

IN THE COURT OF ABDUL REHMAN KHAN DISTRICT & SESSIONS
JUDGE/PRESIDING OFFICER DISTRICT CONSUMER COURT
SARGODHA.

Case No. 82/2010
Date of Institution 12.10.2010
Date of decision 05.07.2011

Nasir Iqbal s/o Ghulam Hussain
r/o Chak NO.81/SB Tehsil & District Sargodha
(Complainant)

Versus

Ali Nawaz etc.
Proprietor, Ali Nawaz WheetThresher Hal Kara
Near Railway Phatak Fatima Jinnah Road, Sargodha
(Respondents)

ORDER
05.07.2011

As per contents of the instant petition, the petitioner purchased Thresher Machine for consideration of Rs, 255000/- and said amount was paid in installments of Rs, 50000/-, 55000/-, 100000/- and 50000/-, dated 08.04.2010, 15.04.2010, 20.04.2010 and 21.04.2010 respectively. That just after its functioning, the Thresher Machine showed some defects i.e breaking grains while using of 3rd class material and working its parts just like Belts tube and tires for which the complainant was approached through making so many complaints but the respondent did not pay any response to the complaint about the aforesaid defects allegedly shown in the Thresher Machine. That due to aforesaid defects, the petitioner suffered the loss of Rs, 800000 (8 lacs) while selling his wheat crop with broken grains Rs, 300000 (3 lacs) on account of fraud and 2 lacs for humiliation and mental torture and lastly he prayed for recovery of aforesaid amount along with litigation charges amounting to Rs, 15000/- and Rs, 255000/- as price of defective product Thresher Machine.

Respondent was summoned who made his appearance through learned counsel and filed his written reply wherein, he denied all the allegations leveled against him and further maintained that the claim filed by the petitioner is hopelessly time barred as throughout the season, petitioner never complained about the defective services rendered by the petitioner through working of Thresher Machine. That the petitioner has not come in the court with clean hands because the petitioner himself

after making full payment, took the Thresher Machine from workshop of the respondent and he was satisfied with its functioning throughout the season and thereafter only to pressurize and to get the money from the respondent, he filed the instant petition, that there was no any guarantee or warranty of the product in black & white and lastly he prayed for dismissal of the instant petition.

The petitioner got furnished the affidavits of his own Pw namely WaseemSaleem in his evidence which were placed in the record as Exp-A and Exp-B respectively. In this evidence the petitioner reiterated the aforesaid facts as already narrated in the petition/claim. The petitioner also produced in his evidence the original purchase receipts dated 08.04.2010, 04.05.2010, 20.05.2010 and 04.05.2010 as Exp-C, PD, PE and PG respectively and closed his evidence. The respondent got recorded his statement through affidavit which was placed as Ex-D 1 and also produced one Nazir Ahmed Bajwa whose affidavit was furnished and placed on the record as Ex-D 2.

Learned counsel for the petitioner has argued that purchase of Thresher Machine from the respondent is an admitted fact for the consideration of Rs, 255000/- and it has been established on the record that it showed some defects which were brought in to the notice of the respondent, which were not removed at the spot and the same was brought in the workshop of the respondent for 2 times for the removal of the defects but despite the aforesaid facts, the respondent failed to remove the aforesaid defects brought in his notice and by this way, petitioner suffered a lot of financial loss, mental agonies for which he is entitled for the recovery of all such loss, damages and the cost of defective Thresher Machine.

On the other hand, the learned counsel for the respondent has maintained that claim of the petitioner is badly time barred having filed beyond period of limitation because the petitioner remained silent till the end of the wheat season, there was no warrantee or guarantee in black & white, no any witness of locality was produced by the petitioner in support of his version, while Pw-2 namely WaseemSaleem was an interested witness being an Advocate and colleague of the petitioner. So the instant petition is liable to be dismissed.

Arguments of learned counsel for the both the parties heard and record available on the file perused.

Firs of all coming to the first part of the arguments of learned counsel for the respondent that the instant petition is badly time barred. In this respect, the petitioner is consistent throughout by narrating the facts in his petition/claim and through his evidence that from the very first day, about all the defects shown in the product (Thresher Machine), he has been making complaints continuously through out the season to the respondent, in response thereof, the respondent sent his mechanic at the spot, the aforesaid Thresher Machine was brought in the workshop 2 times. The aforesaid fact was totally denied by the respondent while filing the written reply and in examination in chief which was recorded through on affidavit, that the petitioner never made any complaint regarding the defective services rendered by the product (Thresher Machine) throughout the season, but this stance was negated by the respondent himself while admitting the fact in cross examination that Thresher Machine was brought in his work shop for 2 times for removal of defects.

So, keeping in view the aforesaid facts and circumstances, it has been established on the record that the petitioner has been making complaint, to the respondent about the defective product (Thresher Machine) and at the end of the wheat season, he filed the instant petition within the specified period envisaged under the law.

So far as, the merits of the case are concerned, as already stated, the petitioner purchased Thresher Machine from the respondent for the consideration of Rs, 255000/- which was fully paid to the respondent but thereafter some defects shown in the aforesaid product (Thresher Machine) which were brought in to the notice of the respondent and for that purpose, it is also an admitted fact that same (Thresher Machine) was brought in the workshop for 2 times for removal of its defects, but the petitioner was not satisfied with functioning of the aforesaid Machine purchased from the respondent and this fact constrained him to file the instant petition but no any solid proof as to financial loss allegedly suffered by the petitioner due to faulty services of respondent has been produced. So, no such order in this regard except, the repair charges of Rs, 1350,2544 and 1800 of which receipts have

been placed on the record as Ex-PE, PF and PG respectively along with litigation fee of Rs, 10000/-.

For the foregoing reasons, I have come to the conclusion that the petitioner is entitled for the replacement of the Thresher Machine, for which the respondent is directed to replace the same or in default, he shall pay Rs, 255000/- as its consideration to the petitioner within 30 days. Petitioner is also entitled for the recovery of Rs, 5694/- as repair charges and Rs, 10000/- as litigation fee from the respondent. File be consigned to record room after due completion.

Announced
05.07.2011

Sd/
Abdul Rehman Khan
District & Sessions Judge/
Presiding Officer,
District Consumer Court,
Sargodha.