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IN THE COURT OF SOHAIB AHMED RUMI
DISTRICT & SESSIONS JUDGE/PRESIDING OFFICER
DISTRICT CONSUMER COURT
SIALKOT/NAROWAL.



Case No. 29/2018

Date of Institution: 04.05.2018

Date of Decision: 18.09.2018.

Rao Kabir Ali S/O Rana Fakhar-Ud-Din Rajpoot by caste, R/O
Baig Chak, P.O Jamkey Cheema Tehsil Daska, District Sialkot.

(Consumer/Claimant)

Versus

Muhammad Asif S/O Muhammad Javid Iqbal caste Butt,
Proprietor, Kashmir bakers & Sweets main bazaar Jamkey Cheema
Tehsil Daska, District Sialkot.

(Defendant)

CLAIM UNDER SEC. 25 OF THE PUNJAB CONSUMER
PROTECTION ACT, 2005.

JUDGMENT:

Briefly stated necessary facts of the instant complaint launched at the instance of Rao Kabir Ali against defendant for its disposal are that claimant-subscriber on 07.04.2018 purchased different bakery products i.e Biscuits, Fruitcake, Barfi, catch-up sachet against Rs. 600/- from defendant. When the products were presented to guests an insect/worm in live condition appeared from the stale fruitcake, which affected the health of claimant and his guests. A pre-requisite legal notice was issued to the defendant but same was not responded.

2. In response to the complaint and allegations contained therein, defendant submitted his reply while raising

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District & Sessions Judge
Presiding Officer
Sialkot

Attested

Registrar of 8-12-13
District Consumer Court
Sialkot

preliminary objections and controverted the allegations alleging therein that no question as to an insect appearing alive from the cake arises because the cake baked for 30 minutes on 220 Fahrenheit temperature to be prepared as such it is impossible that an insect remain alive during the whole baked process. Defendant also claimed no cause of action to the consumer and dismissal of the complaint being barred by time.

3. Reconciliation efforts remained fruitless and both the parties were directed to lead their respective evidence.

4. From the claimant side, claimant himself appeared in the witness box as A.W.1 and produced Rana Muhammad Akbar Ali (real brother) as A.W.2. In documentary side both witnesses submitted their affidavits in evidence in the shape of Exh-A.1 and Exh-A.2, acknowledges contents thereof and verified their signatures thereon. Learned counsel for claimant after submitting copy of legal notice Mark-A, original postal receipt, acknowledgement due card for issuance of legal notice Exh-P.A, Exh-P.B (Under objections), original disputed cake Exh-P.D, Compact Disk (C.D) EXh-P.E (Under objection) original doctor's prescription and bill of medicines Exh-P.F and Exh-P.G (under objection). Original purchase receipt of cake Exh-P.C and closed the evidence. From the defendant side defendant Asif Javid Butt appeared as R.W.1 and produced affidavit in evidence Exh-R.A, acknowledges contents and verified his signature and thereafter closed the evidence

4. Arguments heard. Record perused.

5. Learned counsel for the claimant while supporting the allegation of the complaint argued that claimant purchased bakery products in order to serve his guests at home and while eating an insect appeared from the fruitcake. The cake Exh-PD has been produced in the Court disintegrated into pieces. It is a small cake. A black colour insect can be seen in the plastic jar, in which broken pieces of the cake have been produced before the Court. It is un-deniable fact that such bakery item is baked at -220 Fahrenheit temperature for a considerable period and existence of a live insect inside the cake is out of question. However, crawling insect on the cake from outside cannot be ruled out but it is not the case of claimant who insisted that the

(Conti...03)



Attested

Registrar 08-12-18
District Consumer Court
Sialkot

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insect appeared from within the cake Exh-PD. The said cake was never sent to laboratory and no such technical report is available on record in this regard. A compact disk (C.D) allegedly recorded at the time when insect appeared has been produced in the Court which is inadmissible into evidence in its present form. Prescription from the local doctor has also been placed on record as Exh-P.F, whereas, author of prescription did not choose to appear in the Court in order to verify its contents. Cases cannot be decided on presumptions and conjectures. Concrete evidence of conclusive nature is required to pass judgment of fact against the person standing before the Court, in the absence of which it will be very hard to sustain the verdict. I have not found any such proof excluding any other inference against defendants. As a result complaint is declined due to lack of evidence. There is no order as to costs. File be consigned to the record room after its due completion.

Announced:
18-09-2018.

[Signature]
Presiding Officer,
District Consumer Court
Sialkot/Narowal.

CERTIFICATE

Certified that this order contains three pages and each of pages is dictated, corrected and signed by me.

Announced:
18-09-2018.



[Signature]
Presiding Officer,
District Consumer Court
Sialkot/Narowal.

نقل بمطابق اصل ہے
محکمہ برائے شہادت و شہادت
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1884 نون شہادت سیکشن