OF MIRZA JAWAD A: BAIG, DISTRICT & SESSIONS JUDGE,
PRESIDING OFFICER, DISTRICT CONSUMER COURT,
DISTRICTS: D.G. KHAN; LAYYAH; MUZAFFARGARH; RAJANPUR,
50/Z, MODEL TOWN, DIVISIONAL HEAD QUARTER, DERA GHAZI KHAN.

(PHONE: PTCL No. 0642474100) (VNTC No. 0649239094) (FAX No. 0642470496).

Mohammad Abad Khan V Syed Mohammad Shakil

COMPLAINT ABOUT FAULTY SERVICES OF MOTOR CYCLE DEALER

Complaint/Case No:	1022/364/10. 1491/194/11.
Date of Institution:	19-07-2010. 02-05-2011.
Date of Decision:	13-09-2011.

ORDER:

Present: Junaid Sattar Siddiqui, Advocate High Court from D.G.Khan on behalf of the claimant and nobody of behalf of the defendant.

1. The case is at the stage of exparte arguments which have been heard and the file has been perused, as such I proceed to dispose off the complaint by discussion in the following paragraphs:-

2. The grievance of the claimant according to the amended complaint dated 08-02-2011 is to the effect that claimant allegedly paid 12 installments of Rs.2200/- per month out of 30 installments to the defendant relating to Motor-Cycle scheme being managed by the defendant; that the amount of Rs.26,400/- by installments was paid when the claimant was held entitled to the providing of the motor cycle on the basis of the draw of lots; that the defendant had refused to provide the motor cycle despite issuance of legal notice dated 19-06-2010, that the previous complaint was disposed off by settlement on 05-03-2010 to the effect that the defendant would hand over the motor cycle and papers; that the motor cycle was handed over in March 2010 but papers were to be delivered in May 2010 according to the promise of the defendant; that the papers have not been given despite issuance of legal notice; hence this claim for recovery of Rs.1,00,000/- as damages for mental tension etc in addition to the recovery of the required papers.

3. The version of the defendant in his written statement in response to the main complaint dated 27-10-2010 which was relied upon in response to the amended complaint dated 08-02-2011 is to the effect that there was no such mention of the delivery of the motor cycle and papers in order dated 05-03-2010; that the papers are being kept to recover remaining payment of Rs.10,000/-; that the delay is being caused due to non payment of remaining sale price; that the complaint is to black mail the defendant; that the claimant has no cause of action; that the complaint may be dismissed.

4. In accordance with the requirement of S.30 PCP Act 2005, the parties were directed to produce their evidence through appointment of learned Local Commissioner (LLC) for recording the evidence subject to the payment of fees to be paid by the parties.

5. Oral evidence of the claimant could not have been recorded due to exparte proceedings. s

6. Documentary evidence of the claimant consists of original postal receipt as Ex.P-1; original detailed affidavit of the claimant as Ex.P-2; original affidavit of one PW as Ex.P-3; attested copy of the previous complaint as Ex.P-4; attested copy of the written reply of the previous complaint as Ex.P-5; attested copy of the order sheet of the previous complaint as Ex.P-6; copy of ID Card of the counsel as Mark.P-1; copy of CNIC of the claimant as Mark.P-2; photo copies of the pages of installments Book as Mark.P-3; copy of legal notice as Mark.P-4; copy of receipt as Mark.P-5.

7. It is pertinent to note that the evidence of the defendant could not have come on the record due to exparte proceedings.

8. It is pertinent to observe that this court is 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 consumer courts under the law prevalent in the neighboring country which is identical with the law promulgated in Pakistan. It is

however clarified that the legal position of the draw of prizes in the schemes relating to the motor-cycles cannot be hit by the said law 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 but the schemes involving payment of installments are to be treated as valid agreements between the parties which are enforceable by the process of consumer court in case of breach.

9. It is also being observed that keeping the scheme incomplete after advertisement about the same falls under the definition of "BAIT ADVERTISEMENT" which is prohibited u/s 22 of PCP Act, 2005 and the same amounts to a liability the infringement of which is an offence inviting the penalty of conviction and sentence u/s 32(1) of PCP Act, 2005. As far as the penalty u/s 32(1) of PCP Act, 2005 about conviction and sentence is concerned in the present case, it is observed that the same cannot be imposed because there is no prayer for awarding the same in the complaint.

10. I have observed from the perusal of the oral and documentary evidence of the claimant with reference to the pleadings in the light of the arguments that since the defendant has absented himself from the proceedings of this court as such he has nothing to rebut and the claimant is deemed to have proved his version by his evidence, therefore the claimant is entitled to the full relief as prayed for.

11. The complaint is therefore accepted in exparte manner as prayed for and the defendant is being directed to provide the requisite papers and to pay Rs.1,00,000/- as damages to the claimant.

12. *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 after the period fixed for appeal, if so required, with the warning to the defendant that the costs to be incurred for and during the application for implementation by the claimant would also be liable to be recovered from the defendant.*

13. *Stringent action would be liable to be taken u/s 32(2) read with S.36 of PCP Act, 2005 for implementation of this order through arrest, detention, attachment & auction after the period fixed for appeal.*

14. *Defendant would be liable to suffer simple imprisonment up to 3 years with fine up-to Rs.20,000/- and liability of recovery of fine as arrears of Land Revenue in default of the payment of fine, concurrently with attachment and auction of their official belongings as well as personal property u/s 32 of PCP Act 2005 read with S.36 of PCP Act 2005, in case of deliberate delay in compliance with this order.*

15. *The amount of fine if recovered would be liable to be credited in the Government Treasury under the relevant head of account.*

16. *This order would become not become final u/s 34 of PCP Act 2005, if the appeal is 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 or if the application for cancellation is filed by exparte defendant under Rule 14 PCP Rules 2009 during the said period.*

17. *A copy of this order would be available for publishing on the internet to the website of Punjab Consumer Protection Council Secretariat, 135-J, Model Town, Lahore for public disclosure and easy access of information to the consumers relating to the products and services in accordance with Rule 25 of PCP Rules 2009.*

18. *The file of this complaint is to be consigned to the record room 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.*

