

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

Case No.	05 of 2017
Date of institution	18.05.2017
Date of decision	16.01.2018

Khadim Hussain Anjum son of Ghulam Muhammad,
Proprietor A-One Petroleum, Near Pul Naher, Kakuwal,
Sargodha Road, District Mandi Baha-ud-Din.

Vs.

Shehzad son of not known, Workshop Petrol Pump Machine
Maker, Muhammadi Chowk, Jehlum.

Present: Claimant with Mehar Muhammad Riaz Advocate.
Defendant ex-parte.

Arguments of claimant heard.

ORDER:

This claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as the Act) has been brought by claimant Khadim Hussain Anjum against defendant Shehzad maintaining therein that adversaries are known to each other since long and the defendant used to repair supply machine of the claimant; an amount of Rs.16,000/- as advance, Rs.3,700/- repairing charges of diesel machine, Rs.23,800/- for repairing of board and LCD of machine were received by the defendant about 4/5 months back; repair was not done and even board and LCD are lying with the defendant; now the defendant even not attending phone calls of the claimant; legal notice was issued to defendant on 07.03.2017 but the grievance of the claimant was not redressed; due to failure of the defendant the claimant suffered damage and loss as under:

- | | |
|-----------------------------------|---------------|
| 1. Payment made to defendant. | Rs. 43,500/- |
| 2. Compensation for mental agony. | Rs. 800,000/- |

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2. Repeated notices were issued to the defendant who was also summoned through phone and ultimately through proclamation in the news paper. As he did not appear, was proceeded against ex-parte on 27.07.2017 by my learned predecessor.

3. The claimant appeared as PW.1 and tendered his affidavit as Ex.PA. He also produced Zafar Iqbal as PW.2 who tendered his affidavit as Ex.PB.

4. No specific date of payments to the defendant has been mentioned; likewise no receipt in this respect has been produced regarding handing over of board and LCD to the defendant. The contents of complaint reflect that those were handed over about 4/5 months back. As per stance of claimant legal notice was sent to the defendant on 07.03.2017. Instant complaint has been filed on 18.05.2017.

5. Section 28 of the Act ibid governs the situation that for ready reference is being reproduced hereunder:-

"28. Settlement of Claims. (1) A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer or service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the consumer has suffered damage, or cease to contravene the provisions of this Act.

(2) The manufacturer or service provider shall, within fifteen days of the receipt of the notice, reply thereto.

(3) No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section (1) and provides proof that the notice was duly delivered but the manufacturer or service provider has not responded thereto.

(4) A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:

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Provided that the Consumer Court, having jurisdiction to hear the claim, may allow a claim to be filed after thirty days within such time as it may allow if it is satisfied that there was sufficient cause for not filing the complaint within the specified period:

Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of services."

6. Plain reading of above provision clearly indicates that a claim before the Consumer Court can be filed within thirty days of the arising of cause of action. In the instant case no such date is mentioned rather in a vague manner it has been asserted that the board and LCD have not been returned for the last 4/5 months. In this scenario even if the maximum latitude is accorded and date of issuance of legal notice (i.e., 07.03.2017) is considered as date of arising of cause of action, in such an eventuality for all the practical purposes for the sake of arguments ignoring the clause of actual arising of cause of action, the complaint should have been filed till 06.04.2017. The complaint as mentioned supra has been filed on 18.05.2017 i.e., after seventy two days. No doubt that proviso to section 28(4) empowers the Court even after thirty days provided sufficient cause has been shown by the claimant, yet, firstly that power is not unrestricted rather it is clearly mentioned that such extension shall not be allowed beyond a period of sixty day and secondly no such exemption or relaxation has been claimed what to talk of sufficient cause shown by the claimant. As such, the claim is barred as the same has not been brought within period specified in section 28(4) of the Act ibid as reproduced above.

8. In nutshell, the claim being barred by limitation period as provided in section 28(4) of the Act ibid cannot be allowed. The same stands dismissed. Needless to mention that in case remedy under any other law is provided, the claimant may avail the same and in such an eventuality that shall be adjudged on its own merits

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without being influenced from this order. Copy of the order be provided to the claimant and also sent to the defendant 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.



Announced
16.01.2018.

(Judge Muhammad Sarfraz Akhtar)

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



Certified that this Order consists of four (04) pages and each page has been dictated, read, corrected and signed by me.



Dated: 16.01.2018

(Judge Muhammad Sarfraz Akhtar)

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

Copy of Order Received by:




خادم حسین انجم

دستور مقدم
16.01-18 Claimant