

IN THE COURT OF BAKHT FAKHAR BAHZAD,
DISTRICT & SESSIONS JUDGE/JUDGE CONSUMER COURT
GUJRAT

CASE NO. 78-2016
 Date of institution: 03-10-2016
 Date of decision: 25-04-2017

Naeem Tariq S/O khadam Hussain, Caste Jutt, R/O Choopala, Teh & Distt Gujrat.

Claimant

Vs

1. *Iftikhar Ahmad Dhillun, Chief Executive Rawaj Hotel & Marriage Hall Jalalpur Jattan, Teh & Distt Gujrat.*
2. *Manager Rawaj Hotel & Marriage Hall Jalalpur Jattan, Teh & Distt Gujrat.*

(Defendant)

Present: Mohsin Cheema Advocate counsel for the claimant.

Defendants ex-parte

COMPLAINT/CLAIM UNDER SECTION 25 R/W Ses30 OF PUNJAB CONSUMER PROTECTION ACT,2005

Judgment:

1. *claimant has triggered the machinery of law into motion by filing the instant claim under section 25 of Punjab Consumer Protection Act, 2005 (herein after referred to as "Act" for brevity) against the defendant.*
2. *Filtering the necessary detail of the facts which are necessitous to be stated for deciding this claim are that claimant got booked Hotel/ Marriage Hall on 20-08-2016 to arrange engagement function which was to be performed on 03-09-2016 and in this regard he paid Rs.5,000/- as token of advance and the menu was settled Rs.450/- per head of Chicken Korma, Chicken Biryani, fresh Salad, Rita, Bottle, Roghni Nan and Ferni. Further it was agreed between the parties that Rs.125/- shall be extra charged if dish of white mutton be added. The claimant alleged*

that the defendants provided defective services and at the end of function instead of said settled rates they charged extra Rs.350/- per head and also misbehaved with him and due their conduct he has to feel insult before the guests. Feeling annoyed this situation claimant served legal notice to the respondent for providing defective service but no avail.

3. So, being perplexed, disheveled, distressed and disgruntled from the conduct of the defendant the instant complaint/claim have been filed, seeking the following relief. The details have been mentioned in pare no 6 which is being reproduced as under:-

- i. Damages for physical and mental torture Rs.10,00,000/-
- ii. Counsel fee Rs.50,000/-
- iii. Excessive received amount Rs.36,300/-

4. The defendants appeared before the court and submitted the written statement on 21-11-2016 and the different dates were fixed for pretrial settlement resultantly the defendants disconnected themselves from the proceedings of the court and on 11-04-17 they were proceeded ex-parte and the claimant was directed to produce his ex-parte evidence. while appearing in witness box Naeem Tariq appeared as PW 1 and submitted his affidavit as Ex-P1, Muhammad Rizwan stepped in the dock as PW 2 and submitted his affidavit a Ex-P2, the counsel for the complainant tendered the following documentary evidence

(i) Copy of legal notice as Mark-A, (ii) receipt of legal notice Ex.P3, (iii) acknowledgment due card Ex.P4, (iv) booking receipt of Rawaj Hotel as Ex.P5 (v) receipt of payment to the defendants as Ex.P6.

5. I have heard the arguments advanced by learned counsel for the claimant at length perused the evidence produced by him and have also given my anxious consideration on the fact and circumstance of the case. I have also examined the receipts submitted by the claimant in documentary evidence. Needless to add here that rule 14 (5) of the Punjab Consumer Protection Rules, 2009 provides that if defendant fails to appear on date of hearing the court may decide ex-parte on the basis of documents available on the record. Before proceedings further it

would be appropriate to establish that whether any relationship of consumer and service provider exist between the parties. To conclude this aspect I venture to place on record the definition of consumer as provided in section 2 © of the Act which is reproduced as under :-

“consumer” means a person or entity who-

- (i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose; or
- (ii) hires any services for a consideration and includes any beneficiary of such services;

6. Whereas in the Act service provider has been defined as under:-

“services” includes the provision of any kind of facilities or advice or assistance such as provision of medical, legal or engineering services but does not include-

- (i) the rendering of any service under a contract of personal service;
- (ii) the rendering of non-professional services like astrology or palmistry; or
- (iii) a service, the essence of which is to deliver judgment by a court of law or arbitrator;

7. After going through the definition of consumer and service provider it has been established that claimant has hired the service of defendants for consideration hence he is a consumer within the meaning of 2 (c) of the Act whereas the defendants are service provider as defined under section 2 (K)of the Act.

8. A consumer can reasonably expect when he hires the services against consideration, those must be of some standards. In the case in hand when both the parties agreed on specific remuneration per head, then it was duty of the defendants to provide qualitative service to the claimant as per agreement. As earlier mentioned, despite submission of

written reply defendants failed to appear before the court and disconnected themselves from the proceedings of the court by adopting this conduct they have been audaciously defying and eluding the process of law, this gimmick on the part of defendants mounts to sabotaging the judicial proceedings. Such conduct can not be countenanced or allowed to prevail, they have been playing hide and seek with the court and law and by disconnecting themselves intentionally by the proceedings of the court has made the scoffery of law.

9. On the other hand, the claimant has been appearing and clamouring before the court to prove his claim/compliant. After perusing the contents of the claim, affidavit produced by both the witnesses and documents submitted by the claimant in the shape of documentary evidence the detail of which has already been mentioned in my earlier part of judgment and need not to be reproduce, the claimant has succeeded to establish his clam and there is no rebuttal of the evidence produced by the complainant and I feel no hurdle and hesitation to conclude that the defendants provided the defective services to the claimant, made affront and due to which claimant definitely suffered financial loss, suffered mental agony and inconvenience due to providing the defective services. The claimant has also to under go the travails of the litigation and was also lowered in the public estimation.

10. For what have been discussed in terms of section 30 (1) and section 31 of the act, this court issue an order to the defendants to take following steps within one month from today.

1. To return the extra charges received from the claimant i.e Rs.36,300/-
2. To pay Rs.1,00,000/- as compensation to the claimant due to defective services
3. As the claimant has not annexed certificate of fee of counsel as required under section 28(3) PCPA 2005 & Rule 13 of PCPR 2009, therefore, instead of fifty thousands fee of the counsel, the defendants shall pay Rs.20,000/- as fee of lawyer which incurred on the legal proceedings

11. Before parting with this judgment it is warned that if the defendants shall not comply with the order passed by this court in letter and spirit proceedings under sec 32 (2) of the Act shall be invoked besides of execution of the order through the Deputy Commissioner Gujrat/ Collector with full force by using all the means including the use of police force as an arrears of land revenue. There is no need to remember the provisions of section 36 of the Act to the Deputy Commissioner/Collector & DPO, however for their guidance and information sec 36 which is being reproduced as under :-

Aid to the Consumer Court. - “All agencies of the Government shall act in aid of the Consumer Court in the performance of its functions under this Act.”

12. In view of above said provisions of law, copy of this judgment be sent to the Deputy Commissioner/ Collector Gujrat and DPO Gujrat to execute / enforce order in letter and spirit and this order would become final under section 34 of the Act, if the appeal or application if not preferred under Section 33 of the Act and Rule 18 of Punjab Consumer Protection Rules, 2009 in accordance with rules and procedure of Hon’abel Lahore High Court, Lahore within one month.

13. A duly attested copy of this judgment shall be sent to the defendants through post by Registrar of this court forthwith. The file of this complaint/ claim be consigned to record room fully page marked with proper index and after due completion and made available for issuance of attested copies and kept under safe custody till the period fixed for destruction in accordance with rules and orders by Hon’able Lahore High Court Lahore.

Announced: 25 -04-2017

BAHZAD

Judge/

Court Gujrat.

BAKHT FAKHAR

District & Sessions

judge Consumer

Certificate:-

It is certified that this judgment consists of five pages. Each

page has been dictated, read, corrected and signed by me.

Announced: 25 -04-2017

Judge consumer court

GUJRAT.

*Present: Claimant Awais Ahmad Cheema along with his counsel Ch.
Ijaz Aslam Advocate.*

Defendant Muhammad Asrar along with his counsel
Ch.Ghazanfar Mehndi
Acvocate

Vide my detailed separate order written in English language of even dated, the complaint in hand Keeping in view whether the storey narrated in the complaint is genuine or not I think that the claimant has failed to establish relationship as consumer and service provider therefore the instant claim sans substratum is hereby dismissed to be presented at proper forum.

Announced: 13 -04-2017

BAHZAD

Judge/

Court Gujrat.

BAKHT FAKHAR

District & Sessions

judge Consumer