

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

*CASE NO. 29-2016*

*DATE OF INSTITUTION:- 18-04-2016.*

*DATE OF DECISION:- 19-04-2017.*

***Titled As:-***

*Muhammad Arif S / O Lala Khan, R/O Jandiyala Tehsil Kharian , District  
Gujrat. (Claimant)*

***Vs***

- 1. Faisal Bank Limited Trade center, 11 / 13 Chandi Ghar Road,  
District Gujrat.*
- 2. Zonal Office Faisal Bank, District Gujrat.*
- 3. Manager Faisal Bank Limited, G. T Road, Kharian, District Gujrat.  
(Defendants)*

*CASE NO. 30-2016*

*DATE OF INSTITUTION:- 18-04-2016.*

*DATE OF DECISION:- 19-04-2017.*

***Titled As:-***

*Mst. Khalida Bivi, w/o Syed Farhat Abbas, R/O Shekha Tahir, Tehsil  
Khariyan, Dist. Gujrat. (Claimant)*

***Vs***

- 4. Faisal Bank Limited Trade center, 11 / 13 Chandi Ghar Road,  
District Gujrat.*
- 5. Zonal Office Faisal Bank, District Gujrat.*
- 6. Manager Faisal Bank Limited, G. T Road, Kharian, District Gujrat.  
(Defendants)*

**Present:-** *Muhammad Arif & Mst. Khalida Bivi, claimants along-with their counsel Raja Waheed Asad advocate.*  
*Sheikh Khalid Aslam advocate, counsel for the defendants.*

**COMPLAINT/CLAIM FOR RECOVERY RS.40,00,000/-**

***Judgment:***

*By way of this single judgment, common question of law of both claims about jurisdiction of this Court is being decided. In this Judgment the defendant Faisal Bbank shall be called as petitioner hearing after and Mst. khalida and Muhmmad Arif shall be called as respondent.*

2. *There is no need to narrate the detailed facts of both the claims filed in this Court under section 25 of the Consumer Protection Act 2005 (hear after referred to as “Act” for brevity ). Shorn of the unnecessary details, claimant Mst. Khalida has filed the claim against Faisal bank for recovery of damages of worth 46,00000/ for providing the defective services alleging that she obtained of Vehicle number LEE 087616 vide reference Loan Number 514128 and all the installments were paid to the bank along-with mark up. She further alleged that the original file of the vehicle was not returned to her. She prayed that damages be awarded to her above mentioned.*
3. *In the second claim filed u/s 25 of the Act by Muhamamd Arif against the Faisal Bank similar allegation were leveled by the claimant.*
4. *In this regard in both the claims defendants appeared and filed their written statements while taking the preliminary*

*objection with regard to the jurisdiction of this Court.*

5. *Another separate applications under order 7 rule 11 of CPC has also been filed by the defendant with the prayer that this Court lacks of jurisdiction to entertain the claims against the bank therefore both the claims be dismissed.*
6. *In both the applications written replies were submitted by both the claimants.*
7. *The first question arises in this case is that whether the application filed under order 7 rule 11 of CPC is maintainable before this Court? And weather CPC is applicable on the proceedings before the Consumer Court? The learned counsel for the petitioner was asked to advance his arguments on this legal aspects but he remained failed to give their able assistance on this legal aspect rather he remained engaged in fishing expedition and pettifogging. Sensing the situation I have myself made research form the internet and from the web site [www.lawyer sclubindia.com/Moblile/forum / detail asp](http://www.lawyer.sclubindia.com/Moblile/forum/detail.asp)? In order to above plumb the law to answer this question, I have extracted some para graphs which are being reproduced as under:*

***Some of the retired judges who preside over consumer fora try to bring in technicalities which they have practiced all their lives in the civil courts, and thereby frustrate the consumer movement.***

*Here are some judgments which will illustrate how consumer fora should follow simple procedure, merely observing the principle of natural justice, devoid of all technicalities.*

#### **Case study 1:**

*In the case of SP Aggarwal Vs. The Sanjay Gandhi Post Graduate Institute of Medical Sciences, Luck now (FA No.778 of*

*2005 decided on March 31, 2010), the National Commission was required*

*to decide whether the proceedings under the CP Act required a detailed affidavit to be filed in accordance with the provisions of Civil Procedure Code (CPC), or a short affidavit would suffice.*

*Aggarwal had filed a complaint before UP State Commission alleging medical negligence. The state commission dismissed the complaint because the affidavit filed by complainant was very short and not in accordance with provisions contained in Order XIX of the CPC. In appeal, the National Commission observed that the provisions of Order XIX of the CPC cannot be strictly applied to the proceedings before the consumer fora. It held that the State Commission had taken a hyper-technical view in rejecting the affidavit as it had not been prepared in accordance with the provisions of the CPC and the annexure filed along-with the affidavits had not been dealt with in detail as required under the CPC. The National Commission held that the affidavit and the documents filed by the complainant were entitled to due consideration on the basis of the intrinsic value of the documents filed.*

*After consideration of the evidence, the National Commission held that the complainant had established medical negligence and for this he was awarded a compensation of Rs.1 Lakh.*

### **Case study 2:**

*In the case of Malay Kumar Ganguly v/s Dr. Sukumar Mukherjee & Ors [III(2009) CPJ 17 (SC)], the Supreme Court observed that even though the proceedings under the CP Act are judicial proceedings, they are not Civil Courts. Hence, disputes have to be tried in a summary manner, following the principles of natural justice, and the provisions of the Indian Evidence Act are not applicable to the consumer fora.*

*conclude this legal aspect that Code of Civil procedure 1908 (Act XX of 1908) is not applicable on the proceedings before this Court except in cases provided in section 30 sub section (3) (A to E), therefore the application filed under order 7 rule 11 of CPC is not maintainable before this Court. As the petitioners have raised in their written statements the preliminary objection with regard to maintainability of the claims therefore I am going to decide that objection on its own merits. The learned counsel for the petitioner has advanced the arguments that this Court has no jurisdiction to entertain the claim against the bank. In support of arguments he has produced the judgment titled Askari Bank LTD and others ....Appellants Vsrsus Irfan Ahmad Niazi and others..... Respondents. PLD 2016 Lahore Page 168 and 2016 CLD 1546 and prayed for dismissal of the both claims.*

9. *On the other hand the learned counsel for respondent has opposed the arguments of the counsel for petitioners and has maintained that this Court has jurisdiction to entertain the claim in sport of his arguments he has relied on the case tilled Allied Bank LTD, Faisalabad Thorough attorneys of the Bank ..... Appellant PLD 2013 Lahore 454*

10. *I have heard the revival arguments of both the sides anxiously, gone through the relevant law and I have straight away observed that the matter is between a customer of the Bank with the Bank which is a financial institution. Before concluding this aspect, it would be appropriate to place on the record provisions 7 (4) of the Financial Institutions (Recovery of Finances Ordinance, 2001) which reads as under:*

*“7 (4) subject to subsection (5) no Court other than a banking Court shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of Banking Court extends this Ordinance including a decision as to the existence or otherwise of a*

*fixance and the execution of a decree passed by a Banking Court”. Whereas Consumer Court has no unfettered powers rather there are certain restrictions as mentioned in section 3 of the Act which is*

*reproduced as under:*

***“Act not in derogation of any other law.– The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”***

11. *Before concluding the point raised by the counsel for the petitioner, I cannot help observing that Financial Institutions (Recovery of Finances Ordinance, 2001) is a Federal statute while PCP Act 2005 is provincial statute. The article 143 of the Constitution of Republic of Pakistan 1973 provides precedence the Federal statute over the Provincial statute. Reliance is placed on the case reported in **PLD 2016 Lahore** Page 168 it has been held.....*

***“(a) Punjab Consumer Protection Act (II of 2005)--***

*----Ss. 28, 27, 25 & 3----Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001), S.7(4)---Constitution of Pakistan, Art.143---Banker and customer---Claim by consumer, dismissal of---Jurisdiction of Consumer Court---Settlement of claim, limitation for---Powers of Banking Court---Subsequent notices issued to Bank for settlement of claim not to affect on prescribed limitation---Punjab Consumer Protection Act, 2005 not in derogation of any other law---Inconsistency between Federal and Provincial Law---Effect---Complainant, while getting activation of his new credit card, was informed by the Bank the transactions having been made through his old credit card, which the complainant denied on ground that he had lost the old card and those transactions had not been made by him---Consumer Court allowed the claim by restraining the Bank to recover amount of the disputed transactions---Validity---Complainant had requested the Bank for blockade of his credit card after the card had*

*already been used for alleged unauthorized transactions---Bank could be held responsible for the unauthorized use of the card only after the Bank had been told about misplacing of the same---Bank could neither stop the transactions nor be held responsible for the same, as*

*there was no intimation to the Bank about loss of the card---Matter in question was between the Bank, which was financial institution, and its customer, which could only be taken up and decided by Banking Court, as provided under S.7(4) of Financial Institutions (Recovery of Finances) Ordinance, 2001---Consumer Court did not have unfettered powers, and certain restrictions existed as embedded in S. 3 of Punjab Consumer Protection Act, 2005---Consumer Court had no jurisdiction to deal with the matter, and had transgressed its powers and erred in law while assuming jurisdiction in the present matter---Financial Institutions (Recovery of Finances) Ordinance, 2001, being Federal statute, had precedence over Punjab Consumer Protection Act, 2005, as provided under Art. 143 of the Constitution---Claim in question had been filed with delay of about one year after cause of action had arisen on pretext that complainant used to issue notices or letter to the Bank in that regard---Mere issuance of subsequent notices after specific denial by the Bank in response to the first notice did not extend period of limitation---Complainant had only thirty days to file his grievance petition in terms of S.28 of Punjab Consumer Protection Act, 2005; whereas, Consumer Court might allow extension of time for filing the same, which had not been done, in the present case---Complaint, being barred by time, should have been dismissed---High Court, setting aside impugned order, dismissed the complaint---Appeal against order was allowed.”*

12. *In the case of standard Chartered Bank (Pakistan) limited through manager ....Appellant versus Shafqat Ullah Tahir ... Respondent. 2016 CLD 1546 it has been held ....*

***“Punjab Consumer Protection Act (II of 2005)---***

*----Ss. 33, 27, 25, 13 & 3---Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001), Ss. 7 (4) & 2(a)---Constitution of Pakistan, Art.*

*143---Consumer complaint---Liability for defective services---Jurisdiction of Consumer Court regarding matter between financial*

*institutions and their customers---Scope---Respondents filed application for rejection of the complaint on the ground that the*

*Consumer Court had no jurisdiction to try the complaint as the matter was between the financial institution and its customer, which was dismissed by the Consumer Court---Respondent, later on, filed application for revisiting said order of dismissal, which was also dismissed---Petitioner contended that impugned order being interlocutory order present appeal was not competent---Validity---Impugned orders to the extent of the applications were final and not interlocutory orders---Matters in hand were between Bank and customers---Bank fell within the definition of 'financial institutions'---Matters pertaining to the financial institutions with their customers could only be taken up and decided by the Banking Court as provided under S. 7(4) of Financial Institutions (Recovery of Finances) Ordinance, 2001---Consumer Court had no unfettered powers and certain restrictions existed in S. 3 of the Punjab Consumer Protection Act, 2005, which provided that the Act would be in addition to, and not in derogation of, the provisions of any other law---Consumer Court, therefore, had transgressed its powers and erred in law while assuming jurisdiction in the matter in hand and entertaining the complaint--- Financial Institutions (Recovery of Finances) Ordinances, 2001, in terms of Art. 143 of the Constitution, being a Federal statute, had precedence over the Consumer Protection Act, 2005---High Court, setting aside the impugned orders, dismissed the complaint---Appeal was allowed in circumstances.”*



*also after seeking the guidance from the water mark esteemed judgments referred above I am constrained to hold that this Court lacks jurisdiction to entertain both the claims which are hereby returned to both the claimants Mst. khalida and Muhammad Arif to be presented before the Court of competent jurisdiction if so advised.*

*Announced: 19-04-2017*

**(BAKHT FAKHAR BAHZAD)**  
D & SJ/ Presiding Officer  
District Consumer Court Gujrat

*Certificate:-*

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

*Announced: 19-04-2017*

**(BAKHT FAKHAR BAHZAD)**  
D & SJ/ Presiding Officer  
District Consumer Court Gujrat