

**IN THE COURT OF MALIK KHIZAR HAYAT KHAN, DISTRICT &  
SESSIONS JUDGE/PRESIDING OFFICER, DISTRICT  
CONSUMER COURT, SARGODHA.**

Case No. 120/2015  
Date of Institution 26.08.2015  
Date of Decision 08.03.2018

**Muhammad Mubashir Ali son of Muhammad Akbar,**  
Resident of House No.503/B, Zafar Colony, Sargodha.  
(Claimant)

**Versus**

1. Retailer (Mobi Cash) High Class, Kutchery Bazar, Sargodha.
  2. Head Office Mobilink (Mobi Cash), Islamabad.
  3. Regional Office (Mobilink) Mobi Cash, Sargodha.
- (Defendants)

**Faisal Niazi Advocate for the claimant.**  
**Muhammad Sagheer Ahmad Chohan Advocate for defendants.**

**ORDER**  
**08.03.2018.**

The instant main petition was brought by Muhammad Mubashir Ali claimant with the assertion that on 01.07.2015 he hired the services of the local office of the defendants company situated in Kutchery Bazar Sargodha, for the on line transfer of an amount of Rs. 4000/- at an address of Lahore City through MOBI CASH service but the said amount could not reach at the destination till 23.07.2015 when he approached the head office of the Mobilink Company at Islamabad and they assured that the amount would be paid within two hours but with no result. Thereafter, on 24.07.2018 he issued legal notice to the defendants for compensation by payment of the said amount with damages @ Rs. 3 lac to him and finding no response to the same, he instituted the instant complaint on 26.08.2015. After recording/receiving the evidence both the parties, at the stage of final arguments, the learned counsel for the defendants brought an application for the rejection of the claim of the petitioner which has been contested by the claimant.

2. Today, it is fixed for the order in the application for rejection of the claim of the petitioner/claimant as arguments of learned counsels for both the parties have already been heard on the previous date.

3. The instant application<sup>is</sup> mainly on the ground of lack of jurisdiction of this court by virtue of Section 58 of the Pakistan Telecommunication (Re-organization) Act 1996 read with Regulations 11 and 15 of the Pakistan Telecom Consumers Protection Regulations, 2009 as interpreted by the Hon'ble Superior Courts i.e. in an order dated

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02.09.2016 passed by the August Supreme Court of Pakistan in Criminal Petitions No. 408/2016, No.409/2016 and 429/2016, judgment of the Hon'ble Lahore High Court, Lahore reported as PLD 2015 Lahore 204 in case titled as "Pakistan Mobile Communication Ltd; Vs. Judge District Consumer Court Gujranwala & 3 others" and an unreported judgment of the Hon'ble Lahore High Court, Lahore dated 09.06.2014 passed in FAO No. 51 of 2013 in case titled as "Hafiz Nasrullah. Vs. Mobilink Franchise, etc".

4. The application has been opposed by the learned counsel for the petitioner/respondent by arguing that the facts of all the cases decided by Hon'ble Superior Courts are different than the case of the present petitioner. He further contended that in the law referred by the learned counsel for the defendants there is no provision for the proper remedy of the compensation by way of awarding damages to the aggrieved consumer. He further argued that an earlier identical application filed by the defendants was rejected by the court, therefore, in the instant one is not maintainable.

5. I have considered the aforementioned contentions in the light of record and law on the subject.

6. It is crystal clear that by virtue of Article 143 of the Constitution of Islamic Republic of Pakistan, 1973, in case of repugnancy between the federal and a provincial legislation, the federal one shall prevail upon the provincial legislation irrespective of the fact whether it was passed before or after the Act of the provincial assembly. In presence of the aforementioned judgments of the Hon'ble Superior Courts of Pakistan this court has no option but to follow the same. It is hereby clarified that in the present case, there is no line for distinction and no factual ground to differentiate.

7. During the course of hearing and perusal of record, it transpired that even otherwise the institution of the instant case was delayed being instituted beyond the period of 30 days provided by Section 28 of the Punjab Consumer Protection Act, 2005 because according to the averments of the main petition the transaction took place on 01.07.2015, the grievance of the petitioner for the first time was conveyed to the head office of the defendants on 23.07.2015, the legal notice was issued on 24.07.2015 while the case was instituted in this court on 26.08.2015.

8. As a result of above discussions, it is hereby observed that in the light of aforementioned judgments of the Hon'ble Superior Courts of

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
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Pakistan, since this court has no jurisdiction to decide the instant case on merits, therefore, it is ordered to be returned to the claimant/petitioner by way of handing over the instant file to the claimant/petitioner or his learned counsel by retaining the copies of requisite documents as a record of this court and making necessary entries in the relevant register with the acknowledgement.

Announced  
08.03.2018

  
Presiding Officer,  
District Consumer Court,  
Sargodha.

Certified that this order consisted upon 03 pages, which have been dictated, corrected and signed by me.

  
Presiding Officer,  
District Consumer Court,  
Sargodha.

ATTESTED  
  
REGISTRAR  
District Consumer Court  
SARGODHA

28-04-18