

IN THE COURT OF MUHAMMAD SARFRAZ AKHTAR
DISTRICT AND SESSIONS JUDGE/PRESIDING OFFICER,
DISTRICT CONSUMER COURT MANDI BAHA-UD-DIN

Case No. 36 of 2018
Date of institution 22.10.2018
Date of decision 07.02.2019

Imtiaz Ahmad son of Karmali, Caste Jutt Kadhar, Resident
of Kadhar, Tehsil & District Mandi Baha-ud-Din.

Vs.

- ✓ 1. Iftikhar Ahmad son of Bashir Ahmad, Caste Gondal,
Resident of Channi Rahim Shah, Tehsil & District Mandi
Baha-ud-Din;
2. Irfan Ahmad son of Muhammad Walait, Caste Tarrar,
Resident of Saida Sharif, Tehsil Phalia, District Mandi
Baha-ud-Din.

Present: Mr. Sajid Nadeem Gondal Advocate with claimant.

Nemo for Defendant No.1.

Nemo for defendant No.2.

Arguments of Mr.Atiq-ur-Rehman Advocate counsel
for defendant No.2 already heard.

Arguments of claimant heard today.

ORDER:

This claim under section 25 of the Punjab Consumer
Protection Act, 2005 (hereinafter referred as the Act) has been
brought by claimant Imtiaz Ahmad maintaining therein that he
entered into an agreement for construction of house with
defendant No.1 at the rate of Rs.75/- per sq. ft. for basement and
Rs.80/- per sq. ft. for first floor. The work of shuttering was got

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construction was raised vis-à-vis height and direction of pillars, beams, stairs and roof. The defendants received extra amount of Rs.42000/-. Due to the defective construction claimant suffered loss of Rs.15,00,000/-. Legal notice was served upon the defendant but nothing was done. As the grievance of the claimant was not redressed instant complaint has been filed. An amount of Rs. 500,000/- (five lacs) as compensation for mental agony, Rs.15,00,000/- as loss of construction material and Rs.42,000/- that was received extra has been claimed by the claimant on account of faulty and defective service of the defendants.

2. Process for defendants was issued. Defendant No.2 appeared whereas evidently defendant No.1 during pendency of instant complaint was arrested in a criminal case. Attendance of defendant No.1 was procured through concerned SHO. Defendant No.2 submitted written statement whereas despite ample opportunities defendant No.1 opted not to engage any counsel and not to submit written statement. After according ample opportunities to defendant No.1 his right was ultimately struck off on 11.12.2018.

3. Defendant No.2 in the written statement maintained that he never entered in any agreement with the claimant rather his services to the extent of shuttering were hired by defendant No.1. Further maintained that he has no nexus with the quality of construction rather he installed shuttering under the instructions of defendant No.1. As his shuttering material was confiscated by the claimant, he submitted an application for registration of criminal case against the claimant and subsequently filed petition under section 22-A/22-B Cr.P.C. against the claimant and due to this grudge he has been falsely implicated in this case.

As no settlement was arrived in between the parties, they were directed to adduce respective evidence. The claimant appeared as PW.1 and produced his witnesses namely Riaz

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Ahmad (Pw.2) and Usman Farooq alias Adnan (PW.3). In documentary evidence claimant produced affidavits of witnesses Ex.PA, Ex.PB & Ex.PC, agreement Ex.PB/1, copy of notice to defendant No.1 Ex.PD with postal receipt Ex.PD/1, copy of notice to defendant No.2 Ex.PE with postal receipt EX.PE/1, receipt of purchase of material Ex.PF & Ex.PG.

5. Defendant No.2 on the other hand merely produced copy of petition under section 22-A/22-B Cr.P.C alongwith report and order sheet as Ex.DA.

6. Firstly, coming to the claim against defendant No.2, the contents of para-2 of complaint clearly indicate that the agreement was entered by the claimant with defendant No.1 and not with defendant No.2. The contents of said para reflects that services of defendant No.2 was not hired by the claimant but by defendant No.1. As such, defendant No.2 is not privy to any agreement Ex.PB/1. During the course of evidence the claimant tried to twist his assertion to the effect that amount was received by defendant No.2. But this does not make any sense as no agreement was entered with defendant No.2 and no services of defendant No.2 was hired by the claimant. Further, record produced by defendant No.2 reflect that application for registration of criminal case in PS Khatiala Sheikhan was submitted on 12.09.2018 whereafter petition under section 22-A/22-B Cr.P.C was filed by said defendant against the claimant on 18.09.2018 wherein concerned SHO submitted his report on 26.09.2018. The matter was under adjudication before the competent forum when during the pendency of said petition instant complaint was filed on 22.10.2018. Despite the fact that claimant was duly represented in said petition, nothing in this respect has been mentioned in the complaint. In the said petition ultimately direction was issued to SHO concerned on 08.11.2018.

7. In the above mentioned scenario, implication of defendant No.2 in this complainant cannot be regarded as bona-

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fide act of claimant. Defendant No.2 even otherwise is not under any obligation towards the claimant as he has no nexus with any agreement and his services were never hired by the claimant.

8. Now, coming to the claim against defendant No.1, as mentioned supra, to his extent right was struck off. The complaint has been verified on oath. In addition thereto the claimant also produced above mentioned witnesses and documents to substantiate his claim. There is no rebuttal on the record.

9. In view of the above there is no reason to refuse the claim in this case to the extent of defendant No.1. At the same time it is relevant to see as to what extent relief can be accorded to claimant. Total Rs.20,42,000/- (twenty lacs forty two thousands) has been demanded as compensation and damages for which there is no evidence on the record as to how this much compensation has been demanded. Needless to mention that wherever compensation or damages are demanded that must be appropriate and keeping in view facts and circumstances of transaction in question and service which was provided. In the instant case the claim is that an amount of Rs.42,000/- in excess has been received from the claimant. No detail of any other payment has been provided. However, during final arguments it has been asserted by learned counsel for claimant that this extra amount of Rs.42,000/- was demanded for rectification of faults in construction but despite payment those faults were not removed. There is no evidence as to what extent damage was caused to the claimant and how much costs shall be incurred to rectify the work done by the defendant No.1. In the absence of any evidence as to how much costs shall be incurred to rectify the loss done by the defendant No.1 and considering the facts of this case including extra payment made to the defendant No.1 by the claimant, the appropriate compensation for claimant is fixed at Rs.42,000/- (forty two thousand) i.e., the amount allegedly settled for rectification of fault in construction.

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10. In nutshell complaint to the extent of defendant No.2 stands dismissed. The claim against defendant No.1 to the extent of Rs.42,000/- is allowed. Therefore, in terms of section 31 of the Act, I issue an order and direct defendant No.1 to make payment of Rs.42,000/- to the claimant. As mentioned supra, defendant No.1 has been arrested in connection with a criminal case. Defendant No.1 shall be duty bound to satisfy claim of the complainant within fifteen days of his release from custody. In case of failure to comply with the order, the defendant No.1 shall have to face the consequences mentioned in section 32(2) of the Act *ibid*. Copy of the order be provided to the claimant and also sent to the defendant No.1 through concerned SHO/Superintendent Jail in line with Rule 17 of the Punjab Consumer Protection Rules, 2009. The Registrar of this Court shall transmit copy of this order for the purpose of Rule 25 of the Rules *ibid*. Order accordingly. File be consigned.



(Muhammad Sarfraz Akhtar)

District & Sessions Judge/ Presiding Officer,
District Consumer Court Mandi Baha-ud-Din

Announced
07.02.2019.



Certified that this Order consists of five (05) pages and each page has been dictated, read, corrected and signed by me.




(Muhammad Sarfraz Akhtar)

District & Sessions Judge/ Presiding Officer,
District Consumer Court Mandi Baha-ud-Din

Dated: 07.02.2019

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