

**IN THE COURT OF MUHAMMAD KALEEM SHEIKH,  
DISTRICT & SESSION JUDGE /PRESIDING OFFICER,  
DISTRICT CONSUMER COURT, FAISALABAD.**

<b>Muhammad Boota s/o Niamat Ali, Bashir Ahmad s/o Abdul Ghani Jut by caste R/o Chak No. 56/JB Tehsil and District Faisalabad</b>  <b>(Claimants)</b>	<b>1. Chief Engineer Irrigation Faisalabad Division</b> <b>2. SE Engineer Irrigation Faisalabad West</b> <b>3. XEN irrigation Jhang branch Faisalabad</b> <b>4. SDO Irrigation Amin Pur Bangla</b> <b>5. Zila Dar Irrigation Amin Pur Bangla Faisalabad.</b>  <b>(Respondents)</b>
<b>Claim No:</b> <b>Date of Institution of Claim</b> <b>Date of decision</b>	<b>96/DCC-2008.</b> <b>11.03.2008.</b> <b>30.06.2009</b>

**Muhammad Boota etc**

**Versus**

**Chief Engineer Irrigation etc**

**Claim for recovery**

**ORDER:-**

1. Brief facts, deciphering this case are that the claimants are co-sharers and co-irrigators at Khawat No. 50/52 Khatoni No. 132 to 139, affectuate at Chak No. 56/GB Tehsil and District Faisalabad, that the defendants forcibly and illegally got excavated water course through Killa No. 11-12, on 11.02.07, where after, the water course was demolished partially causing stoppage of canal water to the claimant's agricultural land, hence, it

turned barren, that the defendants alongwith Muhammad Yousaf etc took away trees of the value of Rs. 50000/- from the said Killas, hence, the claimants have lodged this case against the defendants for recovery of damages/compensation from them under section 25 of PCPA 2005.

2. The defendants have vehemently contested the above said claim by filing their statement of defence, interalia, on the ground that the water course was digged under section 68-A of the Canal and Drainage Act by the order of District Coordination Officer Faisalabad that therefore, no damage was done to the claimants under the said provision of law.
3. As the matter needed evidence therefore, the parties were required to produce their evidence in support of their respective versions. In this regard Muhammad Boota and Bashir Ahmad claimants got recorded their statements as PW-1 and PW-2, through their affidavits EX-PW1/1 and EX-PW2/1 respectively. In their documentary evidence the claimants have tendered the copy of swal form as EX-P1, copy of petition dated 14.03.06 as EX-P2, copy of report of local commission dated 05.06.07 as EX-P3. In rebuttal, Muhammad Islam Deputy Collector Canal Department as DW-1 through his affidavit DW1/1 whereas, Umar Hayyat s/o Muhammad Sharif got recorded his statement as DW-2. In their documentary evidence, the defendants have adduced the copy of petition dated 22.06.07, as EX-D1, copy of report dated 11.02.07, as EX-D2, copy of order and report dated 23.06.07, as EX-D3, copy of report 25.07.07, as EX-D4.
4. After conclusion of evidence of the parties, I have heard both the learned counsel carefully and in estimably. After hearing both the sides at length and scanning the record carefully and meticulously it would be pertinent to ascertain whether or not this court has jurisdiction to entertain the matter under section 25 of PCPA 2005. In

this connection I have critically appraised the evidence on record as under;

5. Admittedly, the matter in dispute pertains to the excavation of the water course by the defendants at Killa No. 11-12, allegedly causing damage to the claimants to their lands turning it barren and futile. In cross examination Muhammad Boota PW-1 denied that the proceedings under section 68-A of Canal and Drainage Act were conducted under the order of SDCO on 02.02.07. However, when subjected to further cross examination he has admitted that he has also instituted Civil Court regarding same cause of action in the Civil Court. He further explained that in that Civil Suit he had got it mentioned that the functionaries of Canal Department took away the trees from his land Muhammad Boota, claimant has further explained that a Criminal Case for interruption in canal water was also lodged regarding the occurrence as a result of which he alongwith Muhammad Khan, Ilyas, Sultan Mehmood, Muhammad Yousaf and Bashir Ahmad were arrested on 13.11.08. Bashir Ahmad PW-2, has also admitted that he alongwith Muhammad Boota was impleaded as a party in the suit instituted in the Civil Court about the disputed water course. He confuted Muhammad Boota PW-1, in cross examination, when he stated that the order of excavation of water course on 02.02.07, was issued by DCO and that in compliance thereof, the Zila Dar and Patwari of Canal Department got restored the dismantled water course in presence of local police EX-P2 is the document showing that the Canal Authorities conducted proceedings under section 68-A Canal and Drainage Act about the water course dispute whereas, EX-P-3 is the copy of plaint titled as Muhammad Boota and other versus The province of Punjab through Divisional Canal Officer showing that the same order in dispute of the water course of the Canal Authority has been challenged

and that the Civil Court also issued Local Commission to ascertain the factual position of the facts of that suit in particular. In rebuttal, Muhammad Islam Deputy Collector Canal Department deposed that on the application of Muhammad Ilyas dated 22.01.07, he inspected the spot and reported that Muhammad Boota the claimant has demolished the water course on 22.01.07, that thereafter, the water course was restored on the order of the DCO but that the Canal Department's functionaries did not cut and took away trees from the disputed land. EX-D1, is the copy of application dated 22.01.07, moved by Muhammad Ilyas before the DCO Faisalabad, EX-D2, is the copy of report dated 11.02.07, EX-D3, is the copy of order of Divisional Canal Officer, EX-D4, is the copy of proceedings of the Canal Authorities about the demolished water course dated 25.07.07, showing that the Civil Suit was pending in the Civil Court of competent jurisdiction.

6. From the above said scenario, on careful scrutiny of evidence on record produced by the parties, as discussed above, following points are crystal clear to my entire satisfaction;
  - a. As the Civil Court of the competent jurisdiction can very well redress the grievances of the claimants under the Canal and Drainage Act, therefore, the consumer forum has no jurisdiction to sit on the judgment of the case'
  - b. As the claimants have availed parallel jurisdiction under section 430 of the PPC therefore, the defendants may not be dragged into in this tier of litigation;
  - c. Admittedly, there is no contract of turning the service for maintenance of canal in between the parties therefore, the claimants are not consumers claiming compensation for damage of their crops on account of breach of canal;

- d. Cause of action accrued to the claimants on 11.02.07, when the “Khal” was restored therefore, the claim as filed on 12.03.08, is hopelessly barred by the law of limitation as contained in section 28 (4) of PCPA 2005;
- e. The claimants have been unable to show that the acts of the defendants are illegal towards the restoration of water course.

The upshot of the above whole discussion is that this court having no jurisdiction to entertain the claim, the same is hereby dismissed for lack of jurisdiction. However, it is made clear that my findings supra would have no effect on the merits of the claimant’s case if pended for hearing in the Civil Court of competent jurisdiction. File be consigned to the record room after its due completions.

Announced  
30.06.2009.

Muhammad Kaleem Sheikh,  
Presiding Officer/  
District & Session Judge,  
District Consumer Court, Faisalabad.

Certified that this judgment consists of five pages, dictated, signed and corrected by me.

Muhammad Kaleem Sheikh,  
Presiding Officer/  
District & Session Judge,  
District Consumer Court, Faisalabad