

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

Case No.	17 of 2017
Date of institution	19.07.2017
Date of decision	17.01.2018

Muhammad Usman son of Mian Abdul Aleem, resident of Mohalla Haideri, near Heelan Chungi, Phalia, District Mandi Baha-ud-Din.

Vs.

Ustad Muhammad Shafique, Proprietor National Hardware and Furnisher House, opposite Islam Welding wali street, near Koolian wali Mosque, Mandi Baha-ul-Din.

Present: Nemo.

Arguments already 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 Usman against defendant Ustad Muhammad Shafique maintaining therein that work for affixation of door, counters and almirahs in the shop "Bismillah Jewelers" was assigned to the defendant; the defendant used substandard material and even did not complete work in the stipulated period and took two months more than that; due to conduct of the defendant goodwill of the claimant adversely effected; legal notice was issued to defendant but the grievance of the claimant was not redressed; an amount of Rs.9,70,000/- has been claimed.

2. The defendant appeared in person on 22.11.2017 but thereafter claimant got absent. After some dates on 09.01.2018 Ch. Zahid Islam Zahid Advocate counsel for the claimant appeared and argued the complaint. An order for personal attendance of the adversaries was passed on the said date. The adversaries did not

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turn up on 11.01.2018 when the hearing was adjourned for today. Even today none turned up.

3. Rule 14 (4) of the Punjab Consumer Protection Rules, 2009 empowers this Court to decide the claim on merits on the basis of documents available on record if claimant fails to appear on the day of hearing. Likewise Rule 14(5) of the Rules ibid empowers this court to decide the claim on merits if defendant fails to appear on the day of hearing.

4. No specific date of assignment of work to the defendant and time period for completion of the same has been mentioned. Further as per copy of legal notice annexed with the complaint reflect that it was sent on 17.05.2017. Instant complaint has been filed on 19.07.2017.

5. Section 28 of the Act ibid governs the situation that for ready reference is being reproduced hereunder:-

"28. Settlement of Claims. (1) A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer or service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the consumer has suffered damage, or cease to contravene the provisions of this Act.

(2) The manufacturer or service provider shall, within fifteen days of the receipt of the notice, reply thereto.

(3) No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section (1) and provides proof that the notice was duly delivered but the manufacturer or service provider has not responded thereto.

(4) A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:

Provided that the Consumer Court, having jurisdiction to hear the claim, may allow a claim to be filed after thirty days within such time as it may allow if it is satisfied that there was sufficient cause for not filing the complaint within the specified period:

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Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of services."

6. Plain reading of above provision clearly indicates that a claim before the Consumer Court can be filed within thirty days of the arising of cause of action. In the instant case no such date is mentioned rather in a vague manner it has been asserted that the defendant took two months more than stipulated period. In this scenario even if the maximum latitude is accorded and date of issuance of legal notice (i.e., 17.05.2017) is considered as date of arising of cause of action, in such an eventuality for all the practical purposes for the sake of arguments ignoring the clause of actual arising of cause of action, the complaint should have been filed till 16.06.2017. The complaint as mentioned supra has been filed on 19.07.2017 i.e., after sixty three days. No doubt that proviso to section 28(4) empowers the Court even after thirty days provided sufficient cause has been shown by the claimant, yet, firstly that power is not unrestricted rather it is clearly mentioned that such extension shall not be allowed beyond a period of sixty day and secondly no such exemption or relaxation has been claimed what to talk of sufficient cause shown by the claimant. As such, the claim is barred as the same has not been brought within period specified in section 28(4) of the Act ibid as reproduced above.

7. In nutshell, the claim being barred by limitation period as provided in section 28(4) of the Act ibid cannot be allowed. The same stands dismissed. Needless to mention that in case remedy under any other law is provided, the claimant may avail the same and in such an eventuality that shall be adjudged on its own merits without being influenced from this order. Copy of the order be provided/sent to the adversaries in line with Rule 17 of the Punjab Consumer Protection Rules, 2009. The Registrar of this Court shall

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transmit copy of this order for the purpose of Rule 25 of the Rules
ibid. Order accordingly. File be consigned.



Announced
17.01.2018.

(Judge Muhammad Sarfraz Akhtar)

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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: 17.01.2018

(Judge Muhammad Sarfraz Akhtar)

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

