

IN THE COURT OF MUSHTAQ AHMAD TARAR

DISTRICT & SESSIONS JUDGE/PRESIDING OFFICER DISTRICT CONSUMER COURT
GUJRAT

NISAR-U-DIN SAJID S/O Abdul Hameed, R/O House No. 60, Muragzaar Colony, Distt. Gujrat
(Complainant)

Vs

COL. (R) ILLYAS, R/O Altabeeb Travels International, Zahor Elahi Statdium, Distt. Gujrat.
(Respondent)

CLAIM FOR THE RECOVERY OF RS. 5,000,000/- AS DAMAGES

Order:

1. The complainant Nisar-u-Din Sajid has filed this claim for the recovery of Rs. 5,000,000/- against the respondent Col. (R) Ilyas alleging faulty services of respondent. The complainant asserted in the complaint that on 29-06-2010 he went to the travel agency of the respondent and got booking of Umrah package for him, his wife and his daughter @ Rs. 28,000/- per head with the respondent; that the respondent gave assurance to him that the visas will be issued till 3rd week of July 2010 and asked the complainant to arrange tickets; that on demand of respondent, he paid Rs. 25,000/- as advance to the respondent through cheque no. A4454394 dated 29-06-2010; that on 19-07-2010 he went to the respondent for getting visas whereupon respondent replied that his quota has been finished and asked the complainant to approach anyother agency; that he told the respondent that they have obtained non-refundable tickets for 09-08-2010 @ Rs. 72,000/- per head and the complainant will suffer huge loss due to conduct of respondent but respondent showed his inability for visas and returned the amount of Rs.

25,000/- through cheque dated 19-07-2010 along-with copies of passports, national identity cards and photographs; that he requested the respondent for issuance of visas but respondent flatly refused; that thereafter he approached travel agency at Islamabad and obtained the urgent visa package @ Rs. 64,000/- per head; that due to the faulty services of respondent the complainant, his wife and his daughter suffered severe mental torture and the complainant was made compelled to pay excess amount of Rs. 36,000/- per head for Umrah package; that legal notice was sent to respondent but he did not reply.

2. The respondent contested the case by filling written reply wherein he took six preliminary objections about the maintainability of complaint by contending that the claim is time barred; that only processing of visas was his liability and he was not liable for issuance of visas. On merits he controverted the contents of complaint except the receipt of legal notice and prayed for dismissal of complaint.

3. In evidence the complainant himself appeared as PW1 and he produced M. Tanveer Ahmed as PW2, Anser Javed as PW3. In documents the complainant produced Ex.PA to Ex.PB and the photocopy of legal notice as Mark A. In rebuttal respondent appeared as RW1 and he produced Abdul Haq as RW2.

4. I have heard the final arguments of learned counsel for parties. The learned counsel for complainant argued that after sending the legal notice the complainant along-with his family members went for performing Umrah on 19-08-2010; that on return from Saudi Arabia after performing Umrah the complainant filed the present complaint which is within time; that the respondent provided defective and faulty services to the complainant party and the complainant is entitled for the recovery of excessive amount paid by him for urgent visas and for the recovery of damages on account of mental torture suffered by the complainant, his wife and his daughter.

5. On the other side learned counsel for respondent argued that the claim is barred under the provisions of section 28 (4) of the Punjab Consumer Protection Act 2005; that the respondent processed for issuance of visas package for the complainant and other family members, diligently and honestly but visas could not be issued due to expiry /finishing of quota of respondent; that the respondent has returned the earnest amount Rs. 25,000/-; that the complainant alongwith others performed Umrah in time and in this way the complainant party has not suffered any loss or damages in the matter; that complainant is not entitled to recover any loss and damages from respondent.

6. In the light of arguments I have perused the record and the evidence of parties. It is the case of the complainant in the complaint and in evidence that on 29-06-2011 he approached the respondent for Umrah visa package for him, his wife and his daughter and Rs. 28,000/- per head was settled. It is also the case of complainant in complaint as well as in evidence that he paid Rs. 25,000/- as advance through cheque no. A4454394 dated 29-06-2010 and the respondent gave assurance for issuance of Umrah visas till 3rd week of July 2010. He stated in his affidavit Ex. PA that on 19-07-2010 he went to respondent for getting visas but the respondent replied that the quota of respondent has been finished and asked the complainant to approach anyother travel agency. He further deposed that he informed the respondent about his flight for 19-08-2010 and non-refundable air tickets purchased for Rs. 72,000/- per head and requested to get issued visas but respondent refused. PW2 M. Tanveer Ahmed and PW3 Ansar Javed also supported the version of complainant. The respondent as RW1 in his affidavit Ex.P1 narrated that he returned the amount of Rs. 25,000/- to the complainant and that he did not make any fault in his service. He further narrated that he tried his best for issuance of visas but the same couldn't be issued due to finishing of his quota. He further narrated that the complainant arranged the tickets at his own without any assurance of respondent. He further narrated that since 29-06-2010 till 19-07-2010

complainant remained in contact with him for progress of visas. During cross-examination respondent admitted that on 29-06-2010 at the time of booking of package he gave three weeks time for visas to the complainant. He admitted correct that on 19-07-2010 he returned the passports, other papers and cheque of Rs. 25,000/- to the complainant. He stated that the complainant came to his office on 5 or 6 occasions for Umrah packages. RW2 Abdul Haq witness of respondent during cross-examination stated that the respondent gave 2 or 3 weeks time for visas to the complainant on 29-06-2010 at the time of booking package for three persons by the complainant.

7. From the pleadings and the evidence of the parties available on record it is established that on 29-06-2010 the complainant got booking for Umrah visa package for him, his wife and his daughter with the respondent and paid Rs.25,000/- in advance and the respondent gave commitment to the complainant for issuance of visas within three weeks i.e. till 3rd week of July 2010. It is also in the evidence of the parties that on 19-07-2010 when the complainant approached the respondent for visas of Umrah package the respondent returned the advance amount along with the papers while showing inability for getting of visas on the pretext of finishing of his quota. It is established from the pleading and the evidence of parties that the complainant availed the services of respondent for Umrah package visas but the respondent remained failed to fulfill his commitment for getting visas for the complainant within stipulated time. It is the case of respondent that his quota was finished and due to that reason he could not get issued the visas. It was upon the respondent to prove that his quota was finished. But the respondent has not produced any oral or documentary evidence to substantiate that which was his quota sanctioned by the embassy and on which date his quota was finished. In cross-examination he admitted that on 29-06-2010, when complainant came to his office visas were being issued. The mere verbal assertion of the respondent that his quota was finished doesn't appeal to any prudent mind.

8. In view of the above observations it is proved that the respondent provided defective services to the complainant and due to defective services of respondent the complainant, his wife and his daughter were bound to suffer mental torture and agony and they were compelled to arrange the visa package through another agency after refusal of respondent on 19-07-2010.

9. The complainant in the complaint and in evidence asserted that he purchased the urgent package at excessive rate of Rs. 64,000/- per head from Islamabad but he has not produced any document to substantiate this fact that he purchased the visa on excessive rate of Rs. 64,000/-. Likewise there is nothing in the evidence of complainant that he obtained the visa from Islamabad for 14 days or for longer period. Thereafter the complainant is not entitled for the recovery of alleged excessive amount if any spent for urgent package.

10. The complainant has claimed Rs. 5,000,000/- as damages on account of alleged mental torture and agony which is an imaginary figure and no quality evidence or any medical certificate to show the alleged severe mental torture to the complainant and his family members has been brought on record by the complainant. Hence the complainant has not succeeded to make out his case for the recovery of such huge amount as damages. However keeping in view the circumstances of case and the mental torture and sufferings/agonies faced by the complainant, his wife and his daughter due to the faulty services of the respondent, the complainant is hereby entitled to recover the amount of Rs. 30,000/- as damages i.e. (Rs. 10,000/- for complainant, Rs. 10,000/- for his wife and Rs. 10,000/- for his daughter) from the respondent. In addition to that the complainant is also entitled to recover Rs.5,000/- as litigation expenses from respondent.

11. So far as the objection of learned counsel for respondent that the claim of complainant is barred by time under section 28(4) of the Punjab Consumer Protection Act 2005 is concerned, the first

proviso of said section provides 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. This section further provides 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. In this case according to Ex. PB the legal notice was sent to respondent by complainant on 04-08-2010 and according to Chief Postmaster GPO certificate Ex. PC the said notice was delivered to the respondent on 05-08-2010. The respondent has admitted the receipt of legal notice. After sending of legal notice the complainant had to wait for 15 days till 20-08-2010 to file the complaint before Consumer Court. It is in the evidence of complainant that he went to perform Umrah on 19-08-2010. The present case has been filed by the complainant on 29-09-2010 after performance of Umrah by the complainant and his wife and daughter. Hence the case of complainant falls under 2nd proviso of Section 28(4) of Act *ibid* and the case of the complainant is well within time.

12. In view of above discussion and observations the complaint is partially accepted and the complaint is hereby entitled to recover the amount of Rs.30,000/- as damages i.e. (Rs. 10,000/- for complainant, Rs. 10,000/- for his wife and Rs. 10,000/- for his daughter). The complainant is also entitled for Rs. 5,000/- as litigation expenses from respondent. File be consigned to record room.

Announced: 06-06-2011.

(MUSHTAQ AHMED TARAR)
D & SJ/ Presiding Officer
District Consumer Court Gujrat

Certificate:-

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

Announced: 06-06-2011.

(MUSHTAQ AHMED TARAR)
D & SJ/ Presiding Officer
District Consumer Court Gujrat