

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

Case No. 13 of 2017
Date of institution 30.06.2017
Date of decision 09.01.2018

Muhammad Iqbal son of Fazal Elahi, caste Arain, Resident of Islam Pura Morr, Malikwal, District Mandi Baha-ud-Din.

Vs.

Rana Shehzad Electronics Malakwal, near Masjid Tauhid, near Bata Shop, Rana Chowk, Malikwal District Mandi Baha-ud-Din.

Present: Claimant with Mr. Liaqat Sher Advocate.
Defendant ex-parte.

Ex-parte evidence recorded. Arguments heard.

ORDER:

This claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as the Act) has been brought by claimant Muhammad Iqbal maintaining therein that a UPS was purchased by him on 10.04.2017 for a consideration of Rs. 14,000/- against proper receipt from defendant Rana Shehzad Electronics who also received Rs. 3,000/- as installation charges; the battery was purchased for Rs. 12,000/-; after few days of installation, UPS became defective; the defendant was called who visited the site on 15.04.2017 and promised to replace defective UPS till 02.05.2017 but thereafter he avoided the same on various pretext and thereafter refused to do the needful; defective UPS also caused damage to the battery; legal notice was issued to defendant that was received by him on 22.05.2017; cause of action accrued when notice was issued before filing of claim; due to failure of the defendant to do the needful, the claimant suffered damage and loss. The claim in nutshell is as under:

1. Price of UPS.	Rs. 14,000/-
2. Installation charges.	Rs. 3,000/-
3. Price of Battery.	Rs. 12,000/-
4. <u>Compensation for mental agony.</u>	<u>Rs. 100,000/-</u>

Total

Rs. 129,000/-

Muhammad Sarfraz Akhtar
DISTRICT & SESSIONS JUDGE
Presiding Officer
District Consumer Court
M.B.Din

9.1.2.18

2. Defendant initially contested the claim by submitting his written statement wherein he denied selling of any UPS to the claimant but conceded receipt of legal notice. However, during the proceedings at the time when the complaint was fixed for claimant's evidence, the defendant got absent and was proceeded against ex-parte on 21.11.2017.

3. Although Rule 14 (5) of the Punjab Consumer Protection Rules, 2009 empowers this Court to decide a claim ex-parte on the basis of documents available on record if defendant fails to appear on the day of hearing, yet, ex-parte evidence of the claimant has been recorded wherein he appeared in the witness box and produced his affidavit Ex.PA, receipt of purchase of UPS Ex.PB and receipt of purchase of Battery Ex.PC.

4. The material brought on record reflects that UPS was purchased on 10.04.2017 that as per stance of claimant became defective in few days and on 15.04.2017 the defendant visited the site and promised to replace defective UPS with new one till 02.05.2017 but did not do the same till 22.05.2017 when he ultimately refused. Legal notice was received by the defendant on 22.05.2017 which fact was conceded by the defendant in his written statement. Instant complaint has been filed on 30.06.2017.

5. Section 28 of the Act ibid provides that a claim can be brought in the Consumer Court within thirty days of the arising of the cause of action. In the instant matter the stance of the claimant is that the UPS became defective within few days of its purchase and on 15.04.2017 the defendant visited the site and promised to replace defective UPS with new one till 02.05.2017 but ultimately refused on 22.05.2017. On the face of it the claim of the claimant before this Court is barred by limitation of eight days if counted from receipt of notice. Section 28(4) empowers the Court to relax this provision subject to certain restrictions. In the instant case the defendant after appearance and submission of written statement opted to absent from the proceedings and has been proceeded

9.1.2018
Muhammad Sarfraz Akhtar
DISTRICT & SESSION JUDGE
Presiding Officer
District Consumer Court
M.B.Din

against ex-parte. In this scenario this appears to be a fit case in which relaxation to this extent can validly be accorded in line with proviso to section 28(4) of the Act *ibid*. Accordingly, the relaxation is accorded to the claimant.

6. Now coming to the merits of the claim, perusal of receipt Ex.PB shows that defendant had sold UPS to claimant on 10.04.2017 against a consideration of Rs. 14000/- and installation charges of Rs. 3,000/-. Complaint has been verified on oath. In addition thereto the claimant also appeared in the witness box as PW.1 and submitted his affidavit Ex.PA. There is no rebuttal on file to the claim of the claimant that defective UPS was sold to him by the defendant. It was the duty of defendant to provide defect free product and even if it became defective in about four/five days then defendant was bound to either replace the same or receive it back and to return price thereof to claimant. Mere denial as is in written statement is not sufficient to avoid liability for defective product within the meanings of section 4 of the Act *ibid*. In addition thereto provision of faulty product and failure to rectify the same also amounts to unfair practice within the meaning of section 21 of the Act *ibid*.

7. In view of the above there is no reason to refuse the claim in this case. At the same time it is relevant to see as to what extent relief can be accorded to claimant. In this case as per Ex.PB UPS was purchased from the defendant; installation charges were also paid to the defendant. But Battery was not purchased from the defendant as is evident from receipt Ex.PC. This Court is mindful of the fact that independent warranty/guarantee is provided by the manufacturers of Batteries. To that extent the claimant should have availed remedy against concerned manufacturer. Again Rs. 100,000/- has been demanded for mental torture 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

Muhammad Sarfraz Akhtar
DISTRICT & SESSION JUDGE
Presiding Officer
District Consumer Court
Mandi Baha-ud-Din

9.1.2.18

product which was sold. Considering the facts of this case the appropriate compensation for claimant is Rs. 10,000/- (ten thousand) besides relief of provision of new UPS or in alternative return of price of product alongwith installation charges.

8. Therefore, in terms of section 31 of the Act *ibid*, I issue an order and direct defendant to take following actions within fifteen days from today:-

- a) To replace UPS with fault free new one of similar configuration. In alternative receive back defective UPS and return the price of Rs.14,000/- alongwith installation charges of Rs.3,000/-; and
- b) To pay Rs. 10,000/- (ten thousand) as compensation to claimant for agony suffered by him due to conduct and behavior of defendant.

9. In case of failure to comply with the order, the defendant 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 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
09.01.2018.

(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: 09.01.2018

(Judge Muhammad Sarfraz Akhtar)

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

Copy of Order Received by:

محمد اقبال

Claimant

محمد اقبال