

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

CASE NO. 20-2017

Date of institution: 14-03-2017

Date of decision: 10-05-2017

*Raja Muhammad Riaz Bhatti S/O Khan Bhatti Caste, Bhatti, R/O Kuri Shareef
Teh Gujrat present address Mohallah Rehmat Abad, Sargodha Road Gujrat.*

(Claimant)

Vs

*Mirza Faisal Hussain Sabir Hussain, R/O New Abadi, Mohallah Usman
Pura Gujrat, proprietor Baba G Karam Elahi Steel Works near Dera
Sarwar new Abadi Mohallah Usman Pura Lund Pur Road, Gujrat.
0344-8481888*

(Defendant)

*Present: Tahir Mehmood sadiq Butt advocate, counsel for the claimant.
Advocate.
Defendant ex-parte*

**COMPLAINT/CLAIM UNDER SECTION 30 OF PUNJAB CONSUMER
PROTECTION ACT, 2005**

Judgment:

1. By filing this claim under section 25 of Punjab Consumer Protection Act, 2005 (herein after referred to as "Act" for brevity) against the defendant, in short Raja Muhammad Riaz Bhatti has asserted that after obtaining permission from TMA he started construction of his house and from the very inception he contacted to the defendant Mirza Faisal Hussain which runs his business on the name of Baba G Karam Elahi Steel Works, near Dera Sarwar new Abadi, Mohallah Usma Pura Lund Pur Road, Gujrat and asked him to prepare nine iron doors. Terms and conditions were also settled and according to condition he had to provide the doors within one month at the rate of Rs.270/- per square foot of 18 gauges. It was also settled between the parties that iron gate shall also be prepared at the rate of Rs.350/- per square foot of 18 gauge and in

token of the agreement he paid Rs.20,000/- for preparing the doors and Rs.10000/- token money for main gate. The defendant issued receipts in this regard. He had also been receiving money for different times and ultimately he received Rs.65,000/- from the claimant in the presence of witnesses. The defendant also issued receipts in this regard but later on he did not honour the commitment and after one year and three months the gate was provided by the defendant of 20 gauge instead of 18 gauge and seven iron doors were also provided of 20 gauge which were rusted. The defendant provided defective product as well as defective services to the claimant. After noticing all these defects the claimant sent legal notice Mark-PA through registered post of acknowledgment receipt Ex.4 and acknowledgment due card of the post office is Ex.P5.

Following prayer has been made by the claimant in his claim:-

1	Return of payment receipt in form of token money	Rs.65,000/-
2	Mental torture & in-convenience	Rs.10,00,000/-
3	Lawyer's fee	Rs.55,000/-
TOTAL		Rs.1,120,000/-

2. Vide order dated 04-04-2017 the copy of the complaint was sent to the defendant with the direction to appear in person on 12-04-2017 to submit his written reply. The defendant was summoned through messenger, through TCS and he was also informed telephonically on his no.0344-8481888 and in pursuance of the summoning order he appeared before the court on 12-4-2017, his thumb impression were obtained on the margin of order sheet along with his signatures and his CNIC No was also noted and he was directed to submit

written reply on 18.4.2017. The defendant on the above referred date appeared on first call and thereafter despite repeated calls on different intervals he did not appear in the court nor submitted his written statement and vide order dated 17-4-2017 he was proceeded ex-parte and the claimant was directed to produce ex-parte evidence and the case was adjourned for 25-4-2017.

3. The claimant in support of his claim himself appeared as PW1 and submitted his affidavit as Ex.P1 and produce Raja Muahammad Iqbal Bhatti as PW2 who has submitted his affidavit as Ex.P2 while Amanat Ali stepped into the witness box as PW3 in support of the claim he submitted his affidavit as Ex.P3.

4. Following documents were produced by the claimant in his documentary evidence detail of which has been mentioned below:-

(1) Copy of legal as Mark-PA (2) postal receipt as Ex.P1 (3) acknowledgment due card Ex.P5 (4) purchase receipt dated 29-11-2015 as Ex.P6 (5) receipt dated 30-03-2016 as Ex.P7 (6) visiting card of Raja Muhammad Riaz Bhatti (7) copy of photograph of doors as Mark-PR & PB/1 (copy of application to SHO Civil Line as Mark-PC (8) copy of compromise between the parties as Mark-PD (9) certificate of counsel fee as Ex.P9.

5. I have heard the ex-parte arguments anxiously and has parsed the documentary evidence produced by the claimant in support of his claim and has also given my serious and earnest consideration to the submissions of learned counsel for the claimant.

6. Needless to observe here that Rule 14(5) of Punjab Consumer Protection Rules, 2009 authorize this court to decide a claim ex-parte if the defendant fails to appear on the date of hearing. For the better appreciation I venture to reproduce above said rule which is as under: - *“If the defendant fails to appear on the day of hearing, the Court may decide the claim ex-parte on the basis of documents available on the record or adjourn it.”*

7. I have minutely gone through the claim, both oral and documentary evidence and straight way observed that the contents of claim which have been referred earlier are supported by affidavit even otherwise in support of claim, the claimant himself appeared as PW1 and submitted his affidavit and also produced two witnesses above mentioned in support of his claim and at the same time he has produced the documentary evidence the detail of which has been mentioned in earlier part of judgment and need not to reproduce so as to avoid to put unnecessary burden of this judgment.

8. Copy of legal notice sent to the defendant is also part of the record and postal receipt is showing that the legal notice was dispatched to the defendant and acknowledgment due card is also tendered in evidence as Ex-P1 which bears the signatures and telephone No. along with complete address of the defendant. The conduct of the defendant is also relevant here that what to speak about reply of legal notice sent by claimant, in pursuance of notice issued by this court he appeared and he was directed to submit written reply and he sought adjournment in this respect and on the first call of hearing he appeared before this court and thereafter disappeared and did not submit written statement. The defendant has been audaciously defying and eluding the process of law. This gimmick on the part of defendant amounts to sabotaging the judicial proceedings such conduct can not be countenanced or allowed to prevail rather by playing hide and seek with the court and law, the defendant has deliberately committed the scoffery of law.

9. The claimant had hired the services of defendant against consideration and payment of charges time to time. In this regard in token of receipt of payment the defendant issued receipt to the claimant which has established relationship of consumer and service provider between the parties.

10 In view of the un-rebuttal evidence produced by the claimant, I feel no hurdle and hesitation to hold that the defendant is liable for providing the defective product as well as for providing the defective services due to which

reason claimant definitely suffered the agonies and in-convenience. In the light of the above discussion the claim is accepted ex-parte against the defendant. Coming to question of relief, I feel that there must be a balance and compensation should be reasonable. The claimant has also prayed to invoke the provisions of section 32 of the Act but I do not find any reason to invoke the above said provision of law by sending the person behind the bars.

11. Therefore in terms of section 31 of the Act, this court issue an order to the defendant

1. To collect the doors and gate supplied by the defendant from the house of the claimant and to replace them with new products as per agreement i.e of gauge of 18 inch which shall be free from any defect or to return to the claimant the price received by him i.e Rs.65000/-
2. To pay an amount of one lac to the claimant as compensation for providing defective product and faulty services.
3. The claimant has also submitted the certificate of fee of counsel, therefore the defendant shall also pays Rs.55000/-to the claimant.

12. The defendant shall comply with the above said order within the period of one month from today.

File be consigned to record room after its due completion. Copy of this judgment shall be sent to the defendant through post by the registrar of this court.

Announced: 10 -05-2017

BAKHT FAKHAR BAHZAD
*District & Sessions Judge/
judge Consumer Court Gujrat.*

Certificate:-

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

Announced: 10 -05-2017

BAKHT FAKHAR BAHZAD
*District & Sessions Judge/
judge Consumer Court Gujrat.*