

IN THE COURT OF Mr. ABDUL HAFEEZ,
DISTRICT & SESSIONS JUDGE /PRESIDING OFFICER,
DISTRICT CONSUMER COURT,
SIALKOT/NAROWAL.

Case No.149/2012

Date of Institution: 04-09-2012.

Date of Decision:16-1-2013.

Muhammad Abdur Rehman Janjua advocate son of Haji Muhammad Sharif caste Janjua Resident of Civil Line Sialkot City.

(Complainant)

Versus

01. Diamond Radio Near Green café Trunk Bazar Sialkot through Sheikh Nadeem and Sheikh Idress proprietors.

(Respondent)

JUDGEMENT:

1. This Complaint has been filed by the complainant under section 25 of the Punjab Consumer Protection Act, 2005 for the recovery of damages on the ground of contravention of the provisions of said Act by the respondent, in the District Consumer Court Sialkot.

2. Briefly stated facts of the complaint are that respondent is dealing with the business of Electronics and sale of Generators, complainant is consumer an advocate by profession. On 20-05-

2012 he purchased a Gasoline Generator (Jiong dong, 3 Kilo watt power) gas kit fitted in consideration of Rs. 34000/- from respondent, receipt is attached. At the time of sale of the generator respondent ensured the complainant that the said generator would work on petrol as well as gas. The complainant informed the

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respondent about the completion of the running of the consumption of petrol and requested the respondent to make adjustment of the gas kit. The respondent sent his mechanic who adjusted the kit, but the generator stopped working after half an hour. The complainant contacted the respondent several times to resolve the matter but the matter remained unsolved. After a number of complaints the respondent again sent his worker who installed the old gas kit on the generator but the same did not work. The complainant complained the respondent that he had given one year warranty of

the said gas kit but the respondent start to avoid the complainant on one pretext or the other, a period of three months has lapsed the generator is lying in the same unworking condition. The generator was purchased in the month of May to meat the energy crisis and hot summer, but with sorry it is mentioned that the complainant could not get the facility of the generator inspite of spending worth Rs. 34000/- only its purchase therefore, the complainant faced the hot season without electricity. Complainant is senior lawyer therefore to meat his requirement the complainant had no alternative except to purchase a new UPS with two new batteries worth Rs. 42500/-. The complainant has suffered with the financial

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loss and he has also to spent three month in a very hot summer without use of the said generator so has suffered with physical as well as mental agony which is irreparable. Complainant has served

the respondent with legal notice dated 08-08-2012 claiming the price of the generator alongwith the damages but the respondent did not bother to reply the legal notice. The cause of action has arisen in favor of complainant against the respondent on 08-08-2012 when he received the legal notice and did not reply and lastly two days back when respondent totally refused to concede to the legal and genuine demand of the complainant. Respondent may be directed to pay 34000/- as price of the generator and Rs. 10,00,000/- as damages for mental agony and physical torture and Rs. 22000/- as lawyer fee.

3. Conversely respondent filed the written reply took various preliminary objections that complaint does not lie in its present condition. Complainant has no cause of action to file the complaint and complaint is liable to be dismissed. Complainant is barred by its word and conduct to maintain the complaint therefore, complaint is liable to be dismissed. Complainant has not come to the court with clean hand and he has concealed the

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original facts therefore, is not entitled for any relief. The generators are manufactured for running on petrol, gas kit is installed with the consent of the purchaser and shopkeeper is not responsible for it, no warranty is given no warranty is mentioned on the receipt. Complainant is not entitled for any relief complaint may be dismissed. The gas kit mentioned by the complainant was not fitted by the respondent. The respondent sale new generators he did not have any mechanic for fitting the said gas kit, the costs of the gas kit is Rs. 300/ to 400/- in the market and it does not have any warranty. The respondent Sheikh Idress is sole proprietor of diamond Radio, Sheikh Nadeem has separate business and had no concern with this business. On merits, he replied that it is correct that respondent is indulged in the business of sale and purchase of generators. Generator was purchased by him gas kit is fitted with at the consent of the purchaser and separate receipt is issued in this respect complaint may be dismissed.

4. After the submission of reply case was fixed for arguments. On 18-12-2012 none appeared on behalf of the respondent, at this respondent was proceeded against ex-parte and case was fixed for ex-parte argument of the complainant. On 04-01-2012 ex-parte arguments of the complainant heard and case was fixed for ex-

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parte evidence of the complainant for 08-01-2013. On 08-01-2013 ex-parte evidence of the complainant was recorded and case was fixed for 10-01-2013 than for 16-01-2013.

5. Ex-parte arguments heard and record perused.

6. In order to prove his case complainant appeared as AW.1. He submitted his statement on affidavit Exh-A1 and identify his signature Exh-A1/1 and Exh-A1/2 on it. He produced the original receipt regarding purchase of generator Exh-A2, visiting card of the respondent as Exh- A3, copy of legal notice Exh-A4 which bears his signatures at Exh-A4/1 and of his counsel at Exh-A4/2,

postal receipt regarding delivery of the notice Exh-A5, warranty card Exh-A6 and certificate of counsel fee as Exh-A7. Zubair Afzal was examined as AW.2 he produced his statement Exh-A8 and identified his signature on it at Exh-A8/1 and Exh-A8/2. Learned counsel for the complainant closed the evidence.

7. The statement of the complainant on affidavit Exh-AW/1 shows that on 20-05-2012 complainant purchased the generator from the respondent in consideration of Rs. 34000/-. At the time of sale of generator respondent ensured and granted warranty that generator will work on gas as well as petrol. Upon the direction of the respondent complainant run the generator for 20/22 hours on

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the petrol, after completion of running respondent was told and asked for adjustment of the gas kit. Respondent send his mechanic for adjustment who adjusted the gas kit but generator stopped after half an hour. Complainant made complaint he again send his

mechanic he again adjusted the generator but generator did not work thereafter complainant many time asked the respondent to correct the generator but he delayed the matter on one pretext or the other and lastly he refused to do so. Due to the over hot weather and load shedding complainant spent huge amount for UPS and sent legal notice on 08-08-2012 but respondent did not submit any reply. Complainant is indulged in the business of the advocacy from previous 24 years due to said illegal act of the respondent complainant suffered sever mental and physical agony and he has also suffered financial loss for that complainant demands of Rs. 34000/- price of the generator, Rs. 10,00,000/- as damages and Rs. 22000/- as counsel fee. Zubair afzal was examined as AW.2 he also supported the complainant version.

8. Since none has appeared on behalf of the respondent after submission of written reply there is no evidence in rebuttal. The statement of the complainant and his witness is on affidavits, wherein it is stated that complainant purchased the generator in

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consideration of Rs. 34000/-. The warranty was given to him that generator will work on the gas and petrol as well as but generator did not run on the gas nor its adjustment could be made by the mechanic. Complainant delivered the legal notice to the respondent but he did not submit any written reply to the legal notice. He appeared before the court and submitted the written reply to the complaint but thereafter he disappeared from the court and was proceeded against ex-parte, therefore in view of the above said it is held that complainant has successfully proved that the generator was defective therefore the complaint is hereby accepted.

9. The above said evidence shows that the complainant has demanded Rs. 34000/- towards the price of the generator the said amount is not disputed one, moreover, the complainant has also demanded Rs. 10,00,000/- as damages towards mental and physical torture and financial loss he did not bring on record any evidence showing that he is a huge tax payer he suffered mental

physical torture and he remained in hospital and spent huge amount upon his treatment and he financial loss to the extent of Rs. 10,00,000/- therefore said claim of the complainant is hereby denied. He has also demanded Rs. 22000/- towards the counsel fee, in order to prove the said fact he has produced the receipt of

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payment of counsel fee as Exh-A7 therefore in view of the above said, said claim of Rs. 22000/- of the complainant is hereby accepted. Moreover, the complainant has to deliver the legal notice to the respondent for redressal of his grievance he instituted the instant complaint he appeared before the court for many time during this process definitely he has suffered a little financial loss mental torture and agony therefore, in view of the above said, in this respect he is also awarded Rs. 25000/- as compensation.

10. The upshot of the above said is that respondent is directed to receive the sold generator from the complainant and pay the

price of the generator Rs. 34000/- compensation money Rs. 25000/- and counsel fee expenses Rs. 22000/- to the complainant within 30 days of the passing of this judgment otherwise he shall be proceeded under section 32 of the Punjab Consumer Protection Act, 2005. Copy of this judgment be given to the parties free of costs. File be consigned to the record room after it's due completion.

Announced:
[16-1-2013.](#)

Presiding Officer,
District Consumer Court
Sialkot/Narowal.

CERTIFICATE

Certified that this order contains 8 pages and each of pages is dictated, corrected and signed by me.

Announced:
[16-1-2013.](#)

Presiding Officer,
District Consumer Court
Sialkot/Narowal.