

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

Case No.75-2017

Title. Qasir Ali Farooq Vs Manager Samsung Etc.

Date of institution	18-10-2017
Date of decision	14-03-2018
Complainant by	Sajid Pervaiz advocate

Judgment:

1. The apple of discord as revealed from the claimant's story is as that on 21-01-2017 he purchased a cell phone Model J7 Prime, IMEI No. 353111087252480 from the defendants; that defendants gave one year technical and accidental warranty for above said mobile phone; that on 30-04-2017 due to an accident his cell phone damaged; that he contacted to the defendants and sought relief upon which defendants assured him that his warranty claim has been sent to the company; that after three weeks of process the defendant No.1 sent back the phone and refused his claim; that claimant sent legal notice to the defendant who after receiving the said did not respond satisfactory which constrained the claimant to file the instant claim with the prayer that a decree for recovery of sum

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Rs.6,15,000/-may kindly be decreed in favour of complainant and against the defendant and any other relief may be granted by the court as it deems fit.

2. It is worth mentioning here that the instant claim was filed on 18-10-2017 and notices were issued to the defendant for 15-11-2017 and following order was passed:-

"Fresh complaint be registered. Preliminary arguments heard. Copies of the claim be sent to the defendants with the direction to appear in person on 15-11-2017 and submit their written statements. The defendants be summoned through TCS subject to deposit of process fee. The claimant is directed to deposit of process fee within three days for summoning of the defendants but on the said fixed date despite of receiving of notices no one appeared on behalf of the defendants which showed their lack of interest to proceed with the case. Therefore, while exercising my powers under rule 14 sub rule 5 of Punjab Consumer Protection Rules, 2009 they were proceeded ex-parte and claimant was asked to produce his evidence.

3. In order to prove his claim the claimant appeared as PW1 and submitted his affidavit as Ex-P1. In documentary evidence the counsel for the complainant tendered Copy of legal notice as Mark-PA (ii) registered postal receipt of legal notice as Ex.P2 (iii) acknowledgment due card as Ex.P3 (iv) purchasing receipt of

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cell phone as Ex-P4 (v) warranty card Ex.P5 (vi) accidental coverage card as Ex.P6(vii) copy of letter received from the Samsung Company as Mark-PB and counsel fee certificate EX.P7 and case was fixed for 03-01-2018 for final ex-parte arguments and on said date Mr. Farrukh Nazir advocate appeared on behalf of the defendants and submitted application for setting aside ex-parte proceedings. On 28-02-2018 the counsel for the complainant appeared and advanced arguments on the application for setting aside ex-parte proceedings but defendant and his counsel did not bother to appear in the court to advance arguments. However, in the interest of justice one opportunity was granted to the defendant for the arguments with the following observation and warning that if on the adjourned date the defendant shall not appear before the court to advance the arguments, his application shall be dismissed in default and the case was adjourned for 28-02-2018 and on the said date again neither the defendant nor his counsel appeared in the court to advance the arguments and the case was adjourned for today for ex-parte arguments.

4. Arguments heard. Before discussing evidence of claimant it is necessary to establish relationship of consumer and service provider between the claimant and defendant. In order to establish this relationship I take little a pause here and venture to place on record the definition of consumer and service provider which are reproduced as under:-

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"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;

"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;

5. From the X-Ray of oral as well as documentary evidence above referred it has been established that the entire story of claimant has been found masked with truth. There is evidence before me which can show that there is no iota of falsehood in the stance of claimant. On the other hand defendant appeared before the court, submitted application for setting aside ex-parte proceedings and then disappeared. The claimant has proved his claim through oral as well as documentary evidence. From the perusal of complaint and documents annexed


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one thing has been established and admitted that claimant sent legal notice to the defendant but he did not reply satisfactory. From the very first day the claimant has clamouring to prove its case. On the other hand the conduct of the defendant is very much clear who after appearing before the court and after submitting the application for setting aside ex-parte proceedings, disappeared. The defendant has been audaciously defying and eluding the process of law. This gimmick on the part of the defendant amounts to sabotaging the judicial proceeding which can not be countenanced and allowed to prevail. As conduct of defendant is highly deplorable and he by playing hide and seek with the court and law has deliberately committed scoffery of law. In such circumstances I have all my sympathies with the bereaved complainant. Since there is no rebuttal from the defendant side on the evidence of claimant except his application for setting aside ex-parte proceedings.

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6. After giving my anxious consideration on the facts and circumstances of the case I have observed that in this matter it is not sole question that complainant is feeling the proverbial pinch of the shoe.

7. Having regard to all the forgoing, I am of the view that in terms of section 31 of The Act, the following final order should be issued to the defendants.

- i. The defendants are directed to replace the mobile with new mobile of same model which shall be free of defects.
- ii. To pay compensation of one lac to the claimant.
- iii. To pay to the complainant Rs.10,000/- as lawyers fee

8. As per Rule, 17 of Punjab Consumer Protection Rules, 2009, the Registrar of this court is directed to communicate copy of this order between the parties free of charge.

9. A copy of this final order be also sent to Provincial Consumer Protection Council through e-mail for publication on its official website to provide access and information to the public at large under Rule 25 of Punjab Consumer Protection Rules, 2009. File be consigned to record room after necessary completion.

Announced: 14 -03-2018


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Certificate:-

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

Announced: 14 -03-2018


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