

IN THE COURT OF
JUDGE SARDAR MUHAMMAD AKRAM KHAN
DISTRICT & SESSIONS JUDGE/ PRESIDING OFFICER,
DISTRICT CONSUMER COURT,
LAYYAH.

Complaint/Case No.25 of 2018.
Date of Institution:10.11.2017.
Date of Decision:20.03.2018.

FAHEEM AHMAD

V/S

BRANCH MANAGER, TCS, EXPRESS CENTER, TEHSIL &
DISTRICT, LAYYAH.

COMPLAINT REGARDING DEFECTIVE SERVICE.

JUDGMENT:

Brief facts of the case are that the complainant/claimant/petitioner-Faheem Ahmad, has filed the instant complaint, before this court on 10.11.2017, while averring that on 15.12.2016, a cheque amounting to Rs.16000/- was issued in his favour by the office of Punjab Government Servants Benevolent Fund, regarding his educational scholarship and the same was booked in his name at the office of TCS, on 20.12.2016, against TCS tracking I.D No.4005929876-4 and his address was mentioned on the same as “Faheem Ahmad S/o Rifat Naheed, SST, Government Girls Middle School, Chak No.431/TDA”. He has further averred that due to negligence of the defendant, the said consignment/shipment was delivered to the petitioner/complainant/claimant with the delay of about nine months on 15.09.217 and due to the said delay; the educational cheque of the petitioner/complainant/claimant was expired. He

has further averred that he was dependent upon the above stated scholarship and he has issued a legal notice to the defendant/respondent on 24.10.2017 but the respondent had not paid any heed to his notice. He has claimed, Rs.16,000/- as amount of the cheque and Rs.30,000/- as damages on account of his mental agony.

2. The defendant/respondent was summoned, who has turned up and has submitted his written reply, while negating the version of the petitioner/complainant/claimant.

3. Both the parties were directed to adduce their evidence. The petitioner/complainant/claimant-Faheem Ahmad, has turned up in the witness box and has submitted his affidavit Exh.A.1 and while producing the documentary evidence i.e. Mark-A to Mark-G and Exh.A.3 to Exh.A.4 and then has closed his evidence.

4. Muhammad Ehsan Qaisar, has turned up on behalf of respondent/defendant as RW.1 and has submitted his affidavit as his examination-in-chief and has also closed his evidence, while producing his documentary evidence as Mark-R.1.

5. Final arguments were heard at full length from both the sides on 05.03.2018 and due to shortage of the time (as the court time was about to over), the file was adjourned for 06.03.2018, for the pronouncement of judgment, but on 06.03.2018, clerk of the learned counsel for the respondent had turned up and has submitted an application for adjournment on the ground that learned counsel for the respondent wants to further argue the matter, therefore, the case was adjourned for 12.03.2018, 13.03.2018, 19.03.2018 and for today, but the learned counsel for the respondent, has not bothered to turn up on any of the above said dates to advance his further arguments, since 06.03.2018 to till today (which was requested by him).

6. This conduct of the learned counsel for the respondent, has made it clear that he wants to only prolong the matter and the Hon'ble apex court i.e. Hon'ble Supreme Court of Pakistan was pleased to hold in case law "2010 SCMR 1119"

that the hearing of the arguments, is not necessary, in a case, if any party does not adduce the arguments, however, providing / granting the opportunity for adducing the arguments is necessary. After hearing the arguments of learned counsel for the respondent at full length on 05.03.2018, the matter has been adjourned more than three times, but the learned counsel for the respondent did not bother to turn up. This court is of the humble view that further granting the opportunity to the respondent's side will not only be a futile exercise but giving a license to a party for prolonging the matter without any justification. Therefore, this court is going to decide the matter on the basis of available record and the arguments heard at full length by both of the sides, on 05.03.2018. File has been perused.

7. As per version of the petitioner/complainant/claimant, a cheque amounting to Rs.16,000/-, was booked at TCS, Office, against tracking I.D No.4005929876. Admittedly, the same was to be delivered to the petitioner/complainant/claimant well in time i.e. within a couple of days, but the same was not delivered to the petitioner/complainant/claimant well in time rather the same was delivered on 15.09.2017, with the delay of nine months. During the cross-examination, Muhammad Ehsan Qaisar (RW.21), has admitted that the envelopment sent to the petitioner was received to the respondent (Branch Manager TCS Chowk Azam) on 20.12.2016 from Lahore. He has also admitted during cross-examination, that the said envelop was not sent to the petitioner for the purpose of delivery, while stating as under:-

مذکورہ لفافہ میں نے متزکرہ مندرجہ پتہ پر ارسال یعنی (reviled) کے لیے نہیں بھیجا تھا"

8. In these circumstances, the respondent's side has admitted the booking of the envelop/consignment/shipment and the same was to be delivered to the petitioner/complainant/claimant well in time, but admittedly, the same was not delivered to the petitioner/complainant/claimant

till 15.09.2016. In this way, it has been proved that the services of the respondent were not only faulty but also defective and the respondent remained negligent in the matter of delivery of the said envelop to the petitioner/complainant/claimant. It is also version of the petitioner/complainant/claimant that the said envelop was bearing a cheque regarding the educational scholarship, which was amounting to Rs.16,000/- This fact has not been negated by the respondent's side. It is also version of the petitioner/complainant/claimant that the said cheque was not a private cheque rather the same was relating to Punjab Government Servants Benevolent Fund. It is known to everyone that the cheques of the government are not encashed after 30th June of any year because the financial year in Pakistan is started on 1st July of a year and the same is ended on 30th June of the next year, and after the passage of 30th June, the financial year is ended and the Account offices as well as the National Bank did not encashed the cheques of the government due to lapse of budget/financial year. Although, it was forcibly argued by the learned counsel for the respondent that nothing has been brought by the petitioner/complainant/claimant regarding non encashment of the said cheque but it is known to everyone that no cheque is encashed after end of the financial year. Furthermore, the cheque was issued to the petitioner/complainant/claimant on 15.12.2016 and the same was received to the petitioner/complainant/claimant on 15.09.2017 i.e. with the delay of about nine months, therefore, the same has become as "stale" and the "stale" cheque is not encashed by the bank. In these circumstances, this court is of the humble view that the petitioner was deprived from his legal right by the gross negligence and defective services of the respondent and the claimant was compelled to suffer the loss of amount of Rs.16,000/-, therefore, he is entitled to get the same from the respondent.

Although, it was stated by the respondent's side that they have contacted with the petitioner/complainant/claimant and

the petitioner has sent a person/boy namely Ahmad, who has received the envelop well in time, but father of said Ahmad has returned the said envelope to the petitioner/complainant/claimant after nine months but the story of the respondent does not appeal to the logic, as it was duty of the respondent to deliver the shipment to the original person and not to any other person. Furthermore, if the story of the respondent was correct than the respondent was duty bound to produce the record regarding making the call to the petitioner/complainant/claimant. Although, it has been stated by Muhammad Ehsan Qaisar (RW.1), during his evidence that as per company's policy, they used to destroy their record after fifteen days but in this respect, no copy of policy has been produced before this court. Furthermore, the record of the telephone calls was not record of the company rather the same can easily be received from the telephone company to prove the version of the respondent. In this way this court is of the humble view that the defense version was just an afterthought story and same has not been proved.

9. Although, it was forcibly argued by the learned counsel for the respondent that the petitioner/complainant/claimant was bound to prove his actual loss suffered to him, but it has come on the record, during the evidence of the petitioner that he is a student and he was bearing the expenditure of his education from the source of his educational scholarship by Punjab Government Servants Benevolent Fund and in such situation, anyone can imagine that how the student can suffer to bear his expenses and surely the petitioner/claimant has faced the mental agony to meet on his educational expenses. Furthermore, in humble view of this court, the Punjab Consumer Protection Act, 2005, was promulgated by the legislature for the protection and promotion of the rights and interests of the consumers and the remedy seeking by anyone else under this special law cannot be thrown away on the technical basis/grounds. As per subsection 2 (c) (ii) of Punjab Consumer Protection Act, 2005, being beneficiary of the service, the petitioner/complainant/claimant falls within the

definition of consumer and he has rightly filed his claim before this court. As it has been cleared from the record that the petitioner/complainant/claimant was compelled to face the hardships and miseries to meet on/to bear his expenses, due to which he has faced mental agony, therefore, he is entitled to get the damages from the respondent at the rate of rupees not less than Rs.20,000/-

10. The respondent has vehemently opposed the instant claim/complaint, on the ground that the same is barred by time. The learned counsel appearing on behalf of the respondent on 05.03.2018 has forcefully argued that the petitioner's claim was time barred, therefore, the claimant was not entitled to get any relief, but the first proviso of sub-section 4 of Sec.28 of Punjab Consumer Protection Act, 2005, has made it clear that this court is competent to extend the period for filing the claim on sufficient cause. The petitioner/complainant/claimant–Faheem Ahmad, has categorically stated in paragraph No.2 of his affidavit-Exh.A-1 that he has approached to the TCS office for which the respondent had sought the time for some days and then, he has also sent an email to the head office at TCS, Karachi and regarding the sending of email, the petitioner/complainant/claimant was not cross-examined by the learned counsel and as per settled principle of law, the point not cross-examined by the opposite party, is deemed as “admission”. Furthermore, the claimant has also produced the photocopy of email, sent by him to the TCS on 09.10.2017 and reply dated 10.10.2017. Moreover, during the cross-examination, Muhammad Ehsan Qaisar, respondent No.1 has stated that as the petitioner has sent an email to the TCS hence he has contacted with the petitioner and has also sent the respectable of the area and till the last week of the month of October, 2017, they remained in contact of the complainant but they could not succeeded to patch-up the matter. In these circumstances, this court is of the humble view that the complainant is entitled to get the benefit of first and second provisos of sub-section 4 of Sec.28

of Punjab Consumer Protection Act, 2005, hence, while exercising the jurisdiction, under both the provisos of subsection 4 of Sec.28 of Punjab Consumer Protection Act, 2005, the period for filing the claim of the claimant is hereby extended and it is deemed that the claimant has filed the claim well within time.

Although, it was forcefully argued that the claimant/complainant has not filed any application for condonation of delay/extension of the time, but this court is of the humble view that the function of the court is to administer the justice and the justice does not demand filing of any application by anyone else or writing of any provision in any application. It is well established law that no one can be knocked out for writing of wrong provision in his application. Similarly, in criminal matters, the Hon'ble superior courts were pleased to hold that filing of suit/ application was not necessary for enlargement of any person on bail and while following the above said analogy, this court is of the humble view that this objection of the learned counsel for the respondent, is not tenable and the same is hereby turned down.

The learned counsel for the defendant / respondent has argued that as per second proviso of sub-section 4 of S.28 of Punjab Consumer Protection Act 2005, The claimant was bound to file the claim within 15 days of warranty, but this argument of learned counsel for the respondent has no force as the claimant was not present at the time of booking of shipment. Similarly, no receipt or agreement or terms and conditions of agreement were in the knowledge of the claimant and the factum of booking of shipment come into the knowledge of the claimant, on 15.09.2017 i.e. on receiving the shipment, therefore, the objection raised by the learned counsel for the respondent, being untenable his hereby turned down.

In humble view of this court, in dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the right of the consumer principally, since it is the consumer who is placed at a disadvantage vis-a-vis the supplier of services

or goods. It is to overcome this disadvantage that a beneficent legislation in the form of the Consumer Protection Act, 2005 was enacted by Parliament. The provision of limitation in the Act cannot be strictly construed to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim. That being so, this court has no hesitation in coming to the conclusion that the claimant/petitioner/complainant is entitled for the extension of the time as mentioned in both the provisions of sub-section 4 of section 28 of the Punjab consumer Protection Act, 2005.

Although, it was forcefully argued by learned counsel for the respondent that the petitioner/complainant/claimant, has not sent the legal notice to the respondent but the petitioner/complainant/claimant has produced the copy of the notice as Mark-E, which is on the record. Similarly, the original postal receipt dated 24.10.2017 is on the record. Although, the postal receipt was not exhibited by the petitioner/complainant/claimant but, as the original receipt is on the record and this court can take judicial notice of the same and as per law, it is presumed that any letter/notice duly sent by one person to another through postal service i.e. register post is delivered to the addressee well in time, unless and until proved otherwise. The respondent remained fail to prove the factum of not receiving of notice through any cogent evidence, therefore, this objection of the respondent is also turned down.

11. For the reasons recorded above, this court has reached to the conclusion that the petitioner/complainant/claimant has succeeded to prove his case, therefore, his claim/petition/complaint is hereby **accepted partly** and the respondent is directed to pay Rs.36,000/- i.e. Rs.16,000/- as the amount of original cheque and Rs.20,000/- as the damages to the petitioner. No order as to costs. Office is directed to provide the certified copies of this judgment to both of the sides

free of cost. File be consigned to record room after its due completion.

Announced:

20.03.2018. (**JUDGE SARDAR MUHAMMAD AKRAM KHAN**)
DISTRICT & SESSIONS JUDGE /PRESIDING OFFICER,
DISTRICT CONSUMER COURT,
LAYYAH

Certified that this judgment consist of nine pages, which has been dictated, read and signed by me.

Dated: 20.03.2018.

DISTRICT & SESSIONS JUDGE /PRESIDING OFFICER,
DISTRICT CONSUMER COURT,
LAYYAH