

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

CASE NO. 23-2016

DATE OF INSTITUTION:- 05.04.2016.

DATE OF DECISION:- 13.04.2017.

Titled As:-

Saqib Shehzad Butt CEO Flavors Resturent Bibmer Road Gujrat.

(Claimant)

Vs

*UR Enterprises through Aziz Mehmood House No. 170/A Hali Road,
Westrage 1, Rawalpindi.*

(Defendant)

Present:- *Shahid Sharif advocate, counsel for the claimant.*

Faisal Jaffer advocate, counsel for the defendant.

**SUIT FOR RECOVERY OF R.S 12,00,000/- DUE TO DEFECTIVE
SERVICES**

Judgment.

By way of this judgment I intend to proceed to decide;

- I. Preliminary objections raised by defendant with regard to the jurisdiction of this court to entertain this claim in hand.*
- II. Application filed under section 35 of Punjab Consumer Protection Act 2005 (herein after referred to as “Act” for brevity).*
- III. Application under order 6 rule 17 read with section 151 CPC filed by Saqib Shehzad Butt.*

“In this judgment Saqib Shehzad Butt shall be called the petitioner while UR Enterprises shall be called respondent”.

2. *Saqib Shehzad Butt filed suit for recovery of Rs. 1200,000/- due to defective services against respondent maintaining that on 20.06.2014 he installed computerized lights along-with accessories on his restaurant in the sum of Rs. 1,65,500/- respondent gave warranty of one year and received amount and also received installation charges but after one week lights became out of order. He made a complaint to the respondent to send his technician and defect was removed and again on the next day the lights became out of order and on the complaint the respondent send a technician after two and half month. Thereafter the lights faced the similar situation. Again he contacted with the respondent but of no avail. Thereafter the respondent asked the claimant / petitioner to send lights to Rawalpindi and in pursuance of which the lights were sent on his office situated in Rawalpindi after repair said lights. He sent back the said lights to him but after one month similar situation arose again. The petitioner contacted with the respondent, the technician of respondent came and removed lights and the same has not been returned even now the respondent has given warranty of one year. Prayer was made for the relief as under;*

- I. *To return of price of that computerized lights Rs. 1,65,000/-*
- II. *Loss of business Rs. 5,00,000/-.*
- III. *Damages for mentally charges Rs. 500,000/-.*
- IV. *Fee of counsel Rs. 45,500/-.*

3. *It was asserted that legal notice was sent to the respondent but his grievance was not redressed, aggrieved by the conduct of the respondent, the petitioner has approached this court for seeking the above mentioned relief.*

4. *Respondent appeared and submitted his written reply / written statement and raised preliminary objection.*

5. *That petitioner can file the claim before the Consumer Court. However, he filed “suit”, thus this Court has no jurisdiction to entertain “Suit” objection No. 9 was also with regard to the territorial jurisdiction of this Court.*

6. *Matter between the parties remained hanging fire since more than two years and the proceedings progressed at snail's pace. During the pendency of the case, the respondent filed an application under section 35 of the Act read with section 151 CPC and order 7 rule 11 of CPC another area of the filing grounds No. 3 was similar with the regard to the filing of the suit and para No. 7 was with regard to the territorial jurisdiction that the agreement of project was also executed at Rawalpindi. Hence, this court lacks jurisdiction to entertain the matter in hand. In para No. 8 it was asserted that no legal notice was sent to the respondent. Hence, the suit before this court was not maintainable.*

7. *Sensing this situation the petitioner filed application under order 6 rule 17 read with section 151 of CPC seeking the amendment in the complaint and in para No.3 of the application it was mentioned that at the time of the institution subject complaint was clerical mistakenly written as the suit in spite of the complaint and that was clerical mistake and it was prayed that the word suit may kindly be replaced with the word complaint. The respondent filed the written reply of the application vide under order 6 rule 17 and under section 151 CPC agitating that as Act is special law and special procedure is provided therefore, CPC is not applicable in this case.*

In the complaint filed under the Act except the circumstances mentioned in the section 30 subsection 3 A to E.

8. *The point of limitation was also raised in the legal objections as well as application filed under section 35 of the Act.*

9. *I have heard the arguments in pro and contra at length and perused the Law minutely with the able assistance of counsel for the parties.*

10. *First I would like to decide the objection raised by the counsel for the respondent with regard to the territorial jurisdiction of this court. The learned counsel for the petitioner had contended that section 27 (C) of the Act, When the cause of action wholly or in part arises, then claim can be filed at any of places, although claimant purchased LED lights from Rawalpindi but because of defect and installed at Gujrat, cause of action also arose here therefore, this court is competent to entertain and to decide this claim under the Act.*

11. *Defendant is running his business at Rawalpindi and his same address is given in the suit/claim. They are not maintaining their office at Gujrat, therefore, it is very crystal clear that the defendant did not reside or runs his business within the jurisdiction of this court section 27 of the Act, for reference is reproduced as under:*

Jurisdiction of Consumer Courts.- *Subject to the provisions of this Act, the Consumer Court shall have jurisdiction to entertain complaints within the local limits of whose jurisdiction-*

- (a) *the defendant or each of the defendants, where there are more than one, at the time of filing of the claim, actually and*

voluntarily resides or carries on business or personally works for gain; or

- (b) *any of the defendants where there are more than one, at the time of the filling of the claim, actually and voluntarily resides, or carries on business , or personally works for gain; provided that in such a case the permission is granted by the Consumer Court or the defendants who do not reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institution; or*

- (c) *the cause of action wholly or in part arises.*

12. *Clause (C) is a relevant provision for the purpose to settle down the question of jurisdiction. Admittedly, on the basis of perusal of claim it is not case of defective and faulty services but it is case of providing of defective product. Admittedly, UR Enterprises is not manufacturer of the LED computerized lights. The said LED lights were purchased by the petitioner from the respondent at Rawalpindi. UR Enterprises might be the dealer which is not still sure to the petitioner nor he has mentioned this fact in his suit. For the sake of arguments, it can be concluded he might be the shop keeper. By no means with regard to the purchase and supply of LED lights, he has any office or company running his business within the territorial jurisdiction of this Court. It is worth mentioning here the manufacturer company of the LED lights in question has not been impleaded as party in this case as this is the case of defective product. No effective order can be passed against the respondent in absence of the necessary party i.e manufacturer. If this is a position then it is wrong to hold*

that cause of action was also available to clamant / petitioner at Gujrat. This could be only if in the process of purchasing and supplying the LED lights any franchise or dealer was to be in picture at Gujrat. In the view of the above I am of the firm opinion that cause of action if available to the claimant, if any at Rawalpindi but not within the territorial jurisdiction of this court. The necessary order at this stage while concluding the point of jurisdiction can be made is that the claim should be returned to claimant with the observation that he should file his claim before the court of competent jurisdiction if so advised, this court lacks territorial jurisdiction to entertain the claim.

13. *A question of limitation was raised being a primarily objection so before further proceedings could be made arguments were also advanced by the counsel for the parties at length on the point of limitation. Learned counsel for the respondent has contended that under section 28 of the Act, limitation for filing a claim in any case is 30 days to be started from the date of accrual of cause of action which in this case petitioner finally on 20.06.2014 when the LED lights became out of order even up to date legal notice was sent on expiry of said period i.e on 27.05.2015 whereas claim was filed on 27.07.2015 even if legal notice is considered within time even then claim was instituted after 30 days, he finally maintained in any situation, it is time barred case and no application for extension of time has been submitted by the claimant. On the other hand counsel for the petitioner propounded the arguments that case of claimant is not time barred as cause of action accrued to claimed two days after his final denial, when there is no*

period provided then limitation for filing of complaint is not 30 days but shall be one year, therefore is not beyond the limitation.

14. *Before commenting on the point raised by the learned counsel for the parties it is apt to place on record the provisions of section 28 of Act which is as under;*

Settlement of claims.- (1) *A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer or service provider is in contravention of the provision of this Act and he should remedy the defects or give damages where the consumer has suffered damage, or cease to contravene the provisions of this Act.*

(2) *The manufacturer or service provider shall, within fifteen days of the receipt of the notice, reply thereto.*

(3) *No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section (1) and provides proof that the notice was duly delivered but the manufacturer or service provider has not responded thereto.*

(4) *A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:*

Provided that the Consumer Court, having jurisdiction to have the claim, may allow a claim to be filed after thirty days within such time as it may allow if it is satisfied that there was sufficient cause for not filing the complaint within the specified period:

Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of services.

15. *It is the say of the claimant/petitioner that he got cause of action two days earlier of his final denial as in para No. 6 of his suit is also negated from another angle that he sent legal notice on 27.5.2015 and this is not a case of the petitioner in his pleadings and that thereafter any further correspondence was made with the defendant/respondent which means that chapter was finally closed on 27.05.2015. In first eventuality if limitation has started to run on 20.06.2014 then he should sent the legal notice on 05.07 2014 and claim should have been filed after 30 days i.e on 05.08.2014. Rather the claim was filed after nine months i.e 27.05.2015 after serving the legal notice, therefore considering from whatever angle it shall time barred claim.*

16. *I am not in agreement with learned counsel for the claimant that if no period is specified limitation shall be one year from the date of purchase of product or providing of services. When we minutely go through section 28 of the Act as a whole, no ambiguity remains to concluded that the claim must be filed within the period of 30 days because last proviso in fact qualifies earlier proviso where discretion has been given to the Court for extension of time after 30 days. If the party desires extension on any reason, for that there must be a written application before the Court agitating the grounds showing sufficient cause for delay but astonishingly as no such application has been filed seeking extension for condonation of delay, so no*

motherly treatment can be given to the petitioner and no kindness can be showered to the petitioner by condoning the delay without seeking on his behalf. For what have been discussed above the instant claim is time barred and is hit by limitation.

17. *The next objection which is to be resolved by this Court that whether the proceedings before this Court are suits i.e whether the petitioner can trigger the legal machinery in to motion by filing “suit” of recovery on this point, I have availed the opportunity of listening both the counsel for the parties at length. The counsel for the petitioner states that inadvertently the word “suit” has been written rather the word complaint should have been written and in this Court he has submitted application under order 6 rule 17 for seeking the amendment of the title. Before deciding this aspect whether the proceedings before this Court can be started by filing the suit. It would be appropriate to decide the application of the petitioner filed under order 6 rule 17 of CPC. I have given my anxious consideration on this point that whether CPC is applicable on the proceedings before this Court on the cases falling within the ambit of this Act.*

The avowed objective of the Consumer Protection Act 2005 was to provide affordable justice to the consumer, shorn of technicalities, so that consumers would be able to argue their complaints in persons without the need of engaging an advocate. It is because of the reason that the Act does not provide any formats for complaints or application. The August Supreme Court of India held said that technicalities to be eschewed by the consumer

fora and the National Commission have observed that even a letter can be treated as a complaint.

Unfortunately over the years, the consumer fora are losing sight of the intent and purpose of Act are often becoming hyper-technical.

Some of the retired judges who preside over consumer fora try to bring in technicalities which they have practiced all their lives in the civil courts, and thereby frustrate the consumer movement.

Here are some judgments which will illustrate how consumer fora should follow simple procedure, merely observing the principle of natural justice, devoid of all technicalities.

Case study 1:

In the case of S P Aggarwal Vs. The Sanjay Gandhi Post Graduate Institute of Medical Sciences, Luck now (FA No.778 of 2005 decided on March 31, 2010), the National Commission was required to decide whether the proceedings under the CP Act required a detailed affidavit to be filed in accordance with the provisions of Civil Procedure Code (CPC), or a short affidavit would suffice.

Aggarwal had filed a complaint before UP State Commission alleging medical negligence. The state commission dismissed the complaint because the affidavit filed by complainant was very short and not in accordance with provisions contained in Order XIX of the CPC. In appeal, the National Commission observed that the provisions of Order XIX of the CPC cannot be strictly applied to the proceedings before the consumer fora. It held that the State Commission had taken hyper-technical view in rejecting

the affidavit as it had not been prepared in accordance with the provisions of the CPC and the annexure filed along-with the affidavits had not been dealt with in detail as required under the CPC. The National Commission held that the affidavit and the documents filed by the complainant were entitled to due consideration on the basis of the intrinsic value of the documents filed.

After consideration the evidence, the National Commission held that the complainant had established medical negligence and for this he was awarded a compensation of Rs.1 Lakh.

18. *The Supreme Court of India has further held that Consumer Court should be shorn of all technicalities and the case in this case should be held in a summary fashion i.e without too many nuances of law and procedural glitches. Gullible consumers who approach consumer Courts after reading these noble words, often finds that they are stuck in a morass of legalism and technicalities from which they are unable to extricate themselves. Every point of fact and law is challenged and put to various tests and the concept of the fact finding forum which Consumer Courts were supposed to be, have become similar or even worse than the Civil Courts of the country. As earlier mentioned both the parties due to technicalities introduced by the counsel of the parties, faced the harrowing period of litigation and travail of the trial and the proceedings of the case remained at snail's of pace. For what has been discussed above, there is no specific provision provided in the Act for the amendment and the CPC and Evidence Act is not applicable in the stricto sensu except in cases provided in section 30 of the Act. Application filed by the claimant is not maintainable and*

hereby dismissed. Even for the sake of justice it is allowed, it would be a futile exercise as the claim of the claimant is hit by limitation and territorial jurisdiction.

19. *The last objection which has been raised by counsel for the respondent that whether suit for recovery can be filed under this Act before the Consumer Court is yet to be decided. The learned counsel for the petitioner argued that it was technical mistake and further argued that section 3 provides that the Act shall be in addition to and not in derogation to any other law for the time being in force. By reason of these Acts, It is evident that the remedies provided under the Act are not in derogation of those providing under other law. The said Act supplements the jurisdiction of the Civil Courts or other statutory authorities and petitioner should not be knocked out technically.*

20. *The learned counsel for the respondent had advanced the arguments that suit is triable under Civil Court and cannot be tried in the Consumer Court constituted under this Act. The learned counsel for the petitioner has submitted that complaint and suit is one and same thing and proceedings in the consumer Court though are not a suit under the CPC are still proceedings which is in the nature of the suit and commenced by proceedings in the nature of the plaint (i.e complaint and is in respect of a claim which is ordinary triable by the Civil Court). By replying this question the learned counsel for the respondent has submitted the provision of CPC on the proceedings under this Act are not applicable; according to the counsel for the respondent, the interpretation given by counsel for the petitioner is totally untenable and cannot be sustained. I have heard the*

arguments by the parties on this point and have observed that the Punjab Consumer Protection Act 2005 is a complete code in itself. Section 30 provides the complete procedure of filing the complaint and CPC is only applicable on the situation mentioned in section 30 Sub section 3 (A to E). “In the case of Savita Garg Vs. Director National Institute (2004) 8 SCC 56 in Para 7 it has been held, “therefore, as far as the commission is concerned, the provisions of Civil Procedure Code are applicable to a limited extent and not all the provisions of the Civil Procedure Code are made applicable to the proceedings to the National Forum.

21. *The detailed discussion has been made on the application of the CPC on the cases falling within the ambit of the Consumer Protection Court. The above discussion makes it clear that the provisions of CPC are not applicable in the proceedings under the Act except to the extent provided for under section 30 of the Act. The Consumer Protection Act 2005 is a special Act and the later Act which will prevail over the provision of the CPC which is general and previous statute. It is a complete code having solution of the disputes covered under the Act as such the CPC have no application in the cases filed under this Act. On careful analysis and after the discussion made above it is evident clear that the word “suit” has been purposely not included in the Act. Rather a claim of the claimant has been introduced intentionally, so, I am of the view that the suit cannot be filed in the Consumer Court which can only be filed before the Civil Court who is fully competent to adjudicate the matter between the parties. The crux of the above discussion is that*

- I. *This Court lacks territorial jurisdiction to decide the matter.*
- II. *The suit/complaint filed before this Court is time barred.*
- III. *Application filed under order 6 rule 17 is hereby dismissed.*

The application filed by the petitioner UR Enterprizes is accepted. Resultantly, the suit/complaint/claim is hereby dismissed due to all the reasons and discussions made above.

*Announced.
13.04.2017*

(BAKHT FAKHAR BAHZAD)
District & Session Judge/
Judge Consumer Court Gujrat.

It is certified that this Judgment consists of fourteen pages and each page has been dictated, read over, corrected and signed by me.

*Announced.
13.04.2017*

(BAKHT FAKHAR BAHZAD)
District & Session Judge/
Judge Consumer Court Gujrat.