

IN THE COURT OF MR. SOHAIB AHMAD RUMI,
DISTRICT & SESSIONS JUDGE/PRESIDING OFFICER,
DISTRICT CONSUMER COURT,
SIALKOT/NAROWAL.



Case No.33/2017

Date of Institution: 12-04-2017

Date of Decision: 26.06.2018

Ghulam Sarwer Sijjad S/O Abdul Haq, Khokher by caste Mohallah
Shahab-Purra, Sialkot.

(Claimant/consumer)

Versus

Muhammad Abbas S/O Muhammad Younis, Arrain by Caste R/O
Dittu wali Tehsil Sambrial District Sialkot. Presently residing at
Punu-wal Tehsil and District Sialkot.

(Defendant)

COMPLAINT U/S 25 OF THE PUNJAB CONSUMER
PROTECTION ACT, 2005.

Judgment:

Ghulam Sarwer, claimant has brought this claim under Sec.
25 of the Punjab Consumer Protection Act, 2005 alleging therein
that he made a contract with defendant for construction of upper
floor of his house on 02.01.2017 at the rate of Rs.120 per square
foot (P.Sft). The construction work fully detailed in Para No.03 of
the plaint was to be completed within a period of two months. After
completion of construction the defendant settled accounts and
received total consideration amount from the claimant.

02. According to claimant when wooden support structure of
(Qalib) roof was removed the R.C.C roof slab deflected. Floor was
cracked from different places and the steps of stairs were not smooth,
whereas, according to contract defendant is responsible to remove all
defects in the construction. As per claimant he had paid all the
payment because defendant requested and demanded total costs on

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Registrar 08-12-18
District Consumer Court
Sialkot

District & Sessions Judge
Presiding Officer

District Consumer Court Sialkot / Narowal

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defendant after prevaricating for some time finally refused to fulfil his commitment. A pre-requisite legal notice dated 22-03-2017 was issued to defendant but he left the dwelling to Mouza Puno-Wal, therefore, second notice was issued. Defendant constructed the building in defective manner which caused him financial loss and mental agony, hence, this complaint.

03. Defendant contested the complaint by filling written reply, controverted the allegations leveled against him with the assertion that claimant did not pay outstanding amount of Rs. 223,700/-. A cheque bearing No. 17314431, of Rs.33,000/- given from claimant was dishonored by the Bank against whom an application to the DPO Sialkot was filed. According to the defendant claimant has filed this complaint just to blackmail and harass the defendant, whereas, defendant had provided best services to the claimant. According to the measurements and labour charges total amount Rs.496,000/- was due out of which claimant paid Rs.272,300/- however, Rs. 223,700/- is still outstanding. It was also contended that claimant has failed to implead necessary parties to suit, hence, liable to be dismissed with costs.

04. Reconciliation efforts remained fruitless and both the parties were directed to lead their respective evidence. From the claimant side, claimant himself appeared in the witness box as A.W.1 and produced Ghulam Rasool as A.W.2 and Faizan Siddique as A.W.3. All the three witnesses submitted their attested affidavit in evidence in the shape of Exh-A.1 to Exh-A.3. From documentary evidence counsel produced Cheque No.17314431 as Exh-A.4, statement of payment Exh-A.5, copy of legal notice 'Mark-A', postal receipt regarding issuance of legal notice as Exh-A.6 and acknowledgement due card alongwith envelop as Exh-A.7, copy of legal notice dated 01.04.2017 as 'Mark-B', postal receipt against legal notice as Exh-A.8 and closed the evidence.

05. Arguments heard and record perused.

06. Contention of the learned counsel for the claimant is that the

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as the construction work was defective one. The R.C.C. roof slab, floor became cracked and the steps of upstairs were not smooth.

07. I have examined the statement of A.W.1. During cross examination it was admitted by the claimant that there was no written contract between the parties. It was also admitted that no area/measurement was mentioned in the legal notice, claim or in the affidavit of the complaint. It was also admitted by the claimant that he issued cheque of Rs.33,000/- to the defendant which was not en-cashed. Except an amount of Rs.33,000/- nothing is outstanding against him. It was further stated that during the construction he pointed out the defects regarding defect in R.C.C Roof slab, unequal steps of stairs, level of walls, plaster, floors, etc to the defendant.

08. Evidence of the R.w.1 Muhammad Abbas reveals that the construction was completed within three months. At the time of settlement of accounts claimant issued cheque which was dishonored. During construction no complaint, what so ever, was made to him regarding defects in the construction. It was admitted by the defendant that he will remove the defects occurred on spot and will not be responsible later on. It was advised to claimant to use concrete, comprising of cement, sand and gravel/crush in the floor because simple cemented floor creates/causes cracks, but he did not agree.

09. During proceedings Mr. Muhammad Nacem Asad Butt S.D.O Buildings, Sialkot was appointed as local commission on the request of claimant who inspected the disputed site and submitted report, according to which;

Some minor defects are found i.e. straightening of edges of roof and windows. The steps of stairs were of unequal height. The contractor is willing to rectify the defects but the claimant had already got the defects rectified and completed the work from some other person by using marble on the steps and floors. The important thing is that the client is reluctant to get the services of the said contractor for the reasons best known to him.

In Para No.03 of the report it is stated that minor

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Report of the commission, appointed by the Court is very much significant as Mr. Muhammad Naeem Asad Butt S.D.O Buildings; Sialkot is an expert in his line and independent person who has formulated the same after visiting the site. According to the report of local commission minor defects are found like straightening of roof and windows edges and the steps of stairs unequal which claimant has rectified from someone else, while defendant is willing and ready to rectify the same. As defects were minor in nature which have already been got rectified by the claimant. Moreover, claimant is not willing to allow the defendant to work at his site, therefore, keeping in view the nature of defects caused by poor workmanship of the defendant, claimant deserved to be compensated. However, deflection of the roof slab is not minor defect and can only be removed by a new slab which may cause huge expenses, Whereas, the same at this stage is not possible because the claimant has got completed his construction. From the report of expert one thing is established beyond any shadow of the doubt that defendant Muhammad Abbas is incompetent in the masonry works. He did his job at the premises of claimant like a quack and the same is poor workmanship. Defendant provided defective services to the claimant. Hence, defendant/respondent is directed to pay Rs. 33000/- to the claimant as compensation. This amount is already outstanding as admitted by the claimant in his statement as A.W.01, therefore, the said amount is adjusted in the amount of compensation. File be consigned to the record after its due completion.

Announced:
26.06.2018.



CERTIFICATE

Certified that this order contains four pages and each of pages is dictated, corrected and signed by me.

Presiding Officer
District Consumer Court
Sialkot/Narowal.

Announced:

Presiding Officer

نقل بمطابق اصل ہے
محکمہ عدالت
جناب سید
کنوٹر کورٹ
سیالکوٹ
26/06/18
1984/06/26