

**IN THE COURT OF MUHAMMAD SHABBIR HUSSAIN DISTRICT & SESSION
JUDGE/PRESIDING OFFICER DISTRICT CONSUMER COURT MANDI BHAUDDIN.**

CASE NO: 04-2017
Date of institution. 16-05-2017.
Date of Decision 25-09-2017

Claim for Recovery of 2,0000000/

*Muhammad Arsahd S/O Bashir Ahmed Resident of Rransikey Tehsil Phalia District
Mandi Bahauddin* (Petitioner)

VERSUS

*Muhammad Asif S/O Muhammad Akbar Cast Kasbi Resident of Murala Hall Tibba
Subhana Tehsil & District Mandi Bhauddin.* (Respondent)

Present: Learned counsels for the parties.

Order.

The instant petition/claim is filed by the petitioner/claimant with the narration that he is a respectable citizen and runs a brick company at moza ransikey Gondal Tehsil Phalia District Mandi Bahauddin, further, alleged that respondent/defendant as a mistry used to perform his duty in his Bricks company, during this assignment respondent/defendant made agreement to provide services to petitioner/claimant.

2. Next added that while performing his job respondent/defendant used excessive coal which caused heavy damage to a lot of bricks, on account of, his defective service, petitioner/ claimant suffered heavy loss not only in his business but also suffered loss of rupees 50,00000/- lacks, hence, he filed the instant claim against the respondent/defendant before this court for recovery of rupees 2,0000000/- as damages.
3. On the other hand respondent/defendant submitted his written statement/reply through his counsel and vociferously denied the allegations of the petitioner/claimant and further alleged therein that the petition/claim in hand is not maintainable before this court.
4. Prior to further proceed it is an essential point for adjudication as to whether petition in hand is proceed able/maintainable before this court

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In this connection both the learned counsels are called for their respective arguments.

5. Learned counsel for the petitioner contending that this court had jurisdictions to adjudicate the matter in hand as provisions of ^{the} Punjab Consumer Protection Act, 2005 are very much attracted.

6. Learned counsel for the respondent/defendant forcefully contended that petition/claim in hand is not maintainable before this court being forum of limited scope of adjudications of controversy/matter among the consumers, manufacturers and service providers next added that petition in hand liable to dismiss with heavy cost.

7. Before parting with the preposition in hand it is worth mentioning here that Punjab Consumer Protection Act 2005, is promulgated to facilitate the consumer and protect their rights. Under this special enactment the consumer may approach, the Consumer Court on the base of defective products and defective services. Under this Act a word consumer is defined as under in section 2 clause C

“Consumer means a person or entity who:-

- (i) *Buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose; or*
- (ii) *Hires any services for a consideration and includes any beneficiary of such services.*

Explanation:- For the purpose of sub-clause (i) “Commercial purpose” does not include use by a consumer of products bought and used by him only for the purpose of his livelihood as a self-employed person.

Similarly in clause K of section 2 a word services is defined as under:-

(K) *“services’ includes the provision of any kind of facilities or advice or assistance such as provision of medical, legal or engineering services but does not include:-*

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- (i) *“ the rendering of any service under a contract of personal service;*
- (ii) *The rendering of non-professional services like astrology or palmistry; or*
- (iii) *A service, the essence of which is to deliver judgment by a court of law or arbitrator.*

8. Undoubtedly, petitioner/claimant file the instant claim against the respondent for the recovery of 2,0000000/- as damages owing to, defective services allegedly provided by the respondent/defendant who is stated to be worked at the brick-kiln of petitioner, no date, month or year is found mentioned in the petition as to when the alleged agreement got executed and when the alleged occurrence took place, more over for the time being respondent did his job being a laborer at the brick-kiln of petitioner/claimant. Resultantly, provisions of section (2) clause (C) and clause (K) noted above do not attract to the claim of petitioner. During the course of proceeding both the parties submitted photocopies of their accounts which candidly and clamorously demonstrate that real controversy between the parties is one of rendition of account which squarely fall within the jurisdiction of civil courts.

9. In the light of above noted facts and circumstances petition in hand is hereby dismissed.

File be consigned to the record room after due completion of legal process.


(MUHAMMAD SHABBIR HUSSAIN)

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