

**IN THE COURT OF SHAUKAT KAMAL DAR DISTRICT &  
SESSIONS JUDGE/PRESIDING OFFICER,  
DISTRICT CONSUMER COURT,  
SIALKOT/NAROWAL.**

Case No.44/2017  
(Dated of Institution: 01-06-2017)  
(Dated of Decision: 25-06-2019)

Hassan Ijaz Butt S/O Ijaz Ahmad Butt CNIC 34603-30907857 R/O  
Habib Porra Emanaanbad Road Tch & District Sialkot. 0300-  
3303806.

(Complainant)

Versus.

01. Mr. Fiaz Hussain Malik (Lufthansa house 5G/2, Gulberg II Block H, Lahore Pakistan Lufthansa Group.
02. Travel Style International (IATA) Fazal Building opp: National Bank, Kutchery Road Sialkot.
03. Swiss International Airline (Manager).

(Respondents)

**Complaint U.Sec 25 of the Punjab Consumer Protection Act, 2005**

**Order:**

The complainant has filed instant complaint U/Sec. 25 of the Punjab Consumer Protection Act, 2005 with the contention that on 21-02-2017 he purchased tickets bearing numbers 724-1245-374-418 & 724-1245-374-419 from defendant No. 02 Travel Style International who is working under the indications of respondent No.01 (Lufthansa Group & Swiss International Airline for his tour from Dubai to Barcelona. The flight of the complainant for Dubai to Zurich was at 0215 but the same was delayed 02 hours, resultantly, when complainant reached Zurich to go his final destination Barcelona he missed his connecting flight. The respondent No. 03 though arranged for him connecting flight from Zurich to Frankfurt but the complainant again had to wait 04 hours at Zurich airport to go for Frankfurt. The complainant reached Barcelona with delay of 06 hours, furthermore, when the complainant was returning back home, although his returned ticket was booked and confirmed from Pakistan but the same was 03 time i.e on 28-03-2017, 03-04-2017 and 08-04-2017 cancelled by the respondent No.03 Swiss Airline and even he was badly treated at Warsaw airport while going to Zurich as there he got

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boarding card as per routine but when he was on the way to board in the plane he was stopped by Swiss Airline staff on the ground that his seat was cancelled because of over booking and he had to stay for 05 hours at Warsaw airport and no service was provided there, hence, due to faulty services of the respondents his leisure/ business was spoiled and the complainant is entitle to receive Rs. 4500000/- compensation from the respondents. The complainant sent a legal notice to the respondents the same was replied but the grievance of the complainant was not redressed, resultantly he filed the instant complaint on 01-06-2017. However, subsequently on 28-01-2018 he filed an application for the condonation of delay, the reply of which was filed by the respondents on 19-02-2018, however, my learned predecessor vide order dated 10-04-2018 kept the decision pending till the respective evidence of the parties.

02. The respondents submitted their written reply while raising certain objections, preliminary as well as on facts. Preliminary objection of the respondents was that this Court has no jurisdiction to try this complaint as the complainant had traveled by air internationally, hence, his case is covered by the Carriage by Air Act, 2012 which is a federal statute and overrides the Punjab Consumer Protection Act, 2005 which is provincial statute, hence the instant complaint is not maintainable and the instant complaint is barred by Article 143 of the Constitution of Pakistan 1973. (ii) The instant complaint is time barred and liable to be dismissed as the alleged cause of action accrued to the complainant on 25-03-2017 and 09-04-2017, whereas, the instant complaint has been filed on 01-06-2017, hence, badly time barred and fled with the delay of 26 days. It is further submitted that the air transport services are not included in the "services" as defined in the Punjab Consumer Protection Act, 2005.

Whereas, on the factual grounds, it has been contended that Swiss Airline does not operate in Pakistan and have no Manager based in Pakistan, hence, same cannot be impleaded as respondent, whereas, Dubai airport was closed on account of thunderstorm and operation of flight was suspended for the safety of the passengers/aircraft which was unavoidable circumstances and beyond the control of the respondents and due to delay no financial damages or loss was sustained by the complainant. According to the terms and conditions of the contract of carriage, the times shown on the tickets are not guaranteed and flight may be rescheduled on account of operational reasons including the weather.

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The complainant himself reached 04 hours earlier at Warsaw Airport before departure scheduled, hence, if he had to stay at Warsaw airport it was due to his own action but not due to fault of the respondents. Furthermore, contract of carriage did not provide any ground service or catering at Warsaw Airport and contents of the complainant were denied, whereas, the respondents offered Rs. 9,000/- in the shape of hotel vouchers to the complainant without admission of any liability/fault and the same was as a gesture of goodwill.

**03.** After perusing the pleadings of the parties the main points regarding factual controversy are that;- whether, this Court has no jurisdiction to try this complaint. The instant complaint is time barred if so the complaint is entitled for condonation of delay. The delay of 06 hours in carriage was due to faulty service or the same was caused by unavoidable circumstances and due to suspension of operation at Dubai airport on account of thunderstorm. The frequent cancellation of confirmed and booked tickets of the complainant was result of faulty services of the respondents and the complainant is entitled for damages. The complainant was stopped and badly treated at Warsaw airport when he was going to board on plane by the respondents and entitled to compensation. The hotel vouchers of value of Rs. 9000/- was provided to the complainant as goodwill gesture or a compensation for the faulty services.

**04.** The question of jurisdiction and time limitation/ condonation of delay are preliminary points, hence, I would like to take them first.

**05.** The learned counsel for the respondents had submitted that this Court has no jurisdiction to proceed with trial of this case as already the Carriage by Air Act, 2012 exclusively governs all matters concerned with carriage by air in Pakistan in relation to the rights and liabilities of carrier services and agents cancellation of tickets, delay in carriage and other matters relating to the damages, injury, loss or death of the passengers. As per section 4 (1) of the Carriage by Air Act 2012, Civil Courts have jurisdiction in such type of matters which is federal and special law and its provisions shall prevail over the Punjab Consumer Protection Act, 2005 being Provincial Statute. On the other hands, contention of the learned counsel for the complainant is that this objection has been raised with malafide intention. There is no provision in Carriage by Air Act 2012, which bars the jurisdiction of the Punjab Consumer Protection Act, 2005.

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No mechanism or provision in the Carriage by Air Act, 2012 for solving the matters regarding the services and the District Consumer Court is fully competent to adjudicate the matters relating to services.

06. I have heard the arguments of both the learned counsel for the parties on the point of jurisdiction. For the ready reference the section 4 of the Carriage by Air Act, 2012 is read as under:-

- Provisions regarding suits against High contracting Party or Parties or State Party or Parties who undertake carriage by air\_ (1) Every High contracting party or Parties or State Party or Parties to the Carriage by Air Conventions shall for the purposes of any suit brought in a court in Pakistan in accordance with\_
- (a) the provisions of rule 28 of the first schedule where a High contracting Party to the Warsaw Convention. 1929, has not availed himself of the provisions of the Additional Protocol thereto;-or
- (b) the provisions of rule 28 of the Second Schedule where a High Contracting Party to the Warsaw Convention as amended at the Hague, 1955, has not availed himself of the provisions of the Additional Protocol thereto;-or
- (c) the provisions of rule 33 of the Fourth Schedule, to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of Code of Civil Procedure, 1908 (Act V of 1908).

So far as territorial jurisdiction is concerned section 33 of 4<sup>th</sup> Schedule of part ii is as under:-

33. Jurisdiction. (I) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the State Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

Regarding the additional jurisdiction section 46 of the 4<sup>th</sup> schedule is relevant which is reproduced as under:-

46. Additional Jurisdiction. Any action for damages contemplated in rule 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court in which an action may be brought against the contracting carrier, as provided in rule 33 or before the court having jurisdiction at the place where actual carrier has its domicile or its principal place of business.

07. From the bar reading of the above provisions of the Act, shows that the Carriage by Air Act, 2012 provides the choice of forum to the aggrieved person, whereas, this law does not bars the jurisdiction of any other Court. The Punjab Consumer Protection Act, 2005 has been enacted for

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the protection and promotion of the rights of the consumer and speedy redressal of the of the consumer complaints. Prior to this enactment, for the aggrieved person there was only forum of Civil Courts. The redressal of consumer complaints under the **Punjab Consumer Protection Act, 2005** special Courts have been constituted for hearing the consumer complaints and at present the consumer can approach the Civil Courts as well as Consumer Courts under the **Punjab Consumer Protection Act, 2005**. which is in addition to and not in derogation of any other law for the time being in force. The main purpose of Punjab Consumer Protection Act, 2005 is to provide speedy redressal of consumer complaints.

Furthermore, Air Navigation Order dated 30-09-2015 which has been issued by DG Civil Aviation Authority of Pakistan in pursuance of powers vested to him under rule 4 (3), 5, 180 and 360 and other enabling provisions of Civil Aviation Rules 1994 (CARs 1994) purpose of which to ensure that air passengers are properly compensated in case of Denied Boarding, Cancellations, Long Delays. Baggage Loss/Damage, Injury and Death and Package Holidays etc and the said order is applicable to all airlines operating to and from Pakistani airports. The rule D19.4 of the said Air Navigation Order is reproduced for ready reference which is as under;-

**Alternatively, the complainant may file a case in a Consumer Court against the airline for violating conditions of carriage.**

This provision clearly empowered the Consumer Courts to try and adjudicate the case against the Airlines/air carriage provider in regard of air passenger rights. Therefore, I am of the view that this Court has ample jurisdiction to decide the instant lis before it.

**08.** The second objection of the respondent was that the instant case was badly time barred. Perusal of record shows that the complainant started his journey from Dubai to Barcelona on 25-03-2017 and reached on the same day i.e 25-03-2017 at 1500 hours at Barcelona 06 hours late as per schedule. Whereas the complainant returned back on 10-04-2017 at 0835 at Sialkot. (In the notice 04 different dates have been mentioned however in the complaint 03 dates i.e 28-03-2017, 03-04-2017 and 08-04-2017 wrong dates are mentioned by the complainant). Therefore, the cause of action aroused on 25-03-2017 and 10-04-2017. The instant complaint was filed on 01-06-2017 with the delay of 26 days. With the complaint no application was filed by the complainant inspite of the fact that he has returned to home i.e Sialkot on 10-04-2017. On the

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other hands the complainant filed an application for condonation of delay on 29-01-2018 in which he alleged that he could not file the complaint well within time with the contention that the complainant fall sick seriously and he annexed with his application a photo copy of out door patient slip allegedly issued on 04-05-2017 by Medical Officer of A.I.M.T Hospital Sialkot. The name of doctor is not mentioned there who issued the out door slip/prescription. However, the application was not decided by the learned predecessor of this Court but in his order dated 10-04-2018 he referred the same and while observing that condonation of delay is mixed question of fact and law which shall be decided after taking into account respective evidence of the parties and case was fixed for the evidence of the complainant. The complainant of this case himself appeared as PW.01 and submitted his affidavit Exh-P1 and after submitting some documents got closed his evidence vide his statement dated 12-06-2018. Perusal of his affidavit shows that even a single word had not been uttered by him in his affidavit Exh-P1 and even he has not produced any other witness to prove the factum of his illness neither he produced original OPD Slip having the prescription allegedly issued by Medical Officer of A.I.M.T date 04-05-2017 nor MO the author of said prescription/OPD slip was ever produce by him. Interestingly no serious disease had been mentioned in the OPD slip whereas, as per photocopy doctor had advised as under:-

**"Advised bed rest for one month with effect 04-05-2017 to 13-06-2017".**

As per the author of this prescription one month mean 41 days. It appears that a fake document just to satisfied the two dates i.e 04-05-2017 ( the day legal notice was sent) and 13-06-2017 (the date at when as per complainant the instant complaint was filed). As mentioned earlier the complainant of this case had submitted in his application for condonation of delay that he filed the instant case 13-06-2017 whereas, actually the instant complaint was filed on 01-06-2017. All these facts clearly shows that the complainant has not come in this Court with clean hands and in order to get condonation he had fabricated a false story regarding his serious illness and bed rest from 04-05-2017 to 13-06-2017. Even, the application of condonation of delay was not supported with affidavit although this Court has ample powers to grant condonation but to get the relief the complainant must come in the Court with clean hands and he has to explain each and every day of delay which is lacking in the

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instant case. So, I hold that the instant complaint is badly time barred and I am not inclined to grant any condonation to the complainant.

**09.** As in the proceedings para of this order, I have hold that the instant complaint is badly time barred, therefore, no need to give finding on the other merit of this case.

**10.** What has been discussed the instant complaint is dismissed being time barred. File be consigned to the record room after its due completion.

Announced:  
25-06-2019.

Shaukat Kamal Dar  
Presiding Officer,  
District Consumer Court  
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**CERTIFICATE**

Certified that this order contains 07 pages and each of pages is dictated, corrected and signed by me.

Announced:  
25-06-2019.

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