

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

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

Tameen Ali Hussain versus Head Office U-fone Multan & 2 others

Complaint / Case	1535 / 238 / 11.
Date of Institution	11-06-2011.
Date of Decision	25-01-2012.

COMPLAINT ABOUT FAULTY SERVICES

ORDER:

Claimant is represented by Kashif Mateen Gurmani Advocate High Court and Malik Sheraz Arshad Advocate while defendants No.1 & 6 are represented by Qaisar Abbas Khan Nutkani Advocate while defendants No.2 to 4 are represented jointly by Rao Mohammad Akram Khurram Advocate & Rana Mohammad Akram Khan Advocate while deleted defendant No.5 was represented by Syed Waqas Ahmad Advocate.

1. The case is at the stage of production of legal references/ case law and also for proper order. The case law is available and written arguments are also available and file has been perused in the light of the oral as well as written arguments as such I proceed to discuss and dispose off the complaint by discussion in the following paragraphs.

2. Briefly stated the version of the claimant is to the effect that the claimant is the consumer of mobile telephone SIM No.03436400000; that the SIM was blocked on 25-04-2011; that new SIM was issued but not activated; that that claimant was informed by customer center Muzaffargarh that the number was changed from Kot Addu franchise; that claimant visited said franchise where he was informed that all this was done after production of an affidavit in favour of one Nawab-ul-Hasan duly signed by claimant and verified by Peer Ijaz Hussain Shah Oath Commissioner Kot Addu and also handed over a copy of said affidavit; that the claimant was shocked to see the affidavit because that was never issued or signed by claimant; that said affidavit was never verified by the Oath Commissioner; that said affidavit was bogus; that claimant had paid Rs.30000/- as cost of this SIM in the franchise and just after four months the said SIM was blocked fraudulently by the officers of Telenor; that claimant could not expect such type of irresponsible and careless attitude from Telenor company; that claimant has been disturbed by Telenor officers who have acted by violating the rights of claimant after blocking the number and transferred in the name of another person just to get extra financial benefits without any reason; that the agony, tension and the inconvenience faced by said client has been calculated in the sum of Rs.500000/-; that u/s 31 (e) this court is entitled to order for a compensation and u/s 31 (f) can also order for damages because this court can understand that how much difficulty and agony had been suffered by the claimant; that legal notice was served; that the defendants have not paid any heed to the genuine request of the

claimant; that the claimant also apprehends that Telenor Company is not caring about the rights of the citizens and they are providing defective and faulty services and in this regard the only consideration for the Telenor Company is the enhancement of business; that the defendants have acted in careless way by providing defective and faulty services at one hand and by violating rights of the claimant at the other hand and even not replying to the legal notice of the claimant; that the defendants have shown that they have no fear of anyone; that the defendants are liable to be prosecuted under the Consumer Protection Act; that condonation of delay if any is also requested; that that there is no other efficacious and speedy remedy except to invoke the jurisdiction of this court; that the claim may please be accepted and the respondents be directed to unblock the said SIM in favour of claimant and to pay the compensation of Rs.500000/- and lawyers fee Rs.15000/- and miscellaneous expenses Rs.2000/- and any other relief deemed proper.

3. It is observed that defendant No.6 being alleged transferee of disputed SIM was not impleaded in the original complaint while PTA was impleaded as defendant No.5 whereas PTA was deleted on its application by crossing from the complaint and defendant No.6 was impleaded on his own application with consent of the claimant by filing of amended complaint.

4. The version of defendant No.1 in his separate written statement is to the effect that the claimant has no cause of action against defendant No.1; that only civil court is competent to determine the genuineness or otherwise of impugned affidavit; that the private complaint u/s 420/468/471/506 PPC relating to same affidavit is pending in the court of Ilaqa Magistrate; that proceedings cannot be initiated in two different courts; that the claim is not maintainable in present form; that the petitioner has not come to the court with clean hands due to concealment of facts; that legal notice has been issued in excess of limitation; that the SIM was transferred because the claimant had himself accompanied with the transferee of the SIM at the franchise office of defendant No.1 and himself produced the impugned affidavit and copy of his CNIC; that there is no justification for condonation of delay; that all the other paragraphs of the complaint are denied being just the rhetoric (zaib-e-dastan); that the petitioner has already adopted different forums; that the sim was got transferred by the claimant himself on 25-04-2011 by visit of the franchise alongwith the transferee; that the claim is incorrect, against the facts, against the law, liable to be dismissed.

5. The version of defendants No. 2 to 4 in their joint written statement is to effect that the functioning of M/s Telenor Pakistan Private Limited being a licensed telecom operator is regulated and governed by the Pakistan Telecommunication (Reorganisation) Act, 1996 and the Rules and Regulations framed there under; that the Pakistan Telecommunication Authority (the PTA) is the federal regulatory authority having the exclusive authority over all matters relating to telecommunication through out Pakistan including authority over all aspects of the Respondent Company's telecommunication services including complaints thereof; that this court lacks jurisdiction; that the PTA has formulated and notified the Telecom Consumers Protection Regulation, 2009 as properly and duly promulgated under the provisions of the Pakistan Telecommunication (Reorganisation) Act, 1996 and the said Regulations of 2009 provide a proper and existing forum for any and all complaints and their redress to any telecommunication services offered by

the Respondent Company; that the Consumer Protection Act, 2005 has no application in regard to the complaints of services provided by the Respondent Company; that even though a proper and defined forum for all complaints relating to telecommunication services is in existence operated by the PTA being the federal and national regulator of telecommunication services and the fact that the Respondent Company does not fall within purview of the Punjab Consumer Protection Act, 2005; that the Respondent Company does not fall within the definition of 'Manufacturer; as defined u/s 2 (h) of the Punjab Consumer Protection Act, 2005 whereas penalties imposed by the said Act relate specifically to Manufacturers; that furthermore the Respondent Company is providing specialized telecom licensed services which otherwise do not fall within the definition of 'product; or 'services' as defined u/s 2 (j) and (k) of the Act, 2005; that the claim is not tenable; that the claim appears to be malafide; that the claim has not been lodged in accordance with law; that the claim is time barred; that the claim of the claimant is liable to outright rejection as he has failed to serve a legal notice to the Respondent Company as laid down in S.28 (1) & (3) of the Act, 2005; that the verification of claim is not attested by Oath Commissioner; that the claimant has already locked up in different courts and precluded from bringing this claim against the Respondent Company; that the claim is an after thought; that the application for registration of criminal case was filed by the claimant to the court of learned Additional Sessions Judge Kot Addu which was dismissed; that the writ file by the claimant against said dismissal was withdrawn by him; that private complaint filed by his is still pending; that the complaint is invalid as ownership of the referred subscription was transferred in a justified manner in good faith and all relevant documents have been provided by Franchise/ Respondent No.1; that the notice sent by claimant does not meet the requirement of law; that the apprehensions of the claimant about the services of the Company have no reality and based on malafide; that the claimant is not entitled to condonation particularly as no application prescribed under law has been moved in this respect; that this court may dismiss and turn down the claim with cost.

6. The version of additional contesting defendant No.6 in his separate written statement is to the effect that he has repeated the preliminary objections raised by defendant No.1 with the addition that the claimant had himself sold the disputed sim in his favour through the affidavit on payment of Rs.2500/- on 25-04-2011; all the paragraphs are denied; that the claim is incorrect, baseless, against the facts, against the law which be dismissed; that special costs should be awarded to the defendant.

7. 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 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.

8. As far as the request for recovery of damages, compensation,

litigation charges, costs, counsel fee 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 recover the damages or compensation or counsel fee or litigation charges through this court under the law of consumers.

11. One of the preliminary objections of the defendants is to the effect that the claim is not maintainable and liable to dismissal u/s 28 (4) of the Consumer Act which is to the effect that a claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action. A perusal of the file shows that the disputed SIM was blocked on 25-04-2011 and transferred on 26-04-2011 therefore the cause of action is presumed to arise in favour of the claimant on the said dates. I have observed that the objection is misconceived because the period of 30 days is fixed as limitation in such cases only according to ^{2nd} proviso of S.28 in which period of guarantee or warranty is fixed while the period of limitation in all other cases is one year from the date of purchase of the products or providing of service if no period of guarantee or warranty is specified. In the present case no period is deemed to be specified as such I find that the complaint being within one year is within the period of limitation. The rulings of honourable superior courts cited by the defendants being about other laws are therefore not applicable on the facts of the present case. The objection under discussion is therefore rejected.

12. One of the preliminary objections is to the effect that the jurisdiction of this court is ousted by the jurisdiction of PTA. The rulings relied upon by learned counsel for defendants No.2 to 4 are to the effect that the special law would prevail over general law and that general law is to apply in the event of inconsistency or where special law is silent. I have observed that since the provisions of the Consumer Act are in addition to and not in derogation of any other law as settled in S.3 of the Act therefore jurisdiction of this court is in addition to the jurisdiction of PTA and the claim can be settled by the both forums. The restriction in the law concerning PTA is to the effect that PTA or its officers should not be sued in any case. The PTA having been

deleted from the present case during the pendency is therefore in compliance of said restriction. The objection against the jurisdiction of this court is therefore rejected.

13. One of the preliminary objections is to the effect that the case does not fall within the definition of 'product; or 'services' as defined u/s 2 (j) and (k) of the Act, 2005. I have observed that the SIM is a product being sold by the Company while the software in the SIM and the connectivity of the SIM with network of the company is a service as such the Company is not only provider of the product within the definition of 'Manufacturer' but also the provider of services while the franchise is also deemed to be the service provider. The objection is therefore rejected.

14. I have observed that since it is to be decided by the learned Magistrate in criminal trial that if the alleged affidavit was forged or not therefore this court should not go into the said question. It is sufficient for this court that the original affidavit of concerned Oath Commissioner has been filed by the claimant to the effect that the disputed affidavit was not attested by him while the alleged transferee of the disputed SIM has not filed any counter affidavit of the said oath commissioner, therefore it is evident that the SIM was transferred by way of faulty service of defendant No.1 under the impression that the affidavit was issued by the claimant and that the person accompanied with the transferee was mistaken to be the claimant by defendant No.1 without sufficient identity, therefore disputed SIM is liable to be restored to its original purchaser being the claimant on the basis of the affidavit of the oath commissioner without any other proof and without any other penalty against the defendants due to the pendency of criminal case in the competent court.

15. In accordance with above findings, the complaint is partly accepted to the extent of the issuance of direction about restoration of dispute SIM in favour of the claimant while the complaint is dismissed to the extent of the recovery of damages, compensation, litigation charges, costs, counsel fee.

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 period of 30 days after obtaining of the copy u/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 defendants that the costs to be incurred for and during the application for implementation would be liable to be recovered from them.*

19. *A soft 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 under Rule 25 of PCP Rules, 2009.*

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:
25-01-2012.

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