

**In the Court of Qamar Ijaz  
District & Sessions Judge/ Presiding Officer  
Consumer Court Districts Sheikhupura, Nankana-Sahib, Kasur &  
Lahore.**

Complaint No	427/2015
Date of institution	04-09-2015
Date of decision.	19-12-2018

**Mian Azhar Shaukat s/o Shoukat Ali r/o House No. 67-B, Muhafiz  
Town Society Phase-1, near Thokar Niaz Baig, Lahore.**

**Complainant**

Vs

- 1. Samsung Mobile Company (Pvt) Ltd Office No. 4&5, 1<sup>st</sup> Floor,  
Mall of Lahore, Park Lane Tower, 172 Tufail Road, Lahore  
through its Country Head.**
- 2. Green Tech Company, Office. No. G-60, Al-Hafeez Shopping  
Mall, Gulberg-III, Lahore through its Manager.**
- 3. Rafi Mobiles, G-91, Al-Hafeez Centre, Main Boulevard,  
Gulberg-III, Lahore through its Manager.**

**Defendants**

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

**ORDER.**

Mian Azhar Shoukat (advocate) contends that on 12-02-2015, he purchased Samsung Galaxy Mobile No. 900 fully described in Para No. 2 of the complaint from the defendant No. 3 for a consideration of Rs. 48,000/-with warranty to be expired on 31-10-2015. It is further stated that on 03-07-15, due to defect in speaker and mike in the mobile set, he visited the office of defendant No. 2 to lodge formal complaint and his employee received mobile set and gave eight days to remove the defect. On 16-07-15, he went to the shop of defendant No. 2 who sought further time and then ultimately demanded Rs. 19,200/- by describing that the actual defect is in motherboard. The complainant refused to yield to the demand of the defendant No. 2, whereupon his defective mobile set was returned to him. Subsequently on 03-08-15/06-08-15, he went to the office of defendants for replacement of defective phone set who refused and extended threats. He sent legal notices which

were not replied by defendants. Hence the complaint for recovery of Rs. 8,48,000/- on account of damages and Rs. 20,000/- as costs of litigation.

2 Due to failure of defendant No. 3 to appear in the court despite service of notice, he was proceeded against ex-parte. The defendants No. 1 and 2, submitted separate written statements. However defendant No. 2, also disappeared subsequently and his right to submit affidavit was struck off and he was also proceeded against ex-parte on 11-01-2017. Only the complainant and defendant No. 1, have produced respective evidence.

3. The defendant No. 2 in his written statement contends that complaint is not maintainable, is bad for misjoinder and non joinder of necessary parties, adding that mobile phone set of the complainant was damaged due to his mishandling and negligence as such fault is not covered under the warranty explaining that insurance company is not made party to the claim and any claim against Insurance Company is not competent before this Court. Purchase of mobile set, defect in the same, visit of the complainant to agitate the said fault and none redressal of his grievances are not disputed facts.

4. Defendant No. 1, in its written statement contends that it has been sued as “Samsung Mobile Company (Pvt) Ltd” and no company in the said name does exist. The Samsung is appearing as matter of abundant caution because notice is sent at the address of SEPAK which is involved in marketing and advertising of various electronics products (Samsung Products) sold by Samsung Gulf FZE(“SGE”), a company incorporated in UAE and is not a manufacturer of the product in question. It is further contended that defendant No. 2, distributes and sells Samsung HHP under its own warranty and subject to terms and conditions of the sale adding that defendant No. 2 is not a distributor of SEPAK. It is further contended that complainant has purchased the product from defendant No. 3, under the warranty of defendant No. 2 and SEPAK is not relevant /concerned party to lodge compliant. Terming the compliant false and baseless, its dismissal with special cost is sought.

5. The complainant himself appeared as Pw-1 and submitted his affidavit as Exb-P/1, original purchase receipt Exb-P/2, warranty card Exb-P/3, accidental warranty card Exb-P/4, copies of legal notices Mark-A to Mark-C, its courier receipts Exb-P/5 to P/7 and print out of emails- Exb-P/8. From defendant No. 1 RW-1 Naveed Anwar appeared and submitted his sworn affidavit Exb-R/1, authority letter as Exb-R/2, Memorandum of Association of SEPAK as Exb-R/3, Article of Association of SEPAK as Exb-R/4, Form-A of SEPAK as Exb-R/5 and Form -29 of SEPAK as Exb-R/6, Taxpayer Registration Certificate of SEPAK as Mark-R/A, authority letter in favor of Rw-1 as Exb-R/7 with board resolution Exb-R/8.

6. In cross examination Pw-1 deposes that he is the practicing advocate and earlier was Legal Manager in Dubai Islamic Bank adding that his affidavit Exb-P/1 was typed in the office of his counsel. He admits that service center mentioned in warranty card Exb-p/3 belongs to Green Tech. He also admits that his phone set falls within accidental coverage which was provided by Premium Insurance and AON Insurance Brokers who are not party to the complaint. He admits using the mobile for five months. He also admits that he was offered that if he paid depreciation of Rs. 19,200/-, he would get a new set explaining that defendants had offered only to repair his mobile set. While referring to Exb-P/8, he admits receiving the mobile set back because defendant No. 2 has refused to entertain his claim adding that he also approached the office of Samsung and denies that Samsung entity where he went does not deal with sale/purchase of mobile phones. He shows his ignorance wherefrom Green Tech has gained authority as distributor. He was also questioned about the nature of damage done to his mobile set.

7. Rw-1 in cross examination deposes that he is Marketing Executive in SEPAK but did not sign the written statement which was signed by some one else. He admits that he has never seen disputed mobile phone and its defect is not in his direct knowledge. He also admits that SEPAK Company deals in marketing and advertising and written in its object to manufacture, buy, sell, import, export, market, promote, treat,

produce, prepare, deal, assemble, hire, maintain, repair, alter, service, after sale service.

8. From the above discussed evidence, it is quite clear that complainant has purchased a mobile phone set for Rs. 48000/- from Rafi Mobile/ the defendant No. 3 on 12-02-2015 with warranty card of Samsung Company valid till 31-02-2015. The visits of complainant to the defendants for removal of defect in the said mobile set are admitted facts. It is also admitted that defendant No. 2 entertained his claim but refused to redress his grievances free of cost. As per suggestion put to PW-1, the defendant No. 2 showed willingness to replace the mobile set of complainant subject to his paying Rs. 19,200/- as depreciation costs which was declined by complainant, for which reason, his mobile set was returned as it was received without removing the defect. The complainant /consumer only knows about the warranty card and he is not supposed to know its complications such as that Samsung Company which has issued warranty card is not the same as mentioned in the warranty card and he has to search some one else by perusing its Memorandum of Resolution etc, especially when there is no other company in the same name of Samsung who has provided warranty of the mobile set. Defendant No. 3 who has sold the mobile set to the complainant has disappeared from the proceedings and is not available to inform the court that which Samsung Company is manufacturer of the product sold by him. Prima facie defendant No. 1 is the same company and there is no misjoinder/ non-joinder of necessary parties. Thus the relationship of consumer and the manufacturer between the complainant and defendants stands established. Sending of legal notice is also proved. The complainant is valuable customer of the defendants and he cannot be placed at the mercy of defendants who deny interse liability for removing defect or entertaining the claim regarding alleged defect in the product. One party says it is not the same company which provided warranty and consumer should search his manufacturer somewhere else. The other party says that the consumer should seek his claim from the Insurance Company. No one is ready to take responsibility. The seller is not appearing in the court with the claim that consumer should seeks his remedy against the

manufacturer company. The manufacturing company claims that it is not that company which is seller but it deals only in other matters and is not responsible for the warranty provided to the consumer. The service provider states that consumer should go and seek his remedy before insurance company. In the circumstances it is held that all the defendants are jointly and severally responsible for the removal of the defect of the product in question and to redress grievances of the complainant which they have failed to do so. Accordingly, as per restrictions contained in Section 10 and as provided u/s 31 of PCPA 2005, complaint is allowed partially against all the defendants jointly and severally (who are at liberty to settle/adjust inter-se claim in accordance with law) with the direction to remove defect in the mobile set in question of the complainant to his complete satisfaction free of costs and if it is not possible then they have to replace it with new one of similar description/value which shall be free from any defect, failing which its price of Rs. 48,000/ shall be recovered from the defendants and they will be only entitled for return of defective mobile set in question. On account of litigation charges etc, the complainant advocate is held entitled for Rs. 2,000/- only and rest of the claim regarding damages etc, being not proved/justified is declined and to that extent complaint is dismissed.

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**Announced**  
**19-12-2018**

**Qamar Ijaz**  
**D&SJ/Presiding Officer**  
**District Consumer Court LHR.**

It is certified that this Order consists of five pages which have been dictated, corrected and signed by me.

**Announced**  
**19-12-2018**

**Presiding Officer**  
**District Consumer Court, Lahore**

