

IN THE COURT OF BAKHT FAKHAR BAHZAD,
DISTRICT & SESSIONS JUDGE/JUDGE CONSUMER COURT
GUJRAT

Case No.76-2018

Title. Muhammad Raheel Vs Manager Mob Shopping

Date of Institution	24-10-2017
Date of declsion	31-07-2018
Complainant by	Muhammad Aqeel advocate

ORDER:

1. By filing this claim under section 25 of the Punjab Consumer Protection Act, 2005 (herein after referred "The Act" for brevity) and the Punjab Consumer Protection Rules, 2009 shall be called "The Rules"(for short).

2. Aggrieved by the conduct of the defendant the complainant purported to have filed the instant claim against the defendant urging various relevant facts and legal contentions. The brief facts are as under:-

3. That claimant through his Mobile No.0314-5426399 contacted to the defendant's office No. 0311-1662111 and got booked Mobile LG v10 and paid Rs.16,5000/- as price of Mobile and Rs.300/- for TCS delivery charges at the time of receiving of TCS parcel contained booked mobile; that after receiving the delivery when claimant unboxed and used the Mobile he came to know that it was defective and was not properly working. That claimant telephonically contacted to the defendants and informed them in this regard; that as per terms and conditioned mentioned in the FaceBook advertisement, in case of any defect, Mobile could be replaced within seven days of purchase; that on 17-10-2017 defendants contacted to the claimant and informed him that they have received legal notice which has sent to the Head Office and henceforth the matter will be dealt by the Head Office; that defendants conceded warranty of Mobile and also accept that they could change Mobile but now matter is pending in the Court and will be decided by the

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Court; that due to the conduct and faulty service of the defendant, claimant had to face financial loss and bore mental torture. He served legal notice to the defendant for compensation but of no reply, so feeling disgruntled the instant claim has been filed with the following relief

2.	Damages due to defective and deceptive services	Rs.5,00,000/-
	Total	5,00,000/-

4. The instant complaint was filed on 24-10-2017, in pursuance of notice issued by this court the defendant No.1 Zeshan Afzal, Manager Mob Shopping, PK AL-Latif Centre, L.G 29, Gulberg, Lahore appeared on 28-11-2017 and he was directed to submit the written statement but instead of filing the written statement, the defendant No.1 disconnected himself from the proceedings of the Court and on 09-01-2018, the following order was passed:-

"The instant claim was filed on 24-10-2017 and on same day defendants were summoned through TCS. The copies of the claim were also sent to the defendants and case was adjourned for 06-11-2017. On the said date no one has appeared on behalf of the defendants. Ultimately on 28-11-2017 Sheikh Mansoor Waqar advocate has appeared before this Court on behalf of the defendant No.1 and sought time for submission of written statement and again defendant No. 2 was summoned through TCS. The delivery report of the TCS shows that the notice was served on 08-12-2017 and was received by one Kashif but despite of receiving the notice of this Court defendant No. 2 has not opted to appear before this Court. Therefore, he is proceeded ex parte.

Adverting to the case of defendant No.1, he appeared before this Court and submitted power of attorney of Sheikh Mansoor Advocate and sought time for submission of written statement and case was adjourned on 06-12-2017. On the said date neither defendant No. 1 appeared nor his counsel appeared before this Court nor submitted his written statement. Section 30 (2) (a) of Punjab


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Consumer Protection Act 2005 states which is reproduced as under:

"Forward a copy of such claim to the defendant directing him to file his written statement within a period of fifteen days or such extended period not exceeding fifteen days as may be granted by the Consumer Court;"

As per provision of law the defendant No. 1 was bound to file the written statement within 15 days or such extended period not exceeding 15 days but after perusing all the interim orders passed by this Court I have observed that statutory period for submitting the written statement has been lapsed. Even otherwise defendant has not appeared till today despite repeated calls. Keeping in view the above said situation and conduct of defendant No.1 he is also proceeded ex parte. The claimant is directed to produce his entire ex parte evidence on the next date of hearing. The claim is adjourned for 18.01.2018 for ex parte evidence".

5. *When the defendant No.1 Zeshan Afzal, Manager Mob Shopping, PK AL-Latif Centre, L.G 29, Gulberg, Lahore proceeded ex-parte, he again appeared on 06-03-2018 and submitted application for setting aside ex-parte proceedings which remained pending for several dates but ultimately the same was dismissed on 25-06-2018 due to non-prosecution.*

6. *Before further proceedings and concluding on this aspect I am constrained to observe that the conduct of the defendant remained highly deplorable before the court. He remained engaged in playing hide and seeks with the court. Due to the conduct of the defendant, the proceedings in the instant claim got arrested as if "TIME" has been arrested despite giving so many opportunities to the defendants to appear before the court but the defendants endeavored very hard to master the art of prolonging the litigation and now is the time to check and control the menace of virus of taking adjournment. Such type of conduct can not be encouraged to prevail. This court hoping that all owe of defendant would be over and the disease of adjourning the matter affecting the marrows of litigation would be kept at bay, waited for his appearance and showed reluctance not to proceed ex-parte, notwithstanding the unwarranted indulgence shown, the defendant*

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remained adamant and throughout proceedings thought it wise not to participate in the proceedings. I have narrated all the factual story to conclude that in this case, it can indubitably be stated that the defendant has acted in a manner to cause colossal insult to justice.

7. Let us take a little pause here to proceed further with the matter. As the earlier mentioned that the defendants disconnected himself from the proceedings of court and the court while exercising powers of Rule 14(5) of Punjab Consumer Protection Rules, 2009 proceeded ex-parte against the defendants and the claimant was asked to produce his ex-parte evidence and in pursuance of which claimant himself appeared as PW1 and submitted his affidavit as Ex-P1. copy of the legal notice as Mark-PA, two postal receipts Ex.P3 & P4, six computerized messages record regarding receiving of legal notice & warranty of the claim Mark-PB/1-6, Purchasing order through text message Mark-PC, delivery report of TCS of receiving parcel / mobile Mark-PD/1-3, computerized calling record for replacement of mobile Mark-PE/1-8, whatsApp messages record for replacement of Mobile Mark-PF/1-3, address verification display message Mark-PG and FaceBook pages for replacement / warranty policy of defendant Mark-PH/1-4.

8. The complainant Muhammad Raheel while appearing as PW-1 submitted his affidavit as Ex.P1. He also produced one Muhammad Tahir in his support of contention as PW2 who submitted his affidavit as Ex.P2. in documentary evidence learned counsel for the claimant submitted copy of the legal notice as Mark-PA, two postal receipts Ex.P3 & P4, six computerized messages record regarding receiving of legal notice & warranty of the claim Mark-PB/1-6, Purchasing order through text message Mark-PC, delivery report of TCS of receiving parcel / mobile Mark-PD/1-3, computerized calling record for replacement of mobile Mark-PE/1-8, whatsApp messages record for replacement of Mobile Mark-PF/1-3, address verification display message Mark-PG and FaceBook pages for replacement / warranty policy of defendant Mark-PH/1-4. There is nothing available on the record to rebut the evidence of the complainant as the respondent was proceeded against ex-parte. So, this court has left no option except to accept the claim of complainant.

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So far as the question of mental agony and harassment is concerned, the complainant has made oral assertion which are unrebutable

9. The claimant submitted application seeking permission to get exhibit the mobile which was allowed who tendered in evidence mobile Ex.P5

10. Perusal of claim and other documents shows that defendants are online seller and provides services for Online shopping. The receipts submitted by the claimant shows that Rs.16,500/- as price of Mobile has been received by the defendant. In this backdrop Mob Shopping is a service provider as contemplated under section 2(k) of Punjab Consumer Protection Act, 2005. Muhammad Raheel is a consumer who also falls within the definition of consumer as provided as under:-

(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;

11. Defendants are Online seller and provides services for the Online shopping so under section 27 of the act claimant has absolute right to file the claim in this court because he has made payment of Rs.16,5000/- for purchasing of above mentioned Mobile. Postal receipts annexed with the claim clearly indicate that legal notice was dispatched by the claimant at their address which has even otherwise been admitted by defendant in his telephonic conversation with the claimant. The claimant in clear words was beneficiary of services which was to be provided by the defendants. Therefore, in terms of section 2 (c) of the Act, claimant is a consumer.

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12. Adverting to the definition of Service, which is reproduced as under:-

“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-

- (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;

13. From over all survey of definition of “Consumer” and “Service”, the relationship between the parties as “Consumer” Service provider has been established.

14. After receiving payment from the claimant it was the duty of defendants to give promised Mobile to the claimant instead they provided defective one to the claimant. In pursuance of notices issued by this court, the defendant No.1 appeared and thereafter disconnected himself from the proceedings of the court. Keeping in view their conduct it shall be presumed that they have nothing to say in rebuttal of claim and they have failed to perform their duty and obligation as per commitment. In view of the discussion I have no hesitation to say that the defendants are responsible for providing faulty services which caused monetary damages to the claimant and claimant has to undergo mental agonies.

15. Whatever have been discussed above, in the light of that, this claim is partially accepted, I therefore, in pursuance of section 31 of The Act, issue an order to the defendants No.1 Zeshan Afzal, Manager Mob Shopping, PK AL-Latif Centre, L.G 29, Gulberg, Lahore and defendant No.2 Manager, Mob Shopping,

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P.K, (Mobshopping.pk), Midway Centrum, LG31, Murree Road, Wawalpindi directing them to take following actions within one month from today:-


1. To return actual Cost of Mobile i.e Rs.16,500/-
2. To pay one lac as compensation to the claimant.
3. To pay Rs.25,000/- to the claimant as counsel fee including litigation charges.
4. Mobile Ex.P5 be returned to the defendants if they so demand

16. As per section 34 of Punjab Consumer Protection Act, 2005, order of this court shall be final if no appeal has been preferred within statutory period.

17. As per rule 17 of Punjab Consumer Protection Rules, 2009, Registrar of this court is directed that a copy of this order be communicated to the parties through registered post free of charges.

18. Registrar is further directed that in terms of section 25 of the Rules a copy of this final order be sent to Provincial Consumer Protection Council through e-mail for publication on its official website for information to the public at large. File be consigned to record room after necessary completion.

Announced: 31-07-2018


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Certificate:-

It is certified that this order consists of seven pages. Each page has been dictated, read, corrected and signed by me.

Announced: 31-07-2018


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