

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

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

Fayaz Ahmad Versus Shirazi Trading Company

Complaint / Case No: 1861 / 564 / 11.  
Date of Institution: 31-10-2011.  
Date of Decision: 19-01-2012.

COMPLAINT ABOUT FAULTY SERVICE

ORDER:

Claimant is represented by Sardar Toqeer Iqbal Khan Kithran Advocate alongwith personal appearance while the defendant is being proceeded against ex-parte.

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

2. Briefly stated the version of the claimant is to the effect that he is junior clerk in the court of Special Judge Anti-Corruption Dera Ghazi Khan; the a photo copy machine of Canon brand was purchased in 2007 from the defendant; that it was agreed at the time of purchase that the representative of the defendant would visit every month for maintenance of the machine; that the Company was responsible for minor repairs to maintain the machine in good condition; that the representative of the defendant performed the visit twice in first year in the same month on 02-06-07 & 21-06-07; that no other visit was performed despite repeated demands; that the machine could not have been kept in proper condition due to no visit of the representative of the defendant; that the defendant has refused to acknowledge the demand of the claimant despite issuance of legal notice. The claimant has requested for the replacement of damaged components which have been damaged due to absence of the defendant and also requested for grant of Rs.50000/- as damages for mental tension and financial loss and Rs.20000/- as counsel fee.

3. The complaint was initially contested by one Waqar Hussian claiming to be the representative of the defendant who also filed the copy of the reply of legal notice on 24-11-2011 with the request that the same should be treated as the written statement therefore the case was adjourned for the arguments on the merits of the case in his presence to 15-12-2011 but he absented himself afterwards resulting in the recording of ex-parte evidence.

4. It is mentioned in the copy of the reply of the legal notice that without service contract it is not feasible to visit any customer to attend the machine and if parts/ components are required the same shall be supplied against Bill and customer will make payment thereof.

5. The ex-parte evidence of the claimant consists of his own original affidavit of claimant as Ex.P-1; original postal receipt as Ex.P-2; copy of CNIC of the claimant as Mark P.A; copy of legal notice as Mark P.B; copy of bill as Mark P.C; copy of service data as Mark P.D produced through the statement of learned counsel for the claimant. The right of the claimant to produce additional evidence has been reserved to be produced if the case is to be contested by the defendant.

6. I have observed from a perusal of the file that the version of the claimant is established to the extent that the defendant is responsible for the proper working of the Photo copier and liable to repair the machine.

7. As far as the request for recovery of the 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.

8. 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.

9. 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.

10. In accordance with above discussion, the claimant is entitled to the repair of the disputed machine therefore the complaint is partly accepted to the said extent and the defendant is directed to repair the machine while the complaint is partly dismissed to the extent of the recovery of the damages and counsel fee.

11. *The claimant is entitled to get this 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 also be liable to be recovered from the defendant.*

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

13. *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.s*

Announced:  
19-01-2012.

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