

Shahid Mehmood Vs Haji Muhammad Akbar

04-10-18

Present

Vice counsel for parties.

Advocates are observing strike. Adjournment is sought. So to come up on 30-11-18 for arguments on application U/S 28 of PCPA 2005

Announced

04-10-18

Qamar Ijaz

P/O, DCC, Lahore

30-11-18

Present:

Presence as before.

Presiding Officer is on casual leave today.

To come up on 10-01-19 as per previous proceedings.

Announced

30-11-18

Registrar

DCC, Lahore

10-01-19

Present:

Learned counsel for the complainant.

Vice counsel for the defendant.

Learned counsel for the complainant completed his arguments on application U/S 28 of PCPA 2005 while due to non availability of actual counsel, adjournment is sought by defendant.

So, to come up on 21.02.19 for arguments of learned counsel for the defendant/orders.

Announced

10-01-19

Qamar Ijaz

P/O, DCC, Lahore

21-02-19 بجائے کونسل فریقین حاضر

برائے بحث درخواست زیر دفعہ 28 کنٹرولر ایکٹ مرعا علیہ مندرجہ صلیت کی استدعا ہے کہ آج ٹیڑا لے جیسی وجہ سے مرعا علیہ صلیت حجتاً ہے لہذا سب استدعا ملٹوری ہو کر ٹیڑا 28-03-19 بجائے بحث درخواست زیر دفعہ 28 رہی ہو

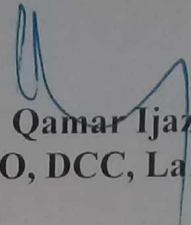
Qamar Ijaz
District Sessions Judge
Presiding Officer District
Consumer Court LHR

برائے بحث درخواست زیر دفعہ 28 کنٹرولر ایکٹ مرعا علیہ مندرجہ صلیت کی استدعا ہے کہ آج ٹیڑا لے جیسی وجہ سے مرعا علیہ صلیت حجتاً ہے لہذا سب استدعا ملٹوری ہو کر ٹیڑا 28-03-19 بجائے بحث درخواست زیر دفعہ 28 رہی ہو

Qamar Ijaz
District Sessions Judge
Presiding Officer District
Consumer Court LHR

Learned counsel for the parties
Arguments on application U/S 28 of PCPA 2005 completed.
So to come up on 27-05-19 for orders.

Announced
21-05-19


Qamar Ijaz
P/O, DCC, Lahore

27-05-19
Present

Vice counsel for the parties
Arguments have already been completed on previous date. Record perused.

ORDER

The defendant Haji Muhammad Akbar, has filed an application U/S 28(4) of PCPA 2005, seeking dismissal of instant complaint, alleging therein that it is time barred. It is contended that between the parties, agreement for construction of house, was executed on 01-04-2012, for a consideration of Rs. 6.76 Million. The defendant completed the construction work of the house as per terms of the said agreement and handed over its possession to the complainant, who was quite satisfied from the construction work. The complainant started living in the said house since 2013 and never lodged any complaint regarding any violation/fault in construction work during that period. However, after two years and five months of the handing over the possession, he filed instant complaint, only to blackmail and pressurize the defendant. Hence the complaint is liable to be dismissed. Reference to some case law is made in this regard.

2. The complainant has opposed the application by stating that instant application is filed with mala fide intention and with ulterior motive, only to prolong the adjudication of the case. It is further contended that defendant has not completed the construction work according to the agreed terms and conditions and approved LDA map. It is further stated that limitation shall start running on the fulfillment of the defendant's contractual obligation, which he has still not completed, so it is a recurring cause of action as such his complaint is within stipulated period and instant application is liable to be dismissed.

3. Briefly, the stated facts of the case are, that on 27-10-15, instant complaint was filed U/S 25 of PCPA 2005, for recovery of damages to the tune of Rs. 5 Million along with 3 lacs as litigation charges. It is stated in the complaint, that defendant provided services under the agreement dated 01-04-2012, regarding the construction of house, which proved faulty in nature, so

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complainant is entitled for recovery of asked for damages. In Para No. 3 of the complaint, it is further stated that the complainant shifted in the constructed house in May 2013 and noticed that construction work was not completed according to the agreement and many defects /missing articles and irrelevant items which were not properly fixed/installed by the defendant. When complainant agitated the matter, the defendant made little construction and promised to do the remaining work, but finally refused in the month of February 2015, by saying that he had already completed the construction and nothing was left. Thereafter legal notice to the defendant was served, who did not reply the same. Hence the complaint.

4. U/S 28 (4) of PCPA 2005, a claim by the consumer, shall be filed within 30 days of the arising of cause of action and this period can be extended by the Court, if it is satisfied that there was sufficient cause for not filing the complaint within that specified period up to one year from the date of providing of services. For seeking extension in time, the consumer has to file a separate application for condonation of delay, while filing the claim and in absence of such an application, the Consumer Court has no jurisdiction to entertain the complaint and extend the limitation period. Reliance is placed on case law reported as Coca Cola Beverages Pakistan Limited vs Ashiq Ali (PLD 2014 Lahore 196), FAO No. 508/15, titled as Pakistan International Air Lines Corporation etc Vs. Attique Ur Rehman, dated 24-04-2019, 2012 YLR 1830 Lahore, 2017 CLD 1196 Lahore, 2014 CLC 1454 Lahore. It is held that period of limitation it is to be calculated from the date, when cause of action accrued and cause of action is believed to be accrued on the same day when he according to the consumer, he has for the first time noticed the defect in the services provided by the defendant. In the instant case in Para No. 3, of the complaint, the complainant himself has stated that, he shifted in the constructed house in May 2013 and noticed that construction work was defective in terms of the agreement. So cause of action in his favor admittedly accrued in May 2013 and he filed instant complaint on 27-10-2015 after lapse of about two years five months. In Para No. 4 of the complaint, he further states that defendant finally refused to redress his grievances in February 2015. Even from that date, the complaint is filed beyond prescribed 30 days period provided U/S 28(4) of PCPA 2005 and that too without filing any application seeking condonation of delay in filing the claim. In the circumstances it is held that complaint is time barred and is not entertainable. According while allowing the application of the defendant, instant complaint is dismissed. Parties are left to bear their own costs. File be consigned to the record room after its due completion.

Announced
27-05-19

Qamar Ijaz
P/O, DCC, Lahore