

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

Case No.27-2017

**Title.** Muhammad Saleem Vs Mansha Yousaf

Date of institution	06-05-2017
Date of decision	24-04-2018
Complainant by	Syed Imran Hussain Shah

**Judgment:**

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".

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:-

The complainant on 25-09-2016 ink an agreement with the defendant for the construction of his house and paid Rs.40,000/- as token money; that Rs.150/feet was settled between them and to provide material to the defendant was claimant's responsibility; that defendant constructed only structure of the building and did not complete his task; that measurement of structure is 2500 per square feet and half labour as per terms and conditions is Rs. 1,87,500 as only structure of the house has been constructed and finishing has not been done by the defendant; that construction of boundary wall was not included in the main contract and it was separately settled that Rs.70/feet will be paid to the defendant for construction and Plastering the boundary wall and measurement of wall structure completed by the defendant is 1140 feet and half charges for the above mentioned measurement

**(BAKHT FAKHAR BAHZAD)**

District & Sessions Judge /  
Judge District Consumer Court

Gujrat

was Rs.45,600/-; as layer of pluster was not mounted on the wall; that total cost of work done by the defendant was Rs.2,35,100/- and he has received Rs.3,00,000/-; that defendant decisively have received excessive amount Rs.1,46,900/- from the complainant; that on 15-12-2017, defendant suddenly stopped working of house construction due to which claimant's 37 bags of cements which he have already purchased were damaged; that claimant repeatedly asked the defendant to complete the remaining finishing work but he putting the matter on one pretext or other and ultimately refused to do needful; 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

1.	Received excessive amount	Rs.1,46,900/-
2.	Loss due to damage of cement	Rs.18,870/-
3.	Damages for mental torture	5,000,00/-
4.	Counsel fee	Rs.25,000/-
	<b>Total</b>	<b>6,90,770/-</b>

3. The instant complaint was filed on 06-05-2017, in pursuance of notice issued by this court the defendant appeared on 16-05-2017 and he was directed to submit the written statement which he submitted the same on 13-06-2017 and the case was fixed for pretrial settlement and thereafter on six consecutive dates, the defendant has not appeared before this court and ultimately on 14-11-2017 he appeared and his thumb impression was obtained on the margin of order sheet and thereafter he disconnected himself from the proceedings of court and ultimately not giving further motherly treatment to the defendant, he was proceeded ex-parte due to his continuous non-appearance before the court and the case was fixed for recording the ex-parte evidence of the complainant.

4. Before further proceedings and concluding on this aspect I am constrained to observe that the conduct of the defendant remained highly


(BAKHT FAKHAR BAHZAD)

District & Sessions Judge /

Judge District Consumer Court

Gujrat

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 defendant to appear before the court but the defendant 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 diseases 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 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.

  
(BAKHT FAKHAR BAHZAD)  
District & Sessions Judge /  
Judge District Consumer Court  
Gujrat

5. Let us take a little pause here to proceed further with the matter. As the earlier mentioned that the defendant 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 defendant 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. In documentary evidence counsel for the claimant produced (I) copy of legal notice as Mark-PA (ii) postal receipt as Ex-P2 (iii) payment receipt Ex-P3 (iv) copy of agreement for construction as Mark-PB.

6. The complainant Muhammad Saleem while appearing as PW-1 reiterated the same facts as mentioned in the complaint. In documentary evidence he produced (I) copy of legal notice as Mark-PA (ii) postal receipt as Ex-P2 (iii) payment receipt Ex-P3 (iv) copy of agreement for construction as Mark-PB. 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. So far as the question of mental agony and harassment is concerned, the complainant has made oral assertion which are unrebutable

7. Perusal of claim and other documents shows that Mansha Yousaf is a contractor and provides services for the construction of buildings. The receipts submitted by the claimant shows that Rs.3,80,000/- as labour has been received by the defendant. In this backdrop Mansha Yousaf is a service provider as contemplated under section 2(k) of Punjab Consumer Protection Act, 2005. The Muhammad Saleem 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;

8. Defendants is a contractor and provides services for the construction of houses so under section 27 of the act claimant has absolute right to file the claim in this court because he has made an agreement for the construction of his house and had paid Rs. 3,80,000/- for this purpose. Postal receipts annexed with the claim clearly indicate that legal notice was dispatched by the claimant at their addresses. The claimant in clear words was beneficiary of services which was to be provided by the defendant. Therefore, in terms of section 2 (c ) of the Act, claimant is a consumer.

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

(BAKHT FAKHAR BAHZAD)

District & Sessions Judge /

Judge District Consumer Court

Gujrat

**“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;

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

11. After receiving payment from the claimant it was the duty of defendant to give settled services to the claimant and complete the whole work. In pursuance of notices issued by this court, the defendant appeared and thereafter disconnected him from the proceedings of the court. Keeping in view his conduct it shall be presumed that he has nothing to say in rebuttal of claim and he has failed to perform his duty and obligation as per commitment. In view of the discussion I have no hesitation to say that the defendant is responsible for providing faulty services which caused monetary damages to the claimant and has to undergo mental agonies.

12. Whatever have been discussed above, in the light of that, this claim is accepted, I therefore, in pursuance of section 31 issue an order to the defendant directing them to take following actions within one month from today:-

1. To return excessive amount to the claimant i.e Rs.1,46,900/-
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.
13. 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.
14. As per rule 17 of Punjab Consumer Protection Rules, 2009 a copy of this order be communicated to the parties through registered post free of charges.
15. Before parting with this order at this juncture it would be appropriate to reproduce section 25 of Punjab Consumer protection Rules, 2009 which is as under:-  
"After pronouncement of the final order by the Court, the Council shall obtain a copy of the order, publish it on its website and provide easy access of information to the consumers relating to products and services".
16. In pursuance of above stated provision of law, a copy of this final order be sent to Provincial Consumer Protection Council through e-mail for publication on its official website to provide access to information to the public at large. File be consigned to record room after necessary completion.

Announced: 24/4-2018

  
**BAKHT FAKHAR BAHZAD**  
District & Sessions Judge/  
Judge District Consumer Court  
Gujrat.

Certificate:-

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

Announced: 24-04-2018

  
Judge District Consumer Court  
Gujrat.