

**IN THE COURT OF KHALID MAHMOOD MALIK, DISTRICT &
SESSIONS JUDGE/PRESIDING OFFICER DISTRICT CONSUMER
COURT SARGODHA.**

**Case No. 04/2008
Date of Institution 28.05.2008
Date of decision 26.08.2008**

Muhammad Akhtar,
New KotFarid, Sargodha
(Complainant)

Versus

Muhammad Tahir
Manager, Singer Pakistan, Ltd.,
(Respondent)

J U D G M E N T
26.08.2008

A claim for recovery of Generator and damages amounting to Rs, 30000/- has been filed by the petitioner against the respondent under the Punjab Consumer Protection Act, 2005. The main allegation against the respondent in petition is that respondent did not deliver the Generator to the petitioner as per sale package and brochure published by respondent.

2 The claim of the petitioner in brief is that on 09.04.2008 petitioner went to the Showroom namely "Singer Pakistan Ltd." Of respondent for purchasing of Generator through brochure; thereafter petitioner had intended to purchase Generator of 2-KV and as per respondent's demand petitioner had deposited advance amount Rs, 5000/- vide receipt attached with petition. As per promise petitioner went to showroom and respondent told him that "Generator is not available in showroom" then he approached to Area Manager of the company who said that after two or three days respondent will provide Generator from other showroom. After two or three days petitioner again informed by the respondent that Generator was booked from Karachi and Generator will be delivered to the petitioner; Respondent linger the matter one another pretext, therefore, petitioner served a legal notice on 22.05.2008 and also went at the

showroom but respondent told him that contract has become void; petitioner prayed for recovery of Generator along with damages amounting to Rs, 30000/-.

3. Respondent has filed written reply of petition and denied the version of the petitioner. At the very outset learned counsel for the respondent raised an objection that matter in hand does not come within purview of the learned Consumer Court; as the respondent has not produced any products or provided any services to the petitioner; the petitioner has intended to purchase Generator on his own choice which was not available at the time of sale, and subsequently the product are not manufacturer by the company; The petitioner has only paid Rs, 5000/- as advance amount if petitioner aggrieved he can avail remedy before ordinary courts; The petitioner is not entitled any damages U/S 10 and 15 of the Punjab Consumer Protection Act, 2005 as he has not suffered any damages. The petition is not maintainable and liable to be dismissed; On the other hand counsel of the petitioner pleaded that admittedly petitioner has paid Rs, 5000/- as advance to the respondent for purchase of Generator in question. As per sale package respondent did not deliver the same to the petitioner; the claim filed by the petitioner comes within the jurisdiction of the consumer court, thus the petition is maintainable.

4. Arguments heard. Under the Punjab Consumer Protection Act, 2005 provisions of product or services are main ingredients to bring the matter before the Consumer Court. It appears from the record that petitioner has paid only Rs, 5000/- as advance money. Petition is silent about total price of generator, details of sale package and provisions of services by the respondent to the petitioner. According to the petitioner respondent has not fulfilled terms and conditions of sale package. As for question of damages is concerned it is necessary to reproduce section-10 and 15 of the Punjab Consumer Protection Act, 2005:-

(10) Restriction on grant of damages. Where the consumer has not suffered any damage from the product except the loss of utility, the manufacturer shall not be liable for any damages except a return of the consideration or a part thereof and the costs.

(15) Restriction on grant of damages. Where the consumer has not suffered any damages from the provision of service except lack

of benefit, the service provider shall not be liable for any damages except a return of the consideration or a part thereof and the costs.

5. *In case in hand the petitioner has not suffered any damages from the products and provision of services because neither the product i.e. Generator nor any services thereof were provided to the claimant as stated above which are the basic ingredients to bring the case within the purview of Consumer Court; the basic elements are lacking in the case of complainant is maximum case of breach of promise/contract with regard to sale of Generator; The remedy in my view available to the petitioner is to approach in ordinary courts under the relevant law if so advised.*

6. *In the above circumstances, the petition is not maintainable and is hereby dismissed. File be consigned after due completion.*

Announced
26.08.2008

Sd/-
(Khalid Mahmood Malik)
Presiding officer
District Consumer court,
Sargodha