

**In The Court Of Syed Maruf Ahmedali Presiding Officer
District & Sessions Judge District Consumer Court
Lahore.**

Muhammad Zafar Ahmed V/S Sheikh Sheraz

Order.

The Petitioner has filed a Claim against the Respondent for damages amounting to Rs.10000/- under the Punjab Consumer Protection Act 2005.

2 Brief facts, according to the Petition are that the Petitioner purchased a Mobile Telephone Set of Nokia Model 6070 on 26.03.2008 for an amount of Rs.3300/- . It is alleged that the Mobile Set worked for only two days and went out of order. The Petitioner visited the shop of the Respondent and requested him to replace the Mobile Set, but the Respondent refused. It is alleged that the Respondent had given him a defective Mobile Set. A Legal Notice was issued to the Respondent on 24.04.2008 through Post. No reply of the Legal Notice was received. Hence this case, In which the Petitioner has prayed that the Mobile Set be got replaced or price of the Mobile Set be refunded along with damages of Rs. 10000/-

3 The Respondents were summoned who contested the claim through their Written Statement. The Petitioner in order to prove his case appeared in the Witness Box as PW-1. On the other hand the Respondent appeared as RW-1 and produced Copy of the Receipt Ex-C/1.

4 It is contended by counsel for the Petitioner that the Respondent has provided a defective Mobile phone Set for a handsome amount of Rs. 3300/- which only worked for two days, despite the fact, that the Respondent has given an under taking that if the Mobile Set

created any problem within 3/4 days it shall be replaced. He has further contended that the Petitioner has proved his case and his Petition be accepted.

5 On the other hand, the counsel for the Respondent has contended that admittedly it was a used Mobile Set and no Warranty or Guarantee is given of a used Mobile Set and defect if any in the Mobile Set could be due to the misuse and mishandling by the Petitioner of which the Respondent is not responsible and has prayed that this Petition be dismissed.

6 After hearing the arguments of both the learned counsel for the Parties and perusing the record. Admittedly the Petitioner has purchased a used Mobile Set from the Respondent on 26.03.2008 for an amount of Rs 3300/- Receipt of the same is Ex-C/1. Terms and condition have not been mentioned on the back side of the Receipt, as stated by the Respondent. According to the evidence on record given by PW-1 Muhammad Zafar Ahmed Petitioner in this case that the Mobile Set went out of order on the very next day and he took the same to the shop of the Respondent who refused to replace the same. Despite the fact that the Respondent had given undertaking that if the Mobile Set created any problem within 3/4 days it should be brought back to him. According to RW-1 Sheikh Sheraz Respondent, had denied that he had under taken to replace the Mobile Set, if it goes out of order. As he had not given any warranty or guarantee of the Mobile Set.

7 After scanning the evidence of both the parties, it has been proved through evidence that the Mobile Set given by the Respondent to the Petitioner was defective and it did not work for more than two days, therefore, the Respondent is liable for the same, as the Petitioner had purchased the same for a handsome amount of Rs 3300/-.Under the Punjab

Consumer Protection Act 2005 there is no such clause that a second hand or used product cannot be replaced or its price can not be refunded, if it is defective.

In view of the afore said reasons this Petition is accepted and the Respondent is directed to refund the price of the Mobile Set amounting to Rs. 3300/- along with costs of Rs. 1000/-, which shall be paid by the Respondent within 10 days from the date of this Order. The Petitioner is directed to hand over the Mobile Set to the Respondent. However the Petitioner has failed to prove the damages as envisaged in the Section 10 of the Act *ibid*.

File be consigned to record room after due completion.

Announced
17.11.2008

Presiding Officer
District Consumer Court
Lahore.

Certificate

Certified that this Order consist of Three (3) pages which have been dictated, read, corrected and signed by me.

Announced
17.11.2008

Presiding Officer
District Consumer Court
Lahore.